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A new unpublished decision from the Fourth Circuit confirms that employers may privately settle past FMLA claims in a release agreement.

Employer's Right to Privately Settle Past FMLA Claims Affirmed By Fourth Circuit

By Julie K. Adams

In 2007, the Fourth Circuit held, in *Taylor v. Progress Energy Inc.*, 493 F.3d 454 (4th Cir. 2007), that the DOL's regulations barred the waiver of substantive and proscriptive Family and Medical Leave Act (FMLA) rights *unless* the DOL or a court approved the waiver. As a result, employers often did not include FMLA in the list of statutes specifically released by employees in a separation agreement for fear that including such language would invalidate the release or subject them to additional liability by including unreleasable claims.

One year after *Taylor*, the DOL amended the FMLA regulations. In the new regulations, the DOL clarified what the *Taylor* court found to be ambiguous in the rules and specifically stated that employers and employees were free to settle claims relating to past conduct privately.

In a recent unpublished decision, the Fourth Circuit confirmed that the DOL's revised regulations supersede *Taylor*. Specifically, in *Whiting v. Johns Hopkins Hospital*, the appellate court affirmed the enforcement of a private release signed by plaintiff in 2007 and the granting of summary judgment to the employer on plaintiff's FMLA claim.

Factual Background

In 2007, Johns Hopkins Hospital discharged the employee after she exhausted her FMLA leave rights and the hospital filled her position. The employee then filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), alleging that the hospital terminated her in violation of the Americans with Disabilities Act (ADA). Thereafter, the parties participated in an EEOC-monitored mediation. At mediation, the employee signed two settlement agreements: the EEOC's mediated settlement agreement and a separate Release and Settlement Agreement (RSA).

By signing the RSA, the employee waived any rights or claims "arising out of or in any way relating to [her] employment, including but not limited to any claims for breach of contract, wrongful discharge, violation of Title VII . . . the [ADA] . . . , the [ADEA], or any other federal, state, or municipal statute or ordinance relating to [her] employment." She also agreed that she would "neither file nor cause or permit to be filed on her behalf

and . . . waive her right to recover . . . upon filing, any lawsuits, claims, grievances, complaints, or charges in any forum, or any dispute arising out of her employment relationship with [the employer] through December 20, 2007.”

Despite the comprehensive settlement terms contained in the RSA, the employee filed a complaint alleging violations of the FMLA. In response, the employer filed a motion to dismiss or, in the alternative, for summary judgment on the grounds that the employee’s claim was barred by the RSA and that the DOL’s 2008 FMLA regulations specifically allowed private settlements of FMLA claims. In opposition, the employee asserted that the new DOL regulations, which the DOL issued more than one year after she signed the RSA, did not apply and, regardless, the DOL’s new regulations were contrary to the FMLA.

The Fourth Circuit Holds That Private Settlements of FMLA Claims, Including Releases That Pre-Date the 2008 DOL Regulations, Are Enforceable.

The Fourth Circuit upheld the district court’s decision, first noting that the 2008 DOL rules merely affirmed that the agency’s original regulations permitted private waivers of FMLA claims. The court further concluded that, because the 2008 DOL regulations simply sought to clarify and confirm the DOL’s long-held view regarding private releases, the DOL’s clarification applied to releases signed before the DOL issued the new rules. Next, the court rejected any analogy between the FMLA and FLSA by noting that the FLSA, unlike the FMLA, is a remedial statute that is intended to protect vulnerable workers who lack bargaining power to negotiate work hours and wages. Finally, relying on the DOL’s rationale for permitting unsupervised settlement of past FMLA claims as stated in the 2008 rules preamble, the court upheld the DOL’s revised regulations on the ground that the DOL’s interpretation of the FMLA was reasonable.

The Take Away

This decision eliminates any ambiguity created by *Taylor* regarding whether private settlements of FMLA claims are permissible in the Fourth Circuit given the DOL’s revised regulations. Not all federal appellate courts have ruled on this issue, but employers and practitioners in states covered by the Fourth Circuit can now be confident that all-inclusive releases and settlement agreements can effectively release past FMLA claims. Please note that the regulations prohibit prospective waiver of FMLA rights. Thus, for example, an employer cannot require new hires to waive their FMLA rights as a condition of employment. The Fourth Circuit’s decision in *Whiting v. Johns Hopkins Hospital* does not affect this prohibition.

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