

Human Resource Professionals Beware — Second Circuit Finds HR Director May Be Individually Liable Under the FMLA

On March 17, 2016, the United States Court of Appeals for the Second Circuit issued a decision in [Graziadio v. Culinary Institute of America](#). In that decision, the Court held that the facts (when viewed in the light most favorable to the plaintiff) could lead a jury to conclude that the Culinary Institute of America's Director of Human Resources was individually liable for violating the Family and Medical Leave Act.

The plaintiff, Cathy Graziadio, was employed at the Culinary Institute as a Payroll Administrator. On June 6, 2012, Graziadio's son was hospitalized due to issues related to Type I diabetes. Graziadio immediately informed her supervisor that she needed to take leave to care for him. Graziadio completed the necessary FMLA paperwork and submitted medical documentation supporting her need for leave. Only a few weeks later, Graziadio's other son fractured his leg playing basketball and underwent surgery. Graziadio again notified her supervisor that she needed leave to care for her other son and expected to return to work, at least part time, by the week of July 9.

On July 9, Graziadio's supervisor asked for an update on Graziadio's return to work and Graziadio responded that she needed a reduced, three-day week schedule until mid-to-late August and could return July 12 if that schedule was approved. Graziadio asked whether the Culinary Institute required any further documentation from her. At that point, Graziadio's supervisor contacted the Director of Human Resources regarding Graziadio's request. Despite several calls and e-mails from Graziadio, the Director of Human Resources did not respond until July 17. Over the next several weeks, Graziadio and the Director of Human Resources corresponded regarding Graziadio's need for continued leave, alleged deficiencies in her FMLA documentation, and her expected return to work date.

On September 11, 2012, the Director of Human Resources sent Graziadio a letter notifying her that she had been terminated for abandoning her position. After being terminated, Graziadio commenced an action against the Culinary Institute, her supervisor, and the Director of Human Resources alleging interference with her FMLA leave and retaliation for taking FMLA leave. The District Court granted summary judgment to the Culinary Institute and the individual defendants, but the Second Circuit reversed that decision.

Under the FMLA, an individual may be held liable if he or she is considered an "employer," defined as "any person who acts, directly or indirectly in the interest of an employer to any of the employees of such employer." In examining this standard, the Second Circuit applied the economic realities test – which courts apply to determine who may be considered an employer under the Fair Labor Standards Act. Under this test, the Court must look to whether the individual "possessed the power to control the worker in question." The factors include whether the individual: (1) had the power to hire and fire employees; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records. In the context of the FMLA, courts look to whether the individual "controlled in whole or in part plaintiff's rights under the FMLA."

In the *Graziadio* case, the Second Circuit held that the Director of Human Resources "appears to have played an important role in the decision to fire Graziadio" and "under the totality of the circumstances, [the Director of Human Resources] exercised sufficient control over Graziadio's employment to be subject to liability under the FMLA." Accordingly, unless the parties reach a settlement, the case will proceed to trial with both the Culinary Institute and its Director of Human Resources as defendants.

This case stands as a stark reminder to human resource professionals involved in making decisions related to employee FMLA requests to proceed with caution and to strictly comply with the requirements of the FMLA when processing requests for leave. If there is any doubt regarding the appropriate course of action, human resource professionals should consult with counsel.

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