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**REPORTED COURT CASES IN WHICH  
THE VALIDITY OF AN FMLA REGULATION  
HAS BEEN CHALLENGED**

**EXECUTIVE SUMMARY**

**Updated Report**

**November 15, 2006**

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## INTRODUCTION

In 1993, Congress enacted the Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6, codified at 29 U.S.C. § 2601, et seq. and 5 U.S.C. 6381, et seq. (the Act or the FMLA). The FMLA became effective on August 5, 1993. The Act requires covered employers to allow eligible employees twelve weeks of leave during a twelve-month period to attend to certain medical and family situations, including the birth of a child, the adoption or foster care of a child, and the need to care for one's self, spouse, child or parent with a serious health condition.

Section 2654 of the Act directs the Secretary of Labor to promulgate regulations "as are necessary to carry out" the provisions of the Act. The Secretary of Labor accordingly issued interim final regulations on June 4, 1993 (which became effective on August 5, 1993), 58 Fed. Reg. 31,812 (1993), codified at 29 C.F.R. pt. 825, and final regulations on January 6, 1995 (which became effective on April 6, 1995), 60 Fed. Reg. 2237 (1995), replacing the interim final regulations at 29 C.F.R. pt. 825.

Over the last 10 years or so, courts have addressed the validity of these regulations in varying contexts. On March 19, 2002, the U. S. Supreme Court issued its first decision under the FMLA. In that case, the Supreme Court held that the FMLA regulation in question was invalid. *Ragsdale v. Wolverine Worldwide, Inc.*, 122 S. Ct. 1155 (2002).

As a result of the *Ragsdale* decision, the law firm of Spencer Fane Britt & Browne LLP conducted a survey of all the court decisions reported by Westlaw<sup>®</sup> and/or LexisNexis<sup>™</sup> involving challenges to the validity of the FMLA regulations. The survey initially covered both published and unpublished decisions reported as of March 20, 2002, and was updated thereafter as of January 1, 2003; August 1, 2003; January 31, 2004; March 31, 2005 and November 15, 2006.

In 2005 and 2006, the number of cases in which the validity of an FMLA regulation was at issue has substantially decreased. The courts now seem to be applying the key principle from the *Ragsdale* case in lieu of deciding cases on the basis of validity. In *Ragsdale*, the Supreme Court indicated that a violation of an FMLA regulation would normally not result in liability unless the employee proves that he/she was prejudiced by the violation. As the number of cases deciding validity issues has decreased, the number of cases applying the *Ragsdale* concept of "prejudice" has increased, particularly in 2006. Consequently, we added only one additional true validity case to the listing in this current update. In light of the trend for courts to simply apply the *Ragsdale* decision without addressing the underlying validity of the regulation in question, we do not believe there will be a significant number of cases deciding validity issues in the future. Accordingly, the chart will not be updated further.

**This report represents the results of the original and updated survey. The information in this report does not purport to reflect all lawsuits filed in which an FMLA regulation has been challenged or all court decisions involving challenges to the validity of the regulations. Instead, the information reflects only those lawsuits in which court decisions have been rendered and the decisions were reported by Westlaw<sup>®</sup> and/or LexisNexis<sup>™</sup> through November 15, 2006.**

## EXECUTIVE SUMMARY

- ▶ **There have been 80 reported court decisions in which the validity of an FMLA regulation was challenged. All of the underlying cases were filed and the relevant decisions were made during the period of August 5, 1993 (the effective date of the Act and the Interim Final Regulations) through November 15, 2006.**
- ▶ **These 80 court decisions represent 79 different court cases. (There is one more court decision than the number of court cases because a district court issued two separate opinions addressing two separate challenges in the same underlying case.) In the situation where a lower court issued a reported decision which was subsequently appealed, and the reviewing appellate court also issued a reported decision, the lower court case and the appellate court case have been treated as two separate court cases. These 80 court decisions (79 court cases) represent 74 different underlying cases.**
- ▶ **Of these 80 court decisions:**
  - (a) **68 included a ruling on the validity issue; and**
  - (b) **12 were decided on other grounds and did not include a ruling on the validity issue.**
- ▶ **Of the 68 court decisions in which there was a ruling on the validity issue:**
  - (a) **60% (41 decisions) held that the FMLA regulation in question was *invalid*; and**
  - (b) **40% (27 decisions) held that the FMLA regulation in question was *valid*.**
- ▶ **Of the 68 court decisions in which there was a ruling on the validity issue, 51 were decided on or before the date of the Supreme Court's decision in *Ragsdale*, and 4 of those decisions were overruled by *Ragsdale*. When this factor is taken into account, it means that:**
  - ▶ **66% (45 of 68 decisions) have held that the FMLA regulation in question was *invalid or would have held it to be invalid* if the case had been decided after *Ragsdale***

## ANALYSIS BY REGULATION CHALLENGED

▶ **These 68 court decisions involved challenges to 14 different FMLA regulations:**

- ▶ § 825.110 ▶ § 825.207 ▶ § 825.216 ▶ § 825.302 ▶ §825.310(b)
- ▶ § 825.111 ▶ § 825.208 ▶ § 825.220 ▶ § 825.303 ▶ §825.700
- ▶ § 825.114 ▶ § 825.215 ▶ § 825.301 ▶ § 825.305

▶ **The 3 most frequently challenged regulations were:**

- ▶ § 825.208(c)
- ▶ § 825.110(d)
- ▶ § 825.700(a)

▶ **Section 825.208(c) (or a related portion of § 825.208) was the subject of 32 of the reported decisions (of which 24 included a ruling on the validity issue):**

- (a) 75% (18 of 24 decisions in which the validity issue was decided) held the regulation to be *invalid*;
- (b) 25% (6 of 24 decisions in which the validity issue was decided) held the regulation to be *valid*; and
- (c) 8 of the 32 cases were decided on other grounds and did not include a ruling on the validity issue.

**Note:** The *Ragsdale* decision involved a regulation similar (in part) to § 825.208(c). Consequently, the 8 decisions referenced above in which the regulation was found to be valid may now be questionable in light of *Ragsdale*.

- ▶ **Section 825.110(d) was the subject of 20 of the reported decisions (of which 17 included a ruling on the validity issue):**
  - (a) **88% (15 of 17 decisions in which the validity issue was decided) held the regulation to be *invalid*;**
  - (b) **12% (2 of 17 decisions in which the validity issue was decided) held the regulation to be *valid*; and**
  - (c) **3 of the 20 cases were decided on other grounds and did not include a ruling on the validity issue.**
  
- ▶ **Section 825.700(a) was the subject of 14 of the reported decisions (all of which included a ruling on the validity issue):**
  - (a) **71% (10 of 14 decisions in which the validity issue was decided) held the regulation to be *invalid*; and**
  - (b) **29% (4 of 14 decisions in which the validity issue was decided) held the regulation to be *valid*.**

**Note: Section 825.700(a) was the subject of the *Ragsdale* decision. In light of the Supreme Court’s ruling that § 825.700(a) is invalid, the 4 decisions referenced above in which the regulation was held to be valid have now been overruled by *Ragsdale*.**

## ANALYSIS BY COURT AND GEOGRAPHIC AREA

- ▶ **Of the 68 court decisions in which there was a ruling on the validity issue:**
  - (a) 1 was decided by the U. S. Supreme Court;
  - (b) 22 were decided by Federal Courts of Appeal; and
  - (c) 45 were decided by Federal District Courts.
  
- ▶ **Although reported state court decisions were surveyed, there were no state court decisions involving the validity of an FMLA regulation.**
  
- ▶ **At the Supreme Court level, the Court has only decided one case involving the validity of an FMLA regulation. The Court found the regulation (§ 825.700(a)) to be *invalid*.**
  
- ▶ **At the Federal Court of Appeals level (in which 22 decisions involved rulings on the validity issue):**
  - (a) 10 of the 12 Circuits of the Court of Appeals (83%) have issued rulings on the validity issue; and
  - (b) 2 of the 12 Circuits of the Court of Appeals (17%) have not yet issued such a ruling (the 3<sup>rd</sup> and D.C. Circuits).
  
- ▶ **Of the 22 Federal Court of Appeals decisions in which there has been a ruling on the validity issue:**
  - (a) 50% (11 decisions) have held that the FMLA regulation in question was *invalid*; and
  - (b) 50% (11 decisions) have held that the FMLA regulation in question was *valid*.

- ▶ **Of the 10 Federal Court of Appeals decisions holding the FMLA regulation in question *invalid*,**
  - (a) **4 of the decisions (1 each by the 5<sup>th</sup> and 11<sup>th</sup> Circuits; 2 by the 8<sup>th</sup> Circuit) involved the same regulation held to be invalid in *Ragsdale*; and**
  - (b) **in all 4 decisions, that same regulation was held to be invalid.**
- ▶ **At the District Court level (in which 45 decisions have involved rulings on the validity issue):**
  - (a) **28 of the 94 District Courts (30%) have issued rulings on the validity issue; and**
  - (b) **66 of the 94 District Courts (70%) have not yet issued such a ruling.**
- ▶ **Of the 45 District Court decisions in which there has been a ruling on the validity issue:**
  - (a) **64% (29 decisions) have held that the FMLA regulation in question was *invalid*; and**
  - (b) **36% (16 decisions) have held that the FMLA regulation in question was *valid*.**
- ▶ **Of the 16 District Court decisions in which an FMLA regulation was held to be valid, 12 were decided on or before the date of the Supreme Court's decision in *Ragsdale*, and 4 of those decisions were overruled by *Ragsdale*. When this factor is taken into account, it means that:**
  - ▶ **73% (33 of 45 decisions) have held that the FMLA regulation in question was *invalid or would have held it to be invalid* if the case had been decided after *Ragsdale*.**
- ▶ **Of the 45 District Court decisions in which there has been a ruling on the validity issue:**
  - (a) **the underlying District Courts were located within 11 of the 12 Circuits of the Court of Appeals; and**
  - (b) **only 1 Circuit of the Court of Appeals (the D.C. Circuit) has had no District Court decision involving a ruling on the validity issue.**

- ▶ **Of the 45 District Court decisions in which there has been a ruling on the validity issue:**
  - (a) **the underlying District Courts were located in 24 of the 55 U. S. states and territories (44%); and**
  - (b) **31 of the 55 U. S. states and territories (56%) have not yet had a District Court decision involving the validity of an FMLA regulation.**

**Note: The U. S. states and territories include the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands.**