

**SUPREME COURT INVALIDATES U.S. DEPARTMENT OF LABOR REGULATION THAT
PENALIZES EMPLOYER FOR NOT INFORMING EMPLOYEES THAT PARTICULAR
ABSENCES ARE LEAVE UNDER
THE FAMILY AND MEDICAL LEAVE ACT**

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In *Ragsdale v. Wolverine World Wide, Inc.*, No. 00-6029, decided on March 19, 2002, the United States Supreme Court invalidated a regulation of the United States Department of Labor that prohibited employers from counting leave taken by an employee against the employee's annual allotment of 12 weeks of leave pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.* ("FMLA"), unless the employer specifically notifies the individual employee at the beginning of a leave of absence that the particular absence would be considered FMLA leave. This regulation, as written, requires employers to give a full allowance of 12 weeks of FMLA leave to every employee who did not receive the individualized notice, regardless of whether the employee had already been allowed far in excess of 12 weeks leave under the employer's general leave policies.

This 5-4 decision held that the Department of Labor's regulation was contrary to the FMLA, because it fundamentally altered the statute's remedial structure which requires an employee to demonstrate impairment of his FMLA rights, and resulting harm done to him and which was caused by the violation of the FMLA, before the employee is entitled to relief.

**THE FACTS OF RAGSDALE & THE INITIAL
PROCEEDINGS**

In *Ragsdale*, the employee, Tracy Ragsdale, began working at one of the respondent Wolverine's factories in 1995. Approximately one year later, Ragsdale was diagnosed with cancer, and was informed that her treatment would require surgery as well as months of radiation therapy. Under Wolverine's leave plan, Ragsdale was given seven months of unpaid sick leave. Wolverine maintained Ragsdale's health benefits and paid her premiums during the first six months of her absence. Wolverine also held open Ragsdale's position with the Company during the entirety of her leave. Wolverine, however, did not specifically inform Ragsdale that 12 weeks of her absence would count as her FMLA leave.

After her seven months of leave under Wolverine's leave plan expired, Ragsdale requested a thirty-day extension of leave. Wolverine refused, and terminated Ragsdale when she did not return to work.

Ragsdale initiated proceedings in the United States District Court for the Eastern District of Arkansas. Ragsdale argued that Wolverine violated a regulation issued by the Department of Labor, which provides, *inter alia*, that when an employee takes medical leave “and the employer does not designate the leave as FMLA leave, the leave taken does not count against an employee’s FMLA entitlement.” See 29 CFR § 825.700(a) (2001). Pursuant to this regulation, Ragsdale claimed that she was denied the 12 weeks of FMLA leave guaranteed to her under the statute, which she remained entitled to receive. Ragsdale sued for reinstatement, backpay and other relief.

The parties filed cross-motions for summary judgment. The District Court determined that the regulation requiring the employer to give each employee specific notice that the leave was designated as FMLA leave was in conflict with the FMLA, and thus invalid, because it required an employer to give an employee more than 12 weeks of FMLA leave in one year. Accordingly, the District Court granted summary judgment for Wolverine. The Court of Appeals for the Eighth Circuit agreed, and affirmed.

**THE SUPREME COURT REJECTS DEPARTMENT OF
LABOR’S NOTICE REGULATION**

The Supreme Court affirmed the decision of the Eighth Circuit, and held that the Department of Labor exceeded its authority in enacting a regulation contrary to the FMLA.

As an initial matter, the Court noted that the Secretary of the Department of Labor was directed by Congress to issue regulations necessary to carry out the FMLA. The Court also observed that the Secretary’s determination that a regulation fits within a particular statutory scheme is entitled to great weight. However, a regulation will be deemed invalid if it is determined to be arbitrary, capricious or contrary to the relevant statute.

The Court also reviewed the FMLA’s statutory scheme. Under the FMLA, employees are guaranteed 12 weeks of FMLA-eligible leave in a one-year period upon the occurrence of certain events: (1) a disabling health problem; (2) the serious illness of certain family members; or (3) the birth or adoption of a child. See 29 U.S.C. § 2612(a)(1). However, employers may adopt policies which provide employees with more generous leave than that mandated by the statute, either by giving employees paid leave or, as in the instant case, by allowing employees to take more than the 12-week minimum leave. Indeed, Congress encouraged employers to provide more generous leave by providing in the statute that “[n]othing in [the FMLA] . . . shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under the [FMLA].” See 29 U.S.C. § 2653.

The Court then observed that the FMLA contains its own notice provision, which states that employers must “keep posted, in conspicuous places . . . , a notice . . . setting forth excerpts from, or summaries of, the pertinent provisions of this subchapter and information pertaining to the filing of a charge.” See 29 U.S.C. § 2619(a). Thus, the Court noted that the Department of

Labor regulation, which makes it the employer's responsibility to inform an employee that an absence will be considered FMLA leave, is in addition to the notice provision already contained in the statute. The Court, however, did not rule on the question whether the Labor Department's additional notice regulation was properly in accord with the language of the statute because the Court determined that the categorical penalty imposed for a breach of the regulation, *i.e.*, permitting the employee to have the full 12 weeks of FMLA leave available regardless of whether the employee had been on leave for much longer than 12 weeks, was contrary to the FMLA's remedial structure.

The Court held that the penalty, which denies the employer any credit for leave granted before the individual notice required by the regulation is given, was incompatible with the FMLA's comprehensive remedial scheme. The Court pointed out that the penalty was without regard to any prejudice that the employee might have suffered from the employer's failure to provide notice. For example, under Section 2617 of the FMLA, which provides employees with remedies should an employer deny FMLA leave that should have been granted or not reinstate the employee properly at the conclusion of FMLA leave, an employee must demonstrate that he has been prejudiced by his employer's violation of the statute before being entitled to the relief. The Court determined that the notice regulation improperly and fundamentally altered the statute by relieving employees from the burden of proving any impairment of their FMLA rights and any resulting prejudice, and by establishing an irrebuttable presumption that, without individualized notice that the leave in question was leave under the FMLA, the employee's exercise of FMLA rights was impaired.

The Court also found that the Department of Labor's notice regulation was unreasonable. The Court noted that, in a majority of cases, the 12-week penalty imposed by the regulation would have no substantial relationship to the harm suffered by a particular employee. In the instant case, for example, Ragsdale would have taken at least 12 weeks of leave regardless whether it was FMLA leave or otherwise, so she was not harmed by not being told individually that her leave would count against her entitlement under the FMLA. The Court also observed that the regulation's penalty was far more severe in its consequences to employees than the \$100 penalty imposed by Congress in the statute for willful violations of the FMLA's general notice posting requirements.

Finally, the Court determined that the regulation was in considerable tension with the FMLA's mandate that nothing in the Act should be construed to discourage employers from implementing more generous leave policies. The Court found that the regulation, by improperly imposing burdensome technical requirements which result in stiff penalties for good-faith, but erroneous, violations, may actually encourage employers that otherwise had generous leave policies to choose the simpler and less generous requirements of the federal statute.

CONCLUSION

Under the FMLA regulations adopted by the Labor Department, an employer is required to make a judgment, at the very beginning of an employee's leave of absence, about whether the leave qualifies as FMLA leave (*e.g.*, it is leave taken as the result of a condition meeting the definition of "serious health condition" as that term is used in the statute). If the employer erroneously designates leave as FMLA leave, the employer violates the FMLA. And, if the employer erroneously designates the leave taken as other than FMLA leave, prior to the Supreme Court's decision in *Ragsdale*, the employee was entitled to an extra 12 weeks of FMLA leave regardless of the length of leave already taken. The *Ragsdale* decision removes this penalty on employers and thus eliminates a concern if an erroneous characterization of the leave is made. Employers should, however, keep in mind that the FMLA's statutory record-keeping requirements contained in 29 U.S.C. § 2616(b) still require that a designation eventually be made.

Please contact J. Scott Dyer (212-455-3845), Fagie Hartman (212-455-2841), or Susan Digilio (212-455-3085) if we can be of assistance on this or any other labor and employment matter.

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