

EMPLOYMENT LAW UPDATE

Juan C. Araneda

Jennifer A. Becker

David P. Borovsky

Robert J. Buccieri

Chip Cox

Kim Dincel

Edward F. Donohue, III

Kathleen M. Ewins

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

William L. Jacobson

Anna Kapetanakos

Joseph P. McMonigle

Douglas J. Melton

Jessica B. Rudin

Steven Sharafian

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach

Kevin D. Whittaker

Irene K. Yesowitch

January 13, 2004

Issue No. 93

Federal Law

Hillstrom v. Best Western TLC Hotel (1st Cir. Court of Appeal, December 31, 2003) 2003 WL 23095252

To Establish A Willful Violation Of The FMLA, A Plaintiff Must Prove That The Employer Either Knew Or Showed Reckless Disregard As To Whether Its Conduct Was Prohibited.

By Jason A. Geller and Kevin D. Whittaker

In April of 2002, Roy Hillstrom was terminated from his job at the Best Western TLC Hotel for poor job performance. In response, Hillstrom brought suit against Best Western for age and gender discrimination and violation of the Family and Medical Leave Act of 1993 ("FMLA"). He claimed that Best Western violated the FMLA by changing his employment position upon his return from medical leave in March of 1999. The Federal District Court granted Best Western's motion for summary judgment on all counts and the First Circuit Court of Appeals affirmed.

Hillstrom argued that Best Western violated the FMLA by not reinstating him to the same or equivalent position upon his return from medical leave. The Court ruled that Hillstrom's claim was time-barred. The FMLA sets forth a two-year statute of limitations that begins to run after the date of the last event constituting the alleged violation of the FMLA. Hillstrom returned from

medical leave in March of 1999 and filed his lawsuit in April 2001, more than two years later. Thus, Hillstrom's claim fell outside the limitations period.

The Court rejected Hillstrom's argument that his FMLA claim was timely because Best Western's failure to return him to his original position was "willful." A "willful" violation of the FMLA increases the limitations period from two to three years. In light of the U.S. Supreme Court holding in ***McLaughlin v. Richland Shoe Co.***, the Court reasoned that in order to establish a "willful" FMLA violation, a plaintiff must show that "the employer either knew or showed reckless disregard of whether its conduct was prohibited by statute." If an employer acts reasonably in determining its legal obligation under the FMLA, its action cannot be deemed willful. In applying this principle, the Court explained that even if Best Western decided to ***slightly*** alter Hillstrom's employment conditions after he received medical leave, there was no

evidence that this constituted a “willful” violation. Best Western acted reasonably and thus the limitations period was not extended.

Finally, the Court rejected his discrimination claims on the grounds, in part, that Hillstrom had no evidence that Best Western treated more favorably employees outside of his protected class and that his statistical evidence of discrimination was not significant.

DOCS\Z9901-500\471976.V1

This publication is intended for general information purposes only and does not constitute nor is it intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed here apply to the reader's specific circumstances including whether the case may have been depublished after the date of this publication.