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Public Employee Can't Sue for Monetary Relief in FMLA Self-Care Cases

By Mark Phillis and Shannon Morales

In *Coleman v. Court of Appeals of Maryland*, No. 10-1016 (Mar. 20, 2012), a divided U.S. Supreme Court ruled that states may not be sued for monetary damages by their employees for federal Family and Medical Leave Act (FMLA) violations where an employee's FMLA claim is based on FMLA leave to deal with the employee's own serious health condition. The Court ruled that Congress did not properly abrogate states' sovereign immunity for these types of claims when it passed the FMLA. Importantly, however, the Court's ruling does not affect state employees' entitlement to FMLA leave.

The FMLA and Sovereign Immunity

In *Coleman*, a divided Supreme Court ruled that Congress did not validly exercise its power to revoke the states' sovereign immunity as it relates to the self-care provision of the FMLA.

Under the federal system, states, as sovereigns, are immune from damages suits unless they waive that defense. However, Congress may nullify the states' immunity by statute pursuant to its powers under section 5 of the Fourteenth Amendment. In order to do so, Congress first must make its intention clear in the statute. Congress then must ensure that the remedy it provides is narrowly tailored to enforce or remedy a violation of the Constitution's guarantee of equal protection.

The FMLA provides that eligible employees may take leave for: (A) "the birth of a son or daughter . . . in order to care for such son or daughter;" (B) the adoption or foster-care placement of a child with the employee; (C) the care of a "spouse . . . son, daughter, or parent" with a serious health condition; and (D) the employee's own serious health condition. Sections A, B, and C are known as the "family care" provisions, and section D is known as the "self-care" provision. In *Coleman*, the Supreme Court examined whether the self-care provision was designed to prevent sex discrimination in the workplace, thus justifying Congress's abrogation of the states' sovereign immunity.

In an earlier case, *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003), the Supreme Court found that Congress validly subjected the states to suit for violations of section C, one of the family care provisions. That holding rested on evidence in the legislative history that states had family-leave policies that differentiated on the basis of sex and that the states administered even gender-neutral family leave policies in ways that discriminated on the basis of sex.

In *Coleman*, the plurality of the Court found that the self-care provision, unlike the family-care provisions, was not based in an effort to prevent or remedy gender discrimination or enforce some other substantive protection provided by the Fourteenth Amendment. Rather, the self-care provision was designed to prohibit discrimination based on illness. A plurality of the justices found that Congress had not provided evidence that state sick leave policies were either facially discriminatory or were administered in a discriminatory fashion. Thus, the justices concluded that Congress did not validly exercise its power in abrogating the states' sovereign immunity as it relates to lawsuits brought under the self-care provision of the FMLA.

The dissent, written by Justice Ginsburg and joined by Justices Breyer, Kagan and Sotomayor, argued that the legislative history of the FMLA demonstrates Congress's intent to eradicate sex discrimination in the workplace, and in achieving this goal, the family care and self-care provisions are inextricably linked. Unlike pre-existing state legislation providing leave for pregnancy-related illness, the FMLA's self-care provision "prescribes comprehensive leave for women disabled during pregnancy or while recuperating from childbirth—without singling out pregnancy or childbirth." The dissent maintains that this gender-neutral self-care provision was necessary to prevent gender discrimination because when legislation singles out pregnant women for certain protections, women of child-bearing age are more likely to suffer employment-related discrimination.

The Practical Effect of *Coleman*

For state employers, *Coleman* means that employees can no longer bring claims for monetary damages relating to an employee's request for leave to care for his or her own serious health condition. Importantly however, state employees remain eligible for self-care leave under the FMLA. They may sue for injunctive relief (such as reinstatement or a change in the state's policies and practices). As the dissent points out, the U.S. Department of Labor also may seek relief on state employees' behalf, including monetary damages.

State employers also must remember that many states have laws that provide protections similar to those provided by the FMLA. As a result, while the Supreme Court's decision may provide some relief in the form of reduced exposure to monetary damages, as a practical matter, state employers must continue to ensure that they provide FMLA and state-required leave to employees who seek it for their serious health conditions.

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