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U.S. Supreme Court Reaches Decision on Family and Medical Leave Act

In a decision issued on March 19, 2002, the United States Supreme Court struck down a regulation of the Department of Labor which provided that an employee's medical leave could not be counted against his/her 12-week entitlement under FMLA unless the employer had designated the leave as FMLA leave at the time the leave was taken. The Court noted that the FMLA itself provides only 12 weeks of leave annually and that the effect of the regulation was to unlawfully expand the rights of employees that had been granted by the legislature. The Court reasoned that if an employee could show that he/she was prejudiced by the lack of notice (that is, would not have taken an earlier leave or would have chosen to take intermittent rather than full-time leave), an expansion of leave time would arguably be an appropriate remedy for the lack of advance notice. However, the regulation as drafted impermissibly presumed that any employee who did not get the required notice was prejudiced and automatically punished employers (and provided a windfall to the employee) even in circumstances where the employee was not actually prejudiced by the lack of notice.

As a result of this decision, employers will no longer be required in all instances to grant an additional 12 weeks of leave in those circumstances where they have neglected to designate an FMLA-qualifying leave as counting towards FMLA leave. You may recall that under the DOL regulations, if a Union employee went out on medical leave protected by the IWA (which can be taken for up to 26 weeks) and the employer forgot to send the employee a notice at the time the leave began that the leave would also count as FMLA leave, the employer had to grant the employee's later request for an additional 12 weeks of FMLA leave (in some cases, this resulted in as much as 38 weeks of protected leave). Fortunately, this is no longer the case.

Notwithstanding this decision, we caution all Hotels that you should still give employees prompt notice as soon as an FMLA-qualifying leave is requested - whether it be a leave under the IWA or a leave covered by disability or Workers Compensation - that you are simultaneously counting the leave towards the employee's annual FMLA entitlement. Although it struck down the regulation automatically penalizing employers for failure to provide notice, the Supreme Court left open the possibility that where an employee can show prejudice by the lack of notice, he/she may have a claim for an unlawful interference with FMLA rights. Prompt notice will prevent any possibility of misunderstanding or subsequent claim by the employee that he/she would have acted differently if notice had been provided.