Interplay Between Texas Workers' Compensation Law and Federal Family Medical Leave Act: Texas Supreme Court Addresses Impact of FMLA on Workers' Compensation Anti-Retaliation Clause

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Introduction

On December 4, 2015, the Texas Supreme Court provided significant guidance for employers by clarifying the relationship between the Texas Worker's Compensation Act and the federal Family Medical Leave Act ("FMLA") in *Kingsaire, Inc. d/b/a Kings Aire, Inc. v. Melendez*. This decision enhances employers' ability to enforce reasonable leave policies, even where the result is to terminate the employment of an employee on workers' compensation leave before that injured employee is able to return to work.

Termination Under Valid Medical Leave Policy

On July 2, 2009, Jorge Melendez was participating in a demolition project for Kings Aire. A light fixture fell and lacerated his wrist causing tendon and nerve damage. On July 21st, Kings Aire sent Melendez a notice reminding him of his rights under the FMLA and informing him that he was entitled to take up to twelve weeks of unpaid leave in conjunction with recovering from his injury.

King's Aire's written personnel policies include a section on employee leave that begins:

A leave of absence may be granted for any reason acceptable to Kings Aire or required by law. . . . Except as discussed below or required by law, a leave generally may not exceed three months, and an employee who fails to return to work within three months of the leave of absence will be terminated.

Melendez's leave under this policy expired on September 24, 2009. By that date, he had not been released to return to work. On September 28th, therefore, Kings Aire informed him that his employment had been terminated on September 25th.

One month after his employment was terminated, Melendez sued Kings Aire, claiming a violation of Texas' Worker's Compensation statute (Labor Code Chapter 451), particularly its wrongful discharge and retaliation provisions. After a trial on the merits, a jury found in favor of Melendez, awarding him damages, and the El Paso Court of Appeals affirmed the judgment.

A Rebuttal Defense Against Workers' Comp Retaliation Claims

The Texas Supreme Court reversed. Relying on applicable precedent, the Court held that so long as employers uniformly enforce a reasonable absence-control policy, then termination of an individual pursuant to that policy does not constitute the "causal connection" for an employee to demonstrate retaliatory termination, such that circumstantial evidence otherwise supporting a causal link is immaterial. *See Kingsaire, Inc. d/b/a Kings Aire, Inc. v. Melendez*, No. 14-

0006 (Tex. December 4, 2015) (citing *Cont'l Coffee Prods. Co. v. Cazarez*, 937 S.W. 2d 444, 451 (Tex. 1996); *Haggar Clothing Co. v. Hernandez*, 164 S.W.3d 386, 388 (Tex. 2005)).

This decision greatly enhances employers' ability to defend against a claim of worker's compensation retaliation so long as such a termination is based on an uniformly applied written leave policy that complies with the FMLA.

Therefore, at a minimum, if an employer is subject to the requirements of the FMLA (that is, employing 50 or more employees within a 75-mile radius of any office), the policy should provide a minimum of twelve weeks' worth of leave for any employee who has worked 12 months; and the leave policy should be consistently applied to all employees.

But Beware of the Need for Your Leave Policy To Comply with the Federal Americans with Disabilities Act

In light of *Melendez*, employers should review written leave policies to ensure they are reasonable and uniformly applied. Nevertheless, employers must also assess the impact of a leave policy against other applicable federal laws, particularly the Americans with Disabilities Act ("ADA"). The ADA imposes separate restrictions on termination of employment for employees who qualify as "disabled" under that statute:

- The ADA applies to any employer with 15 or more employees, with the result that the ADA's application is much broader than that of the FMLA and could prevent implementation of a maximum leave policy if an employee demonstrates that he or she requires additional leave as an accommodation.
- The ADA also applies even if an employee has already exhausted twelve weeks of FMLA leave.
- The only basis for denial of leave as a reasonable accommodation under the ADA is through a showing that such an accommodation would impose an undue hardship upon the employer.

Thus, although there are benefits to having a maximum leave policy in light of *Melendez*, employers with at least 15 employees must ensure that such policies also contain enough flexibility to provide sufficient accommodation to satisfy ADA requirements.