



## From the Halls of Justice and the Legislature



From The Desk of:  
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### **FEDERAL COURT HOLDS EMPLOYEE ELIGIBLE UNDER FMLA**

A Florida federal court recently addressed the issue of whether an employee was “eligible” under FMLA given that his one-year anniversary with the company occurred while he was on non-FMLA leave.

The employee began working on January 2, 2006. In November 2006, he had surgery. He requested to use sick time, personal days, and vacation time for the waiting period before short-term disability started. The company ran short-term disability and FMLA leave concurrently. On November 14, 2006, a three-week leave was approved.

On December 1, 2006, the company provided him information regarding short term disability and FMLA stating short term disability leave would be counted against his 12 weeks of FMLA leave, provided he met eligibility requirements and, depending on his situation, under FMLA, he may be eligible to extend his leave beyond the short term disability period; however, if he qualified for an extension, he would be required to use all accrued sick, vacation and personal holidays prior to going on an unpaid leave. A summary of his FMLA rights was enclosed with this notice. He first used sick days and then received short-term disability for 10 weeks.

On January 2, 2007, he passed his one-year anniversary with the company. His recovery lasted longer than anticipated and he was not authorized to return to work until mid-February. While on leave, he kept in touch with his supervisor and HR, and submitted forms regarding his condition. He returned to work on February 12 and was fired on February 16. He was not offered any alternative positions, and the company contended he was terminated because his position was eliminated in a reduction in force, and not for performance issues. Citing to other facts, the employee argued the company’s proffered reason was a pretext.

In his FMLA lawsuit, he alleged both inference and retaliation claims. The company argued he was not an eligible employee under FMLA and therefore his claims were barred. Addressing the eligibility issue, the court considered the Department of Labor (DOL) FMLA regulations, which were revised in January 2009. The parties disputed these revised regulations applied since they were not in effect at any time relevant to his claims and when his lawsuit was filed in October 2008. However, after discussing both the previous and revised FMLA regulations, the court found the DOL’s revised Regulation §825.110(d) merely clarified the previous regulation regarding the eligibility issue and therefore was applicable. Based on the clarified regulation, the court held the employee was employed by the company on January 2, 2007, the date of his twelve-month anniversary, and thus was eligible for FMLA protection pertaining to the qualifying leave taken after that date. Because the plaintiff was an eligible employee under FMLA, he was allowed to pursue his claims and the court denied summary judgment for the company.

*Practically Speaking:* While this case was decided by the Northern District Court in Jacksonville, it is probable that the Middle District Court (covering Brevard) would follow this holding. This case illustrates the importance of timing and accurate documentation in FMLA cases. Additionally, the HR staff and the employee’s immediate supervisor provided the primary testimony and evidence regarding the company’s FMLA policies and procedures. If you would like additional information regarding this case, contact Myrna Galligano at [mgalligano@cfl.rr.com](mailto:mgalligano@cfl.rr.com).