

Avenues for FMLA Enforcement

Working Together

08.28.2018

Employers with fewer than 50 employees are not covered by either the Connecticut or the federal Family and Medical Leave Act, and employers with 50 or more but fewer than 75 employees are covered only by the federal FMLA. But employees of businesses with more than 75 employees can be eligible for family and medical leave under both acts, and would have separate avenues for enforcement of violations of FMLA rights.

Under the federal FMLA, an employee who believes he was deprived of FMLA rights or was a victim of retaliation for using FMLA has a choice of filing a complaint with the U.S. Department of Labor, or of filing a lawsuit in the U.S. District Court. (Unlike the employment discrimination statutes, there is no requirement that the employee file a complaint with the agency first, before going to court.) The main difference between the two options is that the Department of Labor can only investigate complaints and attempt a conciliation with the employer. The U.S. DOL has no FMLA enforcement authority itself, but would have to file its own lawsuit in federal court - which it rarely does for individual complaints, being more interested in combating systemic violations in a business or industry.

An employee's own civil lawsuit under the federal FMLA can result in various remedies, such as reinstatement and backpay if the employee was terminated for exercising FMLA rights. However, the employee has to hire his own lawyer and finance the lawsuit himself (although reimbursement of attorney's fees is available if the employee wins, so some lawyers may accept these cases on a contingent fee basis), wait two or more years until trial, and carry the burden of proving an FMLA violation.

Authority to enforce Connecticut FMLA rights has been vested in the Connecticut Department of Labor. Unlike the U.S. DOL, the Connecticut DOL has authority not only to investigate a complaint of violation of FMLA rights, but can also hold a hearing and award appropriate remedies, such as reinstatement for terminated employees, backpay, and any other lost benefits. Moreover, an aggrieved employee does not need an attorney to make a claim to the Connecticut DOL. The complaint can be submitted in layperson's terms, and if the DOL finds reasonable cause to believe that the FMLA has been violated, the agency will present the case at the hearing.

There are two caveats for taking an FMLA complaint to the Connecticut DOL. First, the complaint must be filed within 180 days of the denial of FMLA rights. (In contrast, there is a two-year statute of limitations for filing a case under the federal FMLA in U.S. District Court). Second, a complaint filed with the Connecticut DOL is the exclusive remedy for a violation of the state FMLA. Several Connecticut Superior Court cases,

pullcom.com  [@pullmancomley](https://twitter.com/pullmancomley)

BRIDGEPORT | **HARTFORD** | **SPRINGFIELD** | **WAKEFIELD** | **WATERBURY** | **WESTPORT** | **WHITE PLAINS**
203.330.2000 | 860.424.4300 | 413.314.6160 | 401-360-1533 | 203.573.9700 | 203.254.5000 | 914.705.5355

Avenues for FMLA Enforcement

including most recently the decision in [Boyke v. Southern Connecticut State University](#) in the New Haven Superior Court, have held that an employee cannot bypass the state Department of Labor and simply file a lawsuit claiming a violation of FMLA rights.

From an employer's perspective, it is important to remember that employees may be covered by both statutes, and to be certain that the company complies with both, in order to avoid exposure to these various avenues of enforcement.

Posted in Leave

Tags: CT Department of Labor