

# When it comes to FMLA leave, the many may care for the one

By James H. Kizziar, Jr., Bracewell & Giuliani LLP

The U.S. Court of Appeals for the Sixth Circuit recently ruled on a case involving a situation that many of us unfortunately have to deal with in our lives—balancing our jobs with the care of a terminally ill loved one.

After he was terminated from his job, Jerry Romans sued his employer, the Michigan Department of Human Services alleging, among other claims, interference with his leave entitlement and retaliation under the Family and Medical Leave Act (FMLA). After the district

mother, suffering from lung cancer and renal failure, was unlikely to survive the night, and decisions needed to be made about her care, including whether to keep her on life support.

Prior to this incident, Romans had submitted FMLA paperwork certifying that he was needed to care for his mother and that he had her power of attorney. On that particular night, Romans had intended to visit his mother in the hospital after his shift ended. However, shortly before he was to leave work, he

employee may be needed to “make arrangements for changes in care.”

The appeals court noted that Romans’ situation, where he sought to leave work to go to the hospital and make decisions with his sister regarding continuing his mother on life support, was fully embraced by the regulatory language. The question was whether “needed to care for” permitted FMLA leave where all family members would be present simultaneously, since Romans’ sister was already at the hospital.

The appeals court noted that “an employee need not be the only individual, or even the only family member, available to provide care.” Therefore, Romans was “needed to care for” his mother within the meaning of the DOL regulations and was entitled to take FMLA leave. The department also argued that Romans was legitimately denied leave because he worked at a secure facility where all shifts needed to be covered. However, Romans had arranged for a coworker to cover the extra shift. As a result, the court of appeals held that Romans could pursue his FMLA to trial.

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<sup>1</sup>No. 10-2174, 2012 U.S. App. LEXIS 3004 (6th Cir. Feb. 16, 2012)



court dismissed all of his claims, Romans appealed to the federal Sixth Circuit Court (*Romans v. Michigan Dep’t of Human Servs.*<sup>1</sup>). The appeals court overturned the district court’s decision on the FMLA claim, which allows Romans to take his FMLA claim to trial.

Romans worked as a fire and safety officer at a facility that houses juveniles in the state’s custody for delinquency. Fire and safety officers provide security for the facility and are subject to numerous work rules imposed by the department. The department terminated Romans because he allegedly violated numerous work rules, had received formal counseling and reprimands, and had several disciplinary suspensions.

One of the suspensions occurred because the department claimed Romans left his work facility and abandoned his shift. On that day, Romans received a call from his sister, who stated that his

was informed that another security employee had called in sick and that he would have to cover a double shift.

Romans told his supervisor that he had found a coworker to cover the shift, but the supervisor insisted that the rules would not allow him to make a switch. Romans left anyway, stating that “I’m not staying. My mom’s dying. I’m leaving.” The supervisor stated that he would have Romans fired if he left. Romans punched out and drove to the hospital but states he became so worried he would lose his job that he turned around and went back to work.

Romans claimed in his lawsuit that the department interfered with his entitlement to FMLA leave. The language in the Department of Labor (DOL) regulations entitles an employee to take leave if he is “needed to care for” a family member, which encompasses both psychological comfort and physical care. The term includes situations where the

## RECAP

## Employment Update

- Employers should fully understand employee entitlements under FMLA when employees are balancing their job responsibilities with the care of a terminally ill loved one.