5th Circuit Upholds Propriety of FMLA Release

Insights
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In *Faris v. Williams WPC-I, Inc.*, 2003 WL 21213369 (5th Cir. 2003), the 5th Circuit considered whether a post-termination release signed by a former employee was enforceable under 29 C.F.R. § 825.220(d), a regulation issued pursuant to the Family and Medical Leave Act of 1993 ("FMLA").

The plaintiff, Carol Farris, was terminated because of poor performance. She received two weeks pay in lieu of notice and was offered the equivalent of one month's salary in exchange for signing a release that purported to waive her rights to all "claims arising under any federal, state or local law or regulation." She ultimately signed the release, received the month of pay, and never tendered it back.

Promptly after signing the release, Farris then sued her former employee alleging that she was in fact terminated in retaliation for asserting her rights under FMLA. Following discovery, the defendant moved for summary judgment as to the enforceability of the release. Farris countered by arguing that the release was per se unenforceable under § 825.220(d). That regulation provides, in relevant part, that "Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA."

Surprisingly, the district court ultimately sided with Farris, holding that the plain language of the regulation dictated that FMLA claims are not waivable under any circumstances and barred enforcement of the release agreement. On appeal, the employer argued that the regulation did not address the waivability of post-termination FMLA claims and that the federal common law presumptively supported waivability of lawsuits.

Ultimately, the 5th Circuit agreed and reversed the district court, concluding that the regulation applies "only to waivers of substantive rights under the FMLA, rather than to claims for money damages . . ." In reaching its conclusion, the court determined that "rights under FMLA" for purposes of the regulation dealt solely with prospective waivers of FMLA rights.

In sum, the 5th Circuit has now made it clear that it will enforce agreements releasing existing FMLA claims. It is equally clear though that 5th Circuit courts will not enforce agreements whereby an employee waives his substantive rights under FMLA, i.e., rights to leave and reinstatement following return from leave or waivers of prospective FMLA claims.

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