CLIENT ALERT: Massachusetts Supreme Judicial Court Clarifies Leave Rights Under State Maternity Leave Law

The Massachusetts Supreme Judicial Court ("SJC") has held that employees who take leave pursuant to the Massachusetts Maternity Leave Act ("MMLA") are only entitled to the protection set forth in the MMLA of eight weeks leave, even if an employer promises to extend the leave beyond eight weeks. This decision, *Global NAPs, Inc. v. Awiszus,* was born from a case that was initially tried in Massachusetts Superior Court in 2004, in which a jury found in favor of the plaintiff, Sandy Stephens, in an MMLA action against her former employer. Procedurally complicated post-judgment litigation ensued, and the SJC was ultimately confronted with the question of whether Stephens, who was terminated while on maternity leave, had a claim under the MMLA where her maternity leave exceeded eight weeks. In a 4-3 ruling, the Supreme Judicial Court held that Stephens did not.

The MMLA, found at Section 105D of Chapter 149 of the Massachusetts General Laws, covers employers who have at least six employees, and therefore often provide protections to those employees who fall outside the coverage of the federal Family and Medical Leave Act ("FMLA"). (The FMLA provides 12 weeks of unpaid leave and job protection for employees who work for employers with 50 or more employees.) The MMLA provides that an otherwise eligible female employee "who is absent from such employment for a period not exceeding eight weeks for the purpose of giving birth . . . shall be restored to her previous, or a similar, position with the same status, pay, length of service and seniority, wherever applicable, as of the date of her leave." This eight week period, referred to in the MMLA as "maternity leave," may be with or without pay at the discretion of the employer.

Stephens was employed by Global Naps, Inc. ("Global") as a housekeeper. When she found out she was pregnant, Stephens informed Global. Consistent with the law's requirements, Stephens gave Global two weeks' notice of her anticipated date of departure for her leave (July 14, 2000), and her intention to return to work after her leave. According to Stephens, her supervisor at Global told her that if Stephens gave birth by cesarean section, that she then could extend her leave to October 2, 2000. Stephens gave birth on August 2, 2000 by cesarean section, and she informed her supervisor of this fact. When Stephens called her supervisor on September 27, 2000 in anticipation of her return to work, she was informed that she had been fired.

The Court held that the MMLA's protections are limited to employees who do not exceed an eight week period of leave. Accordingly, Stephens had no right under the MMLA to return to her position at the end of her leave once her leave exceeded eight weeks. The Court did note that should an employer promise additional leave time to an employee and then subsequently terminate the employee or take other adverse action, the employee may have a breach of contract or other legal claim (although not one under the MMLA).

Employers are encouraged to review their existing leave policies, and to consult with counsel to ensure that their policies are consistent with applicable law. Given the implications of this decision, it is also recommended that employers act to make certain that its supervisors and other managerial personnel are clear about what both the law and company policy provide relative to maternity leaves, to eliminate the risk of exposure to legal liability through inadvertent misrepresentations.

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