

CLIENT ALERT

HUMAN RESOURCES DIRECTORS MAY BE HELD PERSONALLY LIABLE FOR FMLA VIOLATIONS

On March 17, 2016, the Second Circuit Court of Appeals held that the definition of “employer” under the Family Medical Leave Act (“FMLA”) may include an employee, such as a Director of Human Resources, who has the requisite amount of control over an employee’s terms and conditions of employment. See *Graziadio v. Culinary Institute of America et al.*, Docket No. 15-888-cv (2d Cir. Mar. 17, 2016). In so holding, the Second Circuit extended personal liability for FMLA violations to certain individuals within an organization.

In *Graziadio*, the Second Circuit developed a four-factor test to determine whether the requisite amount of control exists to hold that an individual (e.g., a manager) is an “employer”. The Second Circuit said a court must consider whether the individual:

1. has the power to hire and fire;
2. supervises and controls employee work schedules or conditions of employment;
3. determines the rate and method of payment to employees, and/or
4. maintains employment records.

Not all factors must be present and these factors are explicitly “non-exhaustive” – meaning they’re not the only factors a court may look to when evaluating whether an individual can be held personally liable for FMLA violations.

In the wake of this decision, it is highly likely that we will see a dramatic uptick in the inclusion of individuals (e.g., managers, human resource directors, vice presidents, etc.) as named defendants in FMLA lawsuits. Accordingly, it is now more imperative than ever that employers take any and all steps necessary to comply with even the most subtle FMLA requirements and ensure that all employees in positions of control are well-trained as to the best practices with respect to requests for FMLA leave, FMLA paperwork, leave management and job restoration.

If you have questions or would like additional information, please contact Amanda M. Fugazy (afugazy@egsllp.com), Paul P. Rooney (prooney@egsllp.com), Valerie J. Bluth (vbluth@egsllp.com) or the primary EGS attorney with whom you work.

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