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Second Circuit Determines Teacher Who Worked 1,247 is Eligible under the Family and Medical Leave Act

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Donnelly v. Greenburgh Central School District No. 7, — F.3d —, No. 11-2448-cv, (2d Cir. August 10, 2012).

In *Donnelly v. Greenburgh Central School District No. 7*, — F.3d —, No. 11-2448-cv, (2d Cir. August 10, 2012), the Second Circuit Court of Appeals reminded employers that keeping accurate records of the hours worked by employees is crucial to denying a claim under the Family and Medical Leave Act ("FMLA").

In this FMLA retaliation case, the Court was asked to review a summary judgment motion decision in favor of the employer, a school district. The employee, a school teacher, was denied tenure after he took time off under the FMLA. In denying tenure, the employer argued that the employee was not eligible for FMLA leave because he had only worked 1,247 hours — three fewer than the statutory minimum — in the preceding year.

To be eligible for FMLA leave, an employee must work "at least 1,250 hours of service . . . during the previous 12-month period." 29 U.S.C. § 2611(2)(A)(ii). As calculated under his union's Collective Bargaining Agreement ("CBA"), the parties agreed that the Plaintiff worked seven (7) hours and fifteen (15) minutes per day for 172 days during the twelve-month period prior to his leave. The 1,247 total hour calculation, unfortunately, fell short of the required 1,250 hours. In that same CBA, however, it recognized that "teachers have responsibilities which they readily and willingly perform that extend beyond the pupil's regular school day."

In opposition to the Defendant's motion for summary judgment, the Plaintiff argued that he and "most teachers regularly work in excess of a total of one hour before and after class," and that he "typically worked a total of 1.5 hours before and after class every day." Moreover, his contention was further supported by a June 2006 performance evaluation that stated he "arrive[d] to work in a professional manner; early, on time and often. He often stay[ed] late into the afternoon working with his kids to ensure their success."

Reversing the lower court's decision, the Second Circuit relied on the Department of Labor regulations interpreting the FMLA. In determining the burden of proof regarding eligibility, the regulations require that

> *[i]n the event an employer does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours*

> *worked . . ., the employer has the burden of showing that the employee has not worked the requisite hours. An employer must be able to clearly demonstrate, for example, that full-time teachers (see § 825.800 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution (who often work outside the classroom or at their homes) did not work 1,250 hours during the previous 12 months in order to claim that the teachers are not eligible for FMLA leave.* 29 C.F.R. § 825.110(c)(3).

In light of the Plaintiff's affidavit detailing his excess hours, the performance evaluation, and because the discrepancy between the CBA calculation and the eligibility threshold was only three hours, the Court determined that the Defendant did not meet its burden of proving that the Plaintiff did not work the required 1,250 hours. Additionally, the Second Circuit noted that "the [CBA] was not the sole means to count the plaintiff's hours under the FMLA;" thus, summary judgment should be reversed as this issue should be determined by a jury.

If you or your company have any questions or concerns about this topic and would like further information, please email James G. Ryan at jryan@cullenanddykman.com.

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