

Careful Counting May Exempt Employers from CT and Federal FMLA

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The Connecticut Supreme Court recently held that the Connecticut Family and Medical Leave Act (CTFMLA) only covers employers with at least 75 Connecticut based employees. [Velez v. Commissioner of Labor](#), 306 Conn. 475 (2012). The decision clarifies that employers with a total workforce of 75 or more employees are not covered by the Act, if they employ fewer than 75 employees in Connecticut.

The case arose when an employee of a company employing over 1000 employees nationwide, but only 35 in Connecticut, sued the company for violating the CTFMLA when it terminated her for failing to return to work at the expiration of a company provided leave of absence. The Department of Labor Hearing Officer found she was not covered by the Act because the company employed less than 75 employees in Connecticut.

The employee appealed and the trial court found in her favor, ruling the 75 employee threshold was met if an employer employed at least 75 employees, including those working outside the state.

The Supreme Court, relying on the Department of Labor's regulations, reversed. Those regulations provide that the only employers covered by the Act are those that employed at least 75 employees in Connecticut on October 1 of the year prior to the alleged violation, regardless of the number of employees it may have employed elsewhere.

The Court also stated the regulations served to harmonize state and federal law. Under the federal FMLA employers with 50 or more employees are covered, regardless where those 50

employees work, *unless* the employee claiming coverage works at a facility with fewer than 50 employees, and the employer employs less than 50 employees within a 75 mile radius of the employee's facility. For instance, if the employee works at a site with 25 employees, and the employer employs another 10 employees within 75 miles of the site, the employee is not covered. Conversely, if the employer employs another 30 employees within 75 miles of the employee's worksite, the employee is covered. For federal FMLA purposes, an employer is covered if it meets the 50 employee threshold for each working day during 20 or more workweeks in the calendar year in which coverage is sought, or in the preceding calendar year.

The rationale for the federal 50 employee/75 mile radius exception was to lessen the burden even on large employers who have small numbers of employees in particular locations. This same concept applied to the Court's reasoning in finding that large employers with less than 75 employees in Connecticut should not be held to the state's leave law requirements.

In sum, employers with less 75 employees in Connecticut are exempt from coverage under the CTFMLA, and those with less than 50 employees in a 75 mile radius are also exempt from covering those employees under the federal FMLA.

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