



# OLR RESEARCH REPORT

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## **OLR BACKGROUNDER: VELEZ V. COMMISSIONER OF LABOR**

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This report summarizes the state Supreme Court's decision in *Velez v. Commissioner of Labor* (306 Conn. 475 (2012)).

### **SUMMARY**

Connecticut's Family and Medical Leave Act (FMLA) ([CGS § 31-51kk](#) et seq.) requires employers with 75 or more employees to provide their employees with certain benefits, including allowing them to take unpaid leave for personal and family medical reasons. In *Velez v. Commissioner of Labor*, the state Supreme Court upheld the Department of Labor's (DOL) interpretation that the act only applies to employers with 75 or more employees in the state, and not in aggregate.

In the 2012 legislative session, the General Assembly considered SB 184, which specified that the FMLA applies to employers with 75 or more employees in the state. The bill was reported favorably by the Labor and Public Employees Committee and passed by the Senate, but not taken up by the House.

### **FACTS AND PROCEDURAL HISTORY**

In 2005, Joaquina Velez worked for the Related Management Company (RMC), a company with over 1,000 employees nationwide, but fewer than 75 in Connecticut. After injuring her hand and exhausting the 12 weeks of unpaid leave provided by the federal FMLA, Velez was terminated at RMC when she notified the company that she still did not have full use of her hand and could not return to work.

Velez subsequently filed a complaint with the DOL's Division of Wage and Workplace Standards alleging that RMC violated the state's FMLA, which would have provided up to 16 weeks of unpaid leave. At a contested case hearing, an administrative hearing officer determined that RMC was not subject to the state's FMLA because it did not employ 75 or more employees in the state. In making this determination, the hearing officer relied on [§ 31-51qq-42](#) of the Regulations of Connecticut State Agencies, which allows the Labor Commissioner to rely on an employer's employee quarterly earnings report to determine if an employer has a sufficient number of employees to fall under the act's jurisdiction. Because these reports contain data on Connecticut employees only, the officer reasoned that only Connecticut employees should be counted toward the FMLA requirement.

Velez appealed the department's decision to the Superior Court, which reversed the decision. The Superior Court concluded that the department's decision was unreasonable and inconsistent because the definitions of "employer" in the FMLA and its regulations contained no specific geographic restrictions.

## **SUPREME COURT DECISION**

The Labor Commissioner appealed the trial court's decision, arguing that (1) [§ 31-51qq-42](#) of the regulations also determined the meaning of "employer" under the state's FMLA ([CGS § 31-51kk\(4\)](#)) because agency regulations are presumed to be valid and have the force and effect of statute and (2) the department's interpretation of the statute was time-tested and consistent with the statute, related statutes, legislative history, and similar federal legislation.

The court agreed with the commissioner and overturned the trial court's decision. In explaining its decision, the court stressed its deference to agency regulations and the regulation's consistency with the federal FMLA.

### ***Deference to Agency Interpretations***

Describing why it deferred to the Labor Commissioner's interpretation of the statute and regulation, the court stated that "an agency's interpretation of a statute is accorded deference when the agency's interpretation has been formally articulated and applied for an extended period of time, and that interpretation is reasonable" (306 Conn. at 485).

This is particularly true when a regulation interpreting a statute has been approved by the legislature's regulation review committee and existed for a substantial period of time without legislative efforts to override it (306 Conn. at 486).

The court determined that there was no reason to deviate from these principles and therefore deferred to the commissioner's interpretation that the regulation ([§ 31-51qq-42](#)) limited the state's FMLA jurisdiction to employers with 75 or more employees in the state.

### ***Consistency with Federal FMLA***

Because [CGS § 31-51qq](#) directs the labor commissioner to adopt regulations making the state's FMLA compatible with similar provisions of the federal FMLA, the court also concluded that the in-state employee requirement was consistent with geographic restrictions in the federal law. Specifically, it cited the federal law's 50/75 provision, which limits federal FMLA applicability to employers with 50 or more employees within 75 miles of the employee's worksite, and was designed to ease employer concerns about having to reassign workers to geographically distant facilities.

The court found that the commissioner's in-state employee interpretation of the state's FMLA was wholly consistent with the federal law's 50/75 provision and [CGS § 31-51qq](#)'s directive to harmonize the state law with the federal law. It also added that it could not presume that the legislature intended to (1) create a "logistical nightmare" for employers with one employee in the state and 74 employees spread around the world or (2) force the labor commissioner to conduct investigations into the employment records of employers far outside her jurisdiction (306 Conn. at 492).

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