

Warning: Managers & HR pros can be personally liable for FMLA violations

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Courts have ruled that managers and supervisors can be held personally liable for FLSA violations. And now, in a new twist, courts are saying you can be individually liable for FMLA violations as well. Here's why and when.

In a nutshell, the FMLA says that an employer **can be**:

“... any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer ...



And employers can be held liable for FMLA violations — even if those “employers” are individuals within a company.

So how do you determine who qualifies as an employer under the law? Courts have recently ruled that the FMLA's definition of employer closely tracks the definition of employer under the FLSA and, therefore, have reasoned that the standards used to evaluate employers under the FLSA should be applied to FMLA cases as well.

In other words, courts can look at the “economic reality” of a situation to determine an individual's level of control over an employee — and, thus, that individual's liability under the FMLA.

Employee claims HR director is liable

Recently, the U.S. Court of Appeals for the Second Circuit used this very line of thinking to determine that Shaynan Garrioch, the director of HR for the Culinary Institute of America (CIA), could potentially be held individually liable for FMLA violations allegedly committed against Cathleen Graziadio, CIA's payroll administrator.

What happened was Graziadio requested FMLA leave to care for her 17-year-old son after he was hospitalized with complications related to his diabetes.

A few weeks later Graziadio returned to work and handed in a medical certification supporting her need for leave. She was then promptly pulled out of work again because her 12-year-old son fractured his leg playing basketball and needed surgery. So she again requested FMLA leave.

Then, shortly before she was supposed to return to work for the second time, Graziadio asked her supervisor if CIA required any further documentation from her regarding her leaves. Her inquiry was then forwarded to Garrioch. But she received no answer.

After several attempts by Graziadio to obtain an answer, CIA sent her a letter stating her FMLA paperwork didn't justify her absences.

She then tried again to find out what paperwork CIA needed, but she received no response. When told she couldn't return to work without medical documentation to justify her leave, Graziadio hired an attorney who followed up with

CIA on her behalf.

Her attorney then said that: “CIA continued to take the position that Ms. Graziadio would not be returned to work because she had not provided sufficient support to justify her absences” and insisted that “it was not the employer’s obligation to explain what was missing from the paperwork and instead that it was Ms. Graziadio’s obligation to comply with the statute.”

After failing to make any headway on the documentation issue, Graziadio was eventually terminated for abandoning her position. She then filed an FMLA interference and retaliation lawsuit against CIA as well as Garrioch.

Was HR director her employer?

As part of an attempt to get Graziadio’s lawsuit thrown out, the defense’s legal counsel argued that Garrioch wasn’t an employer under the FMLA and therefore couldn’t be held individually liable.

But the appeals court disagreed and ruled that not only should Graziadio’s FMLA interference and retaliation claims go to trial, but also it’s possible that a Garrioch may be able to be held personally liable. So now a jury will sort things out, which may prove costly for CIA and Garrioch.

In determining whether Garrioch could be held individually liable under the FMLA, the court looked at four factors used under the FLSA to determine “employer” status:

1. Whether Garrioch had the power to fire and hire Graziadio. **The answer:** Yes.
2. Whether Garrioch controlled Graziadio’s work schedules or conditions of employment. **The answer:** Yes, based upon the fact that she controlled when Graziadio could return from work and played a hand in the decision to terminate her.
3. Whether Garrioch determined the rate and method of payment for Graziadio. **The answer:** No.
4. Whether the Garrioch maintained employment records. **The answer:** No.

But based on the fact that the answer clearly appeared to be yes to two of those factors, the court ruled there was enough evidence to support that Garrioch controlled Graziadio’s FMLA rights in an employer capacity.

It’s still possible that a jury will find that Garrioch wasn’t personally liable — or even that Graziadio’s FMLA claims in general don’t hold water. But this is an important reminder that HR managers — as well as ordinary managers and supervisors — can be held individually liable for certain FMLA screw-ups.

Cite: [*Graziadio v. Culinary Institute of America*](#)

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