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## Labor and Employment Bulletin

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### **The Supreme Court Strikes Down Department of Labor Penalty Provision Relating to the Family and Medical Leave Act of 1993**

In a significant victory for employers, the Supreme Court recently struck down a Department of Labor ("DOL") regulation that purported to require employers to provide an employee with more than the statutorily-required 12 weeks of Family and Medical Leave Act ("FMLA") leave if the employer had failed to designate that employee's leave as FMLA-qualifying.

In *Ragsdale v. Wolverine World Wide, Inc.*, the plaintiff had taken 30 weeks of leave under her employer's leave policy to receive treatment for cancer. The employer's policy was more generous than the leave required under the FMLA. Her employer had not, however, explicitly designated her absence as FMLA-qualifying leave. At the conclusion of the 30 week period, the plaintiff requested additional time off, which the employer denied. The plaintiff, relying upon a DOL regulation, argued that she was entitled to 12 additional weeks of FMLA leave over and above the leave provided under her employer's policy since the employer had failed to designate any part of her prior leave as FMLA-qualifying. In a 5-4 split, the Supreme Court held that the DOL regulation upon which the plaintiff relied contradicted the remedial scheme set forth in the FMLA and was unlawful.

The FMLA requires certain employers to provide 12 weeks of unpaid leave in a one year period to a qualifying employee to attend to his own or a family member's serious health condition or upon the birth or adoption of a child. Following the enactment of the FMLA in 1993, the DOL adopted regulations necessary to implement the Act. Among the regulations it crafted was the following penalty provision: "If an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement." 29 CFR §825.700(a).

The effect of this regulation was to relieve an employee from the burden of having to prove that she suffered actual damages as a result of her employer's failure to designate leave as FMLA-qualifying. The Supreme Court found that such an irrebuttable presumption of harm flatly contradicted the FMLA's remedial scheme, which permits a plaintiff to recover damages only if she affirmatively proves that her employer interfered with the exercise of her FMLA rights and that she actually suffered harm as a result.

While the *Ragsdale* decision provides some protection in a given case to employers who, through ministerial errors or oversight, fail to designate leaves of absence properly, the Court specifically did not decide whether the DOL's notice and designation requirements were themselves valid. Instead, the Court struck down the draconian penalty provision attendant to an employer's failure to designate. Accordingly, in spite of the safety net cast by *Ragsdale*, employers should continue to be vigilant in timely designating leave as FMLA-qualifying.

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