Congressional Research Service

Report RS22090

The Family and Medical Leave Act: Background and U.S. Supreme Court Casts

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March 23, 2005

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Order Code RS22090
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The Family and Medical Leave Act: Background and U.S. Supreme Court Cases

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Summary

This report provides background on the eligibility and notification requirements for taking leave under the Family and Medical Leave Act ("FMLA"). The FMLA guarantees eligible employees 12 workweeks of unpaid leave for the birth or adoption of a child; for the placement of a foster child; for the care of a spouse, child, or parent suffering from a serious health condition; or for a serious health condition that makes the employee unable to perform the functions of the employee's position. Since the FMLA's enactment in 1993, the U.S. Supreme Court has considered two cases involving the statute. *Ragsdale v. Wolverine World Wide, Inc.* and *Nevada Department of Human Resources v. Hibbs* are discussed in this report. The report will be updated in response to the FMLA's amendment and relevant Supreme Court cases.

The Family and Medical Leave Act ("FMLA") guarantees eligible employees 12 workweeks of unpaid leave for certain specified reasons.[1] Enacted in 1993, the FMLA seeks "to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity."[2] This report provides background on the eligibility and notification requirements for taking leave under the FMLA, and discusses U.S. Supreme Court cases that have considered the validity of FMLA regulations and the availability of money damages under the FMLA for state employees.

Background

Section 102(a)(1) of the FMLA provides that an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following reasons:

[1] 29 U.S.C. §§ 2601-2654.

[2] 29 U.S.C. § 2601(b)(1), (b)(2).

> (1) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
> (2) Because of the placement of a son or daughter with the employee for adoption or foster care;
> (3) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition;
> (4) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.[3]

The FMLA defines an "eligible employee" as one who has been employed for at least 12 months by the employer from whom leave is requested, and who has been employed for at least 1,250 hours of service with such employer during the previous 12-month period.[4] The FMLA applies only to employers engaged in commerce or in an industry affecting commerce who have at least 50 employees who are employed for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.[5]

Most employees who take leave under the FMLA shall be entitled, upon their return, to be restored to their positions of employment or to equivalent positions with equivalent employment benefits, pay, and other terms and conditions of employment.[6] During the leave period, an employer shall maintain the employee's coverage in any group health plan at the level and under the same conditions that would have existed had the employee continued in employment.[7]

Certain highly compensated employees may be denied restoration to their prior positions under specified circumstances. A salaried employee who is among the highest paid 10 percent of employees employed within 75 miles of the facility at which he is employed may be denied restoration to his prior position when the denial is necessary to prevent "substantial and grievous economic injury" to the employer's operations, the employer notifies the employee of its intent not to restore the employee to his prior position, and, in a case in which leave has commenced, the employee elects not to return after receiving such notice.[8]

When the necessity for leave is foreseeable because of a serious health condition and a planned medical treatment, the FMLA requires the employee to make a reasonable effort

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[3] 29 U.S.C. § 2612(a)(1).

[4] 29 U.S.C. § 2611(2). The term "eligible employee" does not include most federal employees. Federal employees are covered generally under the Federal Employees Family Friendly Leave Act ("FEFFLA"). See also 5 U.S.C. § 6307(d) (permitting the use of sick leave to care for a family member having an illness or injury, and to make arrangements for or to attend the funeral of a family member).

[5] 29 U.S.C. § 2611(4)(I). See also 29 U.S.C. §2611(2)(B)(ii) (Employers who employ 50 or more employees within a 75-mile radius of an employee's worksite are subject to the FMLA even if they may have fewer than 50 employees at a single worksite.).

[6] 29 U.S.C. § 2614(a)(1).

[7] 29 U.S.C. § 2614(c)(1).

[8] 29 U.S.C. § 2614(b)(1), (b)(2).

to schedule the treatment so as not to unduly disrupt the operations of the employer.[9] In addition, the employee is required to notify the employer of his intention to take leave not less than 30 days before the date the leave is to begin.[10] If the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.[11] If an employee fails to provide 30 days notice for foreseeable leave, with no reasonable excuse for the delay, the employer may delay the taking of leave until at least 30 days after the date the employee provides notice to the employer.[12] An employer may also delay leave if an employee fails to provide medical certification to substantiate the need for leave because of a serious health condition.[13]

While the FMLA guarantees leave for eligible employees, it also permits an employer to substitute an employee's accrued paid vacation leave, personal leave, or family leave for the leave provided under the statute for the birth or adoption of a child, or for the care of a child, spouse, or parent who has a serious health condition.[14] In addition, an employer may substitute an employee's accrued paid vacation leave, personal leave, or medical or sick leave for the leave provided under the FMLA for the employee's own serious health condition.[15] An employer who substitutes vacation leave, personal leave, family leave, or medical or sick leave for the leave provided under the statute must tell the employee that the paid leave is being designated as FMLA leave.[16]

Section 107(a)(2) of the FMLA provides a private right of action for employees who are denied their rights under the statute.[17] The private right of action may be limited by the filing of a complaint by the Secretary of Labor on behalf of the employee.[18]

The FMLA and the U.S. Supreme Court

The Supreme Court has considered two cases involving the FMLA since the statute's enactment. In *Ragsdale v. Wolverine World Wide, Inc.*, the Court considered the validity of a FMLA regulation which provided that if an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken would not count against the employee's FMLA entitlement.[19] Wolverine World Wide maintained

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[9] 29 U.S.C. § 2612(e)(2)(A).

[10] 29 U.S.C. § 2612(e)(2)(B).

[11] *Id.*

[12] 29 C.F.R. § 825.304(b).

[13] 29 C.F.R. § 825.312(b).

[14] 29 U.S.C. § 2612(d)(A).

[15] 29 U.S.C. § 2612(d)(B).

[16] 29 C.F.R. § 825.208.

[17] 29 U.S.C. § 2617(a)(2). See also 29 U.S.C. § 2615.

[18] 29 U.S.C. § 2617(a)(4).

[19] 535 U.S. 81 (2002). 29 C.F.R. § 825.700(a) (1991) provided, in relevant part: "If an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the

(continued...)

a leave plan that permitted its employees up to seven months of unpaid sick leave. Ragsdale was terminated after her request for additional leave beyond the seven-month allowance was exhausted, and she was unable to return to work. Because Wolverine World Wide never informed Ragsdale that 12 weeks of leave under the leave plan would count as her FMLA leave, Ragsdale sought relief based on the FMLA regulation.

While the Court recognized that the Secretary of Labor's judgment in issuing the regulation must be given considerable weight, it also acknowledged that the regulation could not stand if it was "'arbitrary, capricious, or manifestly contrary to the statute.'"[20] In this case, the Court maintained that the regulation was invalid because it altered the FMLA's cause of action in a fundamental way: "[The regulation] transformed the company's failure to give notice – along with its refusal to grant her more . . . leave – into an actionable violation . . ."[21]

The Court noted that to prevail under FMLA's enforcement provisions, an employee must prove, as a threshold matter, that the employer interfered with, restrained, or denied the exercise of FMLA rights. Moreover, the Court observed that even when an employer has engaged in such misconduct, the FMLA does not provide relief unless the employee has been prejudiced by the violation.[22] The FMLA regulation at issue established an "irrebuttable presumption" that an employee's exercise of FMLA rights was impaired without any empirical or logical basis for the presumption.[23] Although Wolverine World Wide had granted Ragsdale more than 12 weeks of leave, the regulation, if upheld, would permit her to obtain reinstatement and the other relief provided under the statute. By granting such relief "absent a showing of consequential harm, the regulation worked an end run around important limitations of the statute's remedial scheme."[24] The Court contended that the regulation "relieves employees of the burden of proving any real impairment of their rights and resulting prejudice."[25]

In *Nevada Department of Human Resources v. Hibbs*, the Court concluded that state employees could recover money damages from a state in federal court for violation of section 102(a)(1)(C) of the FMLA.[26] Hibbs was terminated after he failed to return to

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[19] (...continued)
leave taken does not count against an employee's FMLA entitlement."

[20] *Id*. at 86 (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)).

[21] *Ragsdale*, 535 U.S. at 91.

[22] *Ragsdale*, 535 U.S. at 89.

[23] *Ragsdale*, 535 U.S. at 90.

[24] *Ragsdale*, 535 U.S. at 91.

[25] *Ragsdale*, 535 U.S. at 90.

[26] 538 U.S. 721 (2003). Section 102(a)(1)(C) of the FMLA entitles an eligible employee to take 12 workweeks of leave during any 12-month period to care for such employee's child, spouse, or parent with a serious health condition. For additional information about *Nevada Department of Human Resources v. Hibbs*, see CRS Report RL31604, *Suits Against State Employers Under the Family and Medical Leave Act: Analysis of Nevada Department of Human Resources v.*
(continued...)

work with the Nevada Department of Human Resources' Welfare Division after being told that he had exhausted his FMLA leave. The Court considered the case to resolve a split among the U.S. Courts of Appeals on the question of whether an individual may sue a state for money damages in federal court for violation of section 102(a)(1)(C).

Although the Constitution does not provide generally for federal jurisdiction over suits against nonconsenting states, it is understood that Congress may abrogate a state's immunity in federal court if it makes its intention "unmistakably clear in the language of the statute and acts pursuant to a valid exercise of its power under section 5 of the Fourteenth Amendment."[27] Because the language of the FMLA provides clearly for an employee to seek relief in any federal or state court of competent jurisdiction against a public agency, the Court focused on whether Congress acted within its constitutional authority when it sought to abrogate the states' immunity.[28]

Section 5 of the Fourteenth Amendment grants Congress the power to enforce the substantive guarantees of section 1 of the Fourteenth Amendment, including equal protection of the laws, by enacting "appropriate legislation."[29] In the exercise of its authority under section 5, Congress may enact "prophylactic" legislation that proscribes facially constitutional conduct as a way of preventing and deterring unconstitutional conduct.[30] However, to be valid, such legislation must exhibit "'congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'"[31]

The FMLA operates to protect the right to be free from gender-based discrimination in the workplace.[32] A review of the FMLA's legislative record by the Court indicated that stereotype-based beliefs about the allocation of family duties still existed at the time of the measure's enactment. Employers continued to rely on those beliefs to establish

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[26] (...continued)
Hibbs.

[27] *Hibbs*, 538 U.S. at 726. See also *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001); *Blatchford v. Native Village of Noatak*, 501 U.S. 775 (1991). In enacting the FMLA, Congress relied on its power under section 5 of the Fourteenth Amendment, as well as its authority under the Commerce Clause of Article I. However, Congress may not abrogate the states' sovereign immunity pursuant to its Article I power over commerce.

[28] See 29 U.S.C. § 2611(4)(A)(iii) ("The term 'employer' – includes any 'public agency', as defined in section 203(x) of this title."). 29 U.S.C. § 203(x) defines the term "public employer" to mean "the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency."

[29] U.S. Const. amend. XIV, § 5.

[30] *Hibbs*, 538 U.S. at 727-28.

[31] *Hibbs*, 538 U.S. at 728 (quoting *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997)).

[32] See 29 U.S.C. § 2601(b)(4) (explaining that one of the purposes of the FMLA is to minimize the potential for employment discrimination on the basis of sex by ensuring that leave is available for eligible medical reasons and for compelling family reasons on a gender-neutral basis).

discriminatory leave policies.[33] Moreover, Congress recognized that the state leave policies that existed prior to the FMLA's enactment were limited and would do little to combat stereotypes about the roles of male and female employees.[34] For example, prior to the FMLA's enactment, seven states had childcare leave provisions that applied only to women.[35] Given these findings, the Court concluded that Congress was justified in enacting the FMLA as remedial legislation: "In sum, the States' record of unconstitutional participation in, and fostering of, gender-based discrimination in the administration of leave benefits is weighty enough to justify the enactment of prophylactic [section] 5 legislation."[36]

Focusing specifically on section 102(a)(1)(C), the Court maintained that the provision is congruent and proportional to the targeted violation: "the FMLA is narrowly targeted at the fault line between work and family – precisely where sex-based overgeneralization has been and remains strongest – and affects only one aspect of the employment relationship."[37] The Court also cited the FMLA's limitations as evidence of its being congruent and proportional. For example, the statute applies only to employees who meet specified tenure requirements. Employees must give advance notice of foreseeable leave. 12 weeks, rather than a longer period, was selected as the appropriate leave floor. These and other limitations led the Court to find that section 102(a)(1) is "congruent and proportional to its remedial object, and can 'be understood as responsive to, or designed to prevent, unconstitutional behavior.'"[38]

Because the FMLA was found to be a valid exercise of Congress's power under section 5 of the Fourteenth Amendment, and because the statute provides clearly for relief against a public agency, including the government of a state or political subdivision, the Court concluded that money damages are available to state employees when the state fails to comply with the FMLA.

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[33] *Hibbs*, 538 U.S. at 730.

[34] *Hibbs*, 538 U.S. at 733-34.

[35] *Hibbs*, 538 U.S. at 733.

[36] *Hibbs*, 538 U.S. at 735.

[37] *Hibbs*, 538 U.S. at 738.

[38] *Hibbs*, 538 U.S. at 739-40 (quoting *City of Boerne v. Flores*, 521 U.S. 507, 532 (1997)).