No FMLA Successor Liability for Dollar Tree

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On September 27, 2010, the Court in Sullivan v. Dollar Tree Stores (No. No. 08-35413, opinion by Judge Graber) reviewed when a new employer is a successor in interest to a former employer under the Family Medical Leave Act ("FMLA").

Notably, the FMLA applies to "eligible" employees who work at an employer who employs at least 50 employees within a 75 mile radius. 29 U.S.C. §§ 2601-2654. In order to be eligible for FMLA leave an employee must have worked for his/her employer for 12 non-consecutive months and at least 1250 hours during the previous year.

In Sullivan¸ the employee, Christina Sullivan, had previously worked for Factory 2-U, a retail store that went bankrupt. Ms. Sullivan was later hired by Dollar Tree, a retail chain that had purchased the leasehold (in bankruptcy court) of the existing Factory 2-U store in Pasco, Washington where she worked. After Dollar Tree took over the leasehold, it closed the Factory 2-U store, redesigned the location per the specifications of the Dollar Tree chain, and continued to employ Ms. Sullivan throughout the transition period as well as when it opened its doors as a Dollar Tree store four weeks later. For the next eight months, Ms. Sullivan worked at the Dollar Tree store in Pasco. In May, 2005 she requested a leave of absence under the FMLA to care for her sick mother. While some of her leave of absence request was granted, the majority of it was denied when Dollar Tree determined that Ms. Sullivan was not eligible for FMLA. Thereafter, Ms. Sullivan filed a claim with the Department of Labor ("DOL") alleging that Dollar Tree violated the FMLA. She was eventually reinstated to her position, but later sued Dollar Tree for violation of the FMLA after she quit her employment several months after her reinstatement.

The Court concluded that: (1) a finding of no successorship in the current matter advances Congress' purpose of having employees wait 12 months until being eligible for FMLA; and (2) the balancing of the eight factors leads strongly to the conclusion that Dollar Tree was not a successor in interest to Factory 2-U because there are simply not enough similarities between Dollar Tree and Factory 2-U for there to be successorship between the two.

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