Joint Employers Not Jointly Liable Under FMLA

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Practice Area: Labor and Employment

In *Arrigo v. Linkstop*, the District Court for the Western District of Wisconsin determined that business partners determined to be "joint employers" under the Family Medical Leave Act ("FMLA") were not jointly liable for damages under the FMLA. In its decision, the court differentiated between general applicability of the FMLA and liability for actions of business partners.

In order to be considered a "covered employer" subject to the legal requirements and protections of the FMLA, an employer must have 50 or more employees. Under certain circumstances, it is possible to group multiple business entities together as "joint employers" for purposes of combining their workforce populations to reach the 50-employee threshold. If joint employers, all entities will be subject to FMLA leave requirements even if they would not individually reach the 50-employee threshold.

The *Arrigo* court was asked by the plaintiff to extend joint employer status not only to *coverage* under the FMLA but to *liability* for the actions of other joint employers. Fortunately for employers, the court declined to hold joint employers collectively liable for each other's actions under the FMLA.

The court noted that the terms "employer" and "joint employer" are not synonymous under the FMLA. Rather, joint employer status only refers to reaching the 50 employee threshold. Joint employer status does not extend liability to all entities in a joint employer relationship. The court specifically noted that the FMLA regulations distinguish between a primary employer and a secondary employer in a joint employer relationship. The regulations state that only the primary employer is responsible for providing FMLA leave, maintaining health benefits, and providing required FMLA notices; the secondary employer only is responsible for FMLA compliance with respect to its permanent workforce.

Finally, the court noted that extension of FMLA liability to joint employers would be unfair to employers that make use of staffing agencies. If a staffing agency fired an employee for taking protected FMLA leave, the contracting employer also would be held liable, even if it had no involvement in the termination decision. Accordingly, the court held that joint employer status does not make employers jointly liable under the FMLA for each other's decisions under the FMLA.

Employers should be relieved to know that they will not be held liable for FMLA violations by the staffing companies with which they partner. However, employers still should make sure that they have adequate protections in place for any misdeeds of their staffing agencies or other business partners. Employers should carefully review all staffing company agreements with respect to indemnification, proper insurance coverage, and exposure to any other employment-related liability.