

Cases highlight risk of FMLA estoppel claims by employees

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Employers should be aware of the potential hazards of erroneously informing employees that they are eligible to take leave under the federal Family and Medical Leave Act.

If an employee does not meet the eligibility criteria for FMLA leave — for instance, because the employee has not worked for the employer for at least 12 months, or because the employer does not have at least 50 employees at or within 75 miles of the employee’s worksite — but is incorrectly told that he or she is, in fact, eligible for FMLA leave, the employer may be obligated to permit the employee to take leave in accordance with the statute.

A recent federal circuit court decision underscores these risks. In *Tilley v. Kalamazoo County Road Commission*, 777 F.3d 303 (6th Cir. 2015), the 6th U.S. Circuit Court of Appeals reversed a grant of summary judgment for the employer on FMLA claims brought

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by a former employee, despite the fact that the employee was not actually eligible for FMLA leave. Because the employer erroneously notified the employee that he was eligible for FMLA leave, and the employee took leave in reliance on that notification, the 6th Circuit concluded that the employer could be equitably estopped from raising the employee’s ineligibility as a defense to his FMLA claims.

A number of other federal appellate courts, including the 1st and 2nd circuits, have similarly held that equitable estoppel may be invoked when an employee acts in reliance on an employer’s erroneous representation as to the employee’s eligibility for FMLA leave.

In light of these holdings, it is critical that employers ensure that their personnel handbooks, FMLA forms and other leave-related documents correctly and clearly spell out the eligibility criteria for FMLA leave, and that managers, human resources employees and benefits personnel likewise accurately inform employees as to their eligibility for FMLA leave.

Factual background

The plaintiff in the *Tilley* case, Terry Tilley, was employed by the Kalamazoo County Road Commission. In July 2011, following a series of performance-related disputes, the Road Commission suspended Tilley for failing to complete three assignments and issued him a written reprimand in which it provided new deadlines for Tilley to complete the assignments.

Before Tilley had completed those assignments, he experienced symptoms that made him fear he was suffering a

heart attack. He was admitted to a hospital for observation on Aug. 1, 2011, and then discharged the next day. Tilley’s wife informed the Road Commission that Tilley would not be able to return to work until at least Aug. 5.

On Aug. 9, 2011, the Road Commission sent Tilley FMLA paperwork to complete and submit in connection with his absence. A box checked on one of the forms indicated that Tilley was “eligible for FMLA leave,” and the Road Commission’s cover letter stated that it was “important that we utilize the Family Medical Leave Act (sic) (FMLA) leave” for Tilley’s expected time away from work.

In addition, the Road Commission’s personnel manual, which was distributed to Tilley and other employees, stated that “[e]mployees covered under the Family and Medical Leave Act are full-time employees who have worked for the Road Commission and accumulated 1,250 work hours in the previous 12 months.” The manual did not mention the FMLA’s requirement that the Road Commission employ at least 50 employees at or within 75 miles of an employee’s worksite.

After sending Tilley the FMLA paperwork, the Road Commission apparently realized that Tilley was not, in fact, eligible for FMLA leave, since the Road Commission did not have at least 50 employees within a 75-mile radius of Tilley’s worksite.

Subsequently, on Aug. 12, 2011, the Road Commission informed Tilley that his employment was being terminated due to his failure to timely complete the assignments detailed in his written reprimand.

District Court action

Following his termination, Tilley filed suit in state court, alleging that his termination constituted unlawful interference and retaliation under the FMLA. The Road Commission removed the action to federal District Court and, following discovery, moved for summary judgment.

The District Court granted the Road Commission's motion for summary judgment, concluding that Tilley was not an "eligible employee" under the FMLA because the Road Commission employed fewer than 50 employees within 75 miles of Tilley's workplace.

In addition, the court rejected Tilley's argument that the Road Commission should be equitably estopped from raising the defense of his ineligibility for FMLA leave.

6th Circuit's decision

On Tilley's appeal, the 6th Circuit reversed the District Court's award of summary judgment. While the court agreed that Tilley did not qualify as an "eligible employee" under the FMLA, it concluded that a material factual dispute existed as to whether the Road Commission should be equitably estopped from raising that defense.

The 6th Circuit found that Tilley had presented sufficient evidence to establish the three necessary elements of an equitable estoppel claim: (1) a misrepresentation as to a material fact, (2) reasonable reliance on the misrepresentation, and (3) resulting detriment.

First, the court found that the Road Commission's personnel manual misleadingly described the eligibility criteria for FMLA leave. In the 6th Circuit's view, the manual's failure to mention the requirement that an employee work at a site as to which the Road Commission employed at least 50 employees within a 75-mile radius was

sufficient to satisfy this prong of the equitable estoppel standard. (The court did not rely on the similar flaws in the FMLA paperwork sent to Tilley.)

Second, Tilley asserted that, based on the language in the personnel manual, he had understood he was covered under the FMLA and could safely take medical leave despite his having failed to complete his assignments. Based on that, the 6th Circuit concluded that Tilley had acted in reasonable reliance on the manual's misleading description of the criteria for FMLA eligibility.

Finally, the 6th Circuit found that Tilley had suffered a detriment — the loss of his job — as a result of his reliance on the personnel manual's misstatement of the FMLA's eligibility requirements.

Decisions by other courts

Other federal courts have likewise held that an employer may be equitably estopped from raising the defense of an employee's ineligibility for FMLA leave, if the employer misled the employee into believing he or she was eligible for FMLA leave.

For instance, in a case similar to *Tilley*, *Minard v. ITC Deltacom Communications, Inc.*, 447 F.3d 352 (5th Cir. 2006), the employer notified the plaintiff that she was eligible for FMLA leave and that her leave would be counted against her annual FMLA entitlement, even though the employer did not have at least 50 employees within a 75-mile radius of the employee's worksite. The employer later discovered its error and terminated the employee on the day she was scheduled to return to work.

Reversing the District Court's award of summary judgment to the employer, the 5th Circuit held that "an employer who without intent to deceive makes

a definite but erroneous representation to his employee that she is an 'eligible employee' and entitled to leave under FMLA, and has reason to believe that the employee will rely upon it, may be estopped to assert a defense of non-coverage, if the employee reasonably relies on that representation and takes action thereon to her detriment."

The 1st and 2nd circuits have likewise recognized the equitable estoppel doctrine in FMLA cases, as have other federal circuit courts. See, e.g., *Nagle v. Acton-Boxborough Reg. School Dist.*, 576 F.3d 1 (1st Cir. 2009); *Woodford v. Comm. Action of Green Cnty., Inc.*, 268 F.3d 51 (2nd Cir. 2001); *Dormeyer v. Comerica Bank-Ill.*, 223 F.3d 579 (7th Cir. 2000); *Reed v. Lear Corp.*, 556 F.3d 674 (8th Cir. 2009).

Recommendations for employers

In light of *Tilley* and similar court holdings, employers should carefully review their employee handbooks, FMLA paperwork and similar documentation to ensure that the eligibility criteria for FMLA leave are fully and accurately detailed.

As these court decisions indicate, an incorrect or misleading statement in an FMLA document regarding the statute's eligibility requirements may be held against an employer if an employee acts in reasonable reliance upon it.

Additionally, employers should train all supervisors, benefits personnel and HR employees to ensure that they thoroughly understand the eligibility criteria under the FMLA.

By taking such steps, an employer can minimize the risk of a potential FMLA estoppel claim based on an employee's having been mistakenly advised that he or she was eligible for FMLA leave. **NEIH**