

Does HR Understand Their Own Personal Liability for FMLA Violations?

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If you've ever held supervisor and manager training on any employment-law issue, you know the glazed-over expression of a group of individuals going through the motions. "Oh goody, we have training today. Here's an hour of my life I'll never get back," is what you'll hear around the coffee machine before they enter the training room.

Want to wake them up and ensure rapt attention? Hit them with the idea of individual liability. Under Ohio law, we have it for discrimination claim. It exists for wage-and-hour claims under the FLSA. And last week, in *Graziadio v. Culinary Institute of Am.* [pdf], the 2nd Circuit Court of Appeals held that a manager or supervisor can be individually liable for FMLA violations.

According to the *Graziadio* court, one must balance the following four factors to determine if a manager or supervisor is individually liable under the FMLA:

1. Whether the manager or supervisor had the power to hire and fire the employees;
2. Whether the manager or supervisor supervised and controlled employee work schedules or conditions of employment;
3. Whether the manager or supervisor determined the rate and method of payment; and
4. Whether the manager or supervisor maintained employment records.

The court concluded that a jury question existed over whether Shaynan Garrioch, CIA's HR Director, met this test for the imposition of individual liability:

On the overarching question of whether Garrioch "controlled plaintiff's rights under the FMLA," there seems to be ample evidence to support the conclusion that she did: deposition testimony and email exchanges demonstrate a) that Garrioch reviewed Graziadio's FMLA paperwork, b) that she determined its adequacy, c) that she controlled Graziadio's ability to return to work and under what conditions, and d) that she sent Graziadio nearly every communication regarding her leave and employment (including the letter ultimately communicating her termination).

Sounds like most of your organizations' HR managers or directors.

This case is limited to the 2nd Circuit (which covers Connecticut, New York, and Vermont), but does point out that other courts that have examined this issue have similarly found the FMLA to impose individual liability. The 6th Circuit, which covers Ohio, has not yet ruled on this issue, but [this case from 2003](#) suggests that it would agree with *Graziadio*.

What does all this mean for your business? The FMLA is a hyper-technical and hyper-complicated statute. Indeed, [according to one survey](#), the FMLA administration is HR's biggest headache. If you are not effectively and efficiently training your managers and supervisors on the FMLA, you are doing your employees a disservice, as they may not receive the leave to which they are entitled, and you are doing your managers and supervisors a disservice, as you are unnecessarily exposing them to liability.