

Connecticut Court Expands Scope Of The Connecticut Family and Medical Leave Act

According to a new Superior Court decision, Connecticut's Family and Medical Leave Act ("CFMLA"), Conn. Gen. Stat. § 31-55kk *et. seq.*, now applies to Connecticut employers with 75 or more employees anywhere in the nation, not just in Connecticut. This new decision significantly expands the scope of the act and mandates that a large number of Connecticut employers with small operations in the state must comply with the CFMLA, despite the fact that their Connecticut employees had never before been protected by *either* the CFMLA or the federal Family and Medical Leave Act ("FMLA").

On May 14, 2010, deciding an issue of first impression, the Superior Court held in *Velez v. Mayfield et al.*, Superior Court, judicial district of New Britain, Docket No. CV 08 4017925S (May 14, 2010, *Cohn, J.*), that in determining whether an employer satisfies the CFMLA's 75-employee threshold, the Department of Labor must consider the employer's entire workforce—including all the employer's out-of-state employees with no connection to Connecticut. The court reversed the Connecticut Department of Labor's long-held view that the CFMLA applied only to employers that employed 75 or more employees *within* the geographical boundaries of the state.

The *Velez* case involved a plaintiff who alleged that she was terminated in retaliation for exercising her rights under the CFMLA. The Connecticut Department of Labor, adhering to the practice it has followed since the CFMLA was first enacted, dismissed the case after concluding that the employer had fewer than 75 employees within Connecticut. The plaintiff appealed the agency's decision to the Superior Court.

The court rejected the Department of Labor's interpretation of the CFMLA's 75-employee requirement as "unreasonable" and refused to give it deference. The court concluded that the statute is silent on the issue of whether the CFMLA's 75-employee threshold can be met by employees outside of Connecticut, and that all an employer's employees, no matter where they are located, must be counted for purposes of determining whether an employer is subject to the



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CFMLA. In his opinion, Judge Cohn explained that it was “not the judicial function [of the court] to impute to the legislature an intent to limit a term where such intent [did] not otherwise appear in the language of the statute.” Rejecting the “small operations” analysis under the FMLA—which underpins the FMLA’s requirement that, for employees to enjoy FMLA coverage, their employers must have at least 50 employees within a 75-mile radius—Judge Cohn further reasoned that nothing in the CFMLA’s legislative history supported an interpretation that excluded large corporations with small Connecticut workforces from being subject to Connecticut’s family and medical leave laws.

The *Velez* decision is an important one because the CFMLA now covers employees who were never before protected by state or federal leave laws. For example, before *Velez*, an employer with 74 employees in Alaska and one in Connecticut would not have been subject to the CFMLA (fewer than 75 employees in Connecticut), nor would the Connecticut employee have enjoyed any protection under the FMLA (the employer had fewer than 50 employees within a 75-mile radius). After *Velez*, however, although the lone Connecticut employee would not be entitled to any FMLA leave, such an employee would be entitled to the more generous leave provisions afforded by the CFMLA because the employer had 75 total employees, without regard to geography.

Although the *Velez* decision will likely be appealed, and although it is uncertain whether the DOL will alter its approach before this issue is decided by the Appellate Court, employers should nonetheless consider the potential impact of this decision on their personnel policies. It would be prudent for employers with small workforces in Connecticut and larger ones out of state to seek advice from counsel regarding their employee leave policies and CFMLA compliance.

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