

Client Bulletin

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Employers Take Note: General Release Is Not Enough To Waive Rights Under FMLA Says Fourth Circuit

The United States Court of Appeals for the Fourth Circuit has ruled that an employer and employee cannot agree to waive rights guaranteed under The Family and Medical Leave Act (FMLA) without the prior approval of the U.S. Department of Labor or a court. *Taylor v. Progress Energy, Inc.*, 415 F. 3d 364 (4th Cir. July 20, 2005).

In *Taylor*, plaintiff was employed as a data management assistant with Carolina Power & Light Company (CP&L). In April 2000, Taylor began experiencing extreme pain and swelling in her right leg. She underwent a series of medical tests which kept her out of work, off and on for several months. Management advised Taylor that she was ineligible for benefits under FMLA because she was never out of work more than five consecutive days. In December 2000, Taylor underwent abdominal surgery and was out of work for six weeks. Although CP&L advised her that she was eligible for leave under FMLA, she only received credit for four weeks. Additionally, Taylor was given a poor productivity grade on her 2000 performance review because of health-related absences.

Thereafter, CP&L implemented a workforce reduction program based, at least in part, on past performance. As part of the program, Taylor was terminated and was offered additional compensation if she executed a general release waiving any and all claims against the company under federal, state or local law. Taylor executed and returned the release and accepted the additional compensation in June 2001.

In May 2003, Taylor sued Progress Energy, Inc., the parent company of CP&L, in federal court alleging multiple violations of her rights under FMLA. The District Court dismissed the case on the grounds that the general release executed by Taylor barred her FMLA claims. The Court of Appeals reversed and held that FMLA permits waiver or settlement of claims only with prior approval from the U.S. Department of Labor or a court. *See* 29 C.F.R. § 825.220(d).

This Fourth Circuit decision, which technically only applies in Maryland, Virginia, West Virginia and North and South Carolina, undermines common waiver agreements, *i.e.*, general releases that employers use in layoffs and terminations. Additionally, this decision is in direct conflict with other Circuits throughout the country. *See e.g. Faris v. Williams WPC-1, Inc.*, 332 F. 3d 316 (5th Cir. 2003). However, *Taylor* may illustrate a growing trend as just a few weeks ago, a District Court in Colorado, citing to *Taylor*, doubted whether a waiver of an FMLA claim can ever be enforceable. *See Bittner v. Blackhawk Brewery and Casino, LLC.*, 2005 WL 1924499 (D. Colo. August 9, 2005).

In view of these recent decisions employers should review all releases prior to terminating or laying off staff and when necessary should obtain prior approval to waive any rights under FMLA from either the U.S. Department of Labor or a court.



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