

**Press Contacts:**

**Kristin Bowl (SHRM)**  
(703) 535-6047 [kbowl@shrm.org](mailto:kbowl@shrm.org)

**Sue Willman (Spencer Fane)**  
(816) 292-8162 [swillman@spencerfane.com](mailto:swillman@spencerfane.com)

**For Immediate Release**

## **SHRM Files Amicus Brief in First FMLA Case To Be Considered by U.S. Supreme Court**

(Alexandria, Va. - October 11, 2001) The Society for Human Resource Management (SHRM) today filed an *amicus curiae* brief before the U.S. Supreme Court in the case of *Ragsdale v. Wolverine Worldwide*. This is the first time the country's highest court has agreed to review a case under the Family and Medical Leave Act (FMLA) since the Act's inception in 1993. The FMLA requires covered employers to provide up to 12 weeks of job-guaranteed leave in any 12-month period to eligible employees.

The amicus brief filed by SHRM was authored by Jack L. Whitacre, Sue K. Willman and M. Brett Fulkerson of the law firm Spencer Fane Britt & Browne LLP in Kansas City, MO. In the case, the U.S. Supreme Court is being asked to determine the validity of Department of Labor (DOL) regulations which interpret the FMLA. The regulation in question currently requires employers to provide any eligible employee who requests FMLA leave with written notice specifically designating the leave as "FMLA leave." According to the DOL, an employer's failure to make a timely designation of leave as "FMLA leave" prohibits the employer from counting the time off towards the employee's 12-week FMLA allowance.

Specifically, the Court is reviewing the decision by the U.S. Court of Appeals for the Eighth Circuit, which held that the DOL notice requirement is invalid because it creates a scheme that is beyond what Congress has required under the law. The U.S. Supreme Court granted certification to hear the case earlier this year because several U.S. courts of appeal are split on the issue.

"It is important that the Supreme Court understands the difficulties that HR professionals have complying with the FMLA," said SHRM President and CEO Helen Drinan, SPHR. "Here, the Court has an opportunity to provide a reasonable approach that does not punish employers who are responsible and provide generous leave policies, yet send a clear message to those who deny employees their rights under the FMLA."

In *Ragsdale v. Wolverine Worldwide*, the petitioner exhausted seven months of employer-provided leave for treatment of cancer. When she then requested additional leave under the FMLA, the company informed her that her FMLA leave had been exhausted. However, her employer had not given her prior notice that the leave being provided counted towards her 12-week allowance of FMLA leave.

SHRM argues in its brief that the DOL regulations at issue disproportionately and unnecessarily penalize employers for failing to designate employee leave as "FMLA leave." The DOL's interpretation of the FMLA allows an employee to stack FMLA leave on top of other types of paid or unpaid time off and results in an employee receiving more than the 12 weeks of leave required under the FMLA.

According to Willman, one of the brief's authors and also a member of the Society's Employee and Labor Relations Committee, "This stacking penalty is contrary to Congress' clear intent. After much debate, Congress elected to limit the maximum amount of leave under the FMLA to a total of 12 weeks and did not include a stacking penalty as one of the remedies for violation of the Act."

Willman points out that “The Act requires an employer to post a notice about FMLA and to adopt a written FMLA policy which must be distributed to employees. Therefore, employees already receive at least two other notifications regarding FMLA leave.”

SHRM urges the Supreme Court to follow lower court decisions that strike a balance between employer rights expressly preserved by Congress and any loss of employee FMLA rights regarding the guarantee of a total of twelve weeks of job-protected leave.

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