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Maryland High Court Dodges Employment Law Bullet

By James Hammerschmidt

This post is about a case we simply can't resist reporting on. This is, after all, a blog that analyzes and provides insight on developments in Maryland employment issues. Thus, when our State's highest court, the Maryland Court of Appeals, is sued as a defendant for violating the FMLA and the case goes all the way up to the U.S. Supreme Court, well, that's news! Thankfully, for the taxpayers of Maryland, the Court of Appeals emerged victorious.

In Coleman v. Court of Appeals of Maryland, the Supreme Court held that a State cannot be sued for damages by an employee under the Family Medical Leave Act's ("FMLA") *self-care* provisions. While this decision doesn't relieve the burden facing private-sector employers under the FMLA, and is based more on the law of State sovereignty than employment law, it nonetheless offers an interesting look at how the courts responsible for applying the law can sometimes (arguably) run afoul of it.

The case began when Daniel Coleman, an employee of the Maryland Court of Appeals, requested sick leave and, to his dismay, was threatened with termination. He then unsuccessfully sued the Court of Appeals in the U.S. District Court for the District of Maryland. The part of the FMLA that Coleman's suit sought to enforce was its provision for 12 weeks of unpaid leave per year, which may be taken by an employee for (1) the birth of a child, (2) the adoption or foster-care placement of a child, (3) the care of a spouse, child, or parent with a serious health condition, and (4) the employee's own health condition. Coleman's claim involved the fourth option, leave for an employee's own health condition.

In *Nevada Dept. of Human Resources v. Hibbs*, decided in 2003, the Supreme Court allowed a suit for damages against the State of Nevada for violating the FMLA's provision regarding leave for the care of a spouse, child, or parent with a serious health condition, i.e., the *family-care* provisions. There was, however, a strong dissent. It is, therefore, not surprising that the *Coleman* majority that rejected Coleman's suit under the FMLA's *self-care* provision in this case, is primarily composed of the dissenters from *Hibbs* who would have rejected the plaintiff's suit under the *family-care* provision in that case.

Ordinarily, a State cannot be sued for damages unless it consents to be sued, but Congress does have the power to abrogate State sovereign immunity to enforce the Fourteenth Amendment. The Court's current jurisprudence on state sovereignty follows a "congruence and proportionality" test, requiring Congress to target conduct that violates the Fourteenth Amendment's Equal Protection provisions, and utilize a remedy closely tailored to remedy that conduct.

While in *Hibbs* the Court found that Congress had presented extensive evidence of gender discrimination in *family-care* leave policies - based on the stereotype that caring for sick family members is a feminine role - the Court in Coleman found no such evidence to show discrimination in *self-care* leave policies. The Court found that Congress's concern in enacting self-care leave was not to address gender discrimination or stereotypes, but to remedy the economic impact on employees and their families from illness-related job losses. The Court also rejected Coleman's arguments that self-care leave is a necessary adjunct to family-care leave, and that it addresses the disparate impact that self-care places on predominantly female single parents. The dissent, on the other hand, examined the legislative record and found evidence of a concern for gender discrimination and stereotypes in the self-care provision.

So what does *Coleman* portend for the future? For private-sector employers: practically nothing, as they remain subject to FMLA self-care suits. For the public sector, the decision appears to concede that a State can be sued for money damages for violating the maternal/paternal and adoption/foster-care leave provisions, even though *Hibbs* addressed only family-care leave. Ultimately, the vastly different conclusions about Congress's intent reached by the majority and dissent's examination of the FMLA's legislative record seem to lend merit to Justice Scalia's comment that "grading Congress's homework is a task we are ill suited to perform and ill advised to undertake."

