

## Important New Ruling On FMLA Eligibility

Glenn Israel, Esq. | January 10, 2007

The Federal Court of Appeals for the First Circuit, which includes Maine, Massachusetts, and New Hampshire, issued a decision in December that sets a new precedent for employee eligibility under the Family Medical Leave Act (the "FMLA").

In order to be eligible for leave under the FMLA, an employee must have worked for his or her employer for at least 12 months. The question before the court was whether those 12 months must be consecutive. The Court of Appeals for the First Circuit held that the 12 months do not have to be consecutive.

In the case, Rucker v. Lee Holding Co., the employee was a car salesman who had worked for Lee for five years, had left, and then returned five years later. At the time the employee requested FMLA leave he had been back for only seven months. The employer denied his request for leave and terminated his employment. The Federal District Court in Maine held that the employee was not eligible for FMLA leave and dismissed the case. The Appeals Court reversed that decision and held that the employee's previous employment must be counted toward the 12 month requirement.

This ruling is important to all employers because it means that they now must consider an employee's prior employment when making a determination regarding FMLA eligibility. To assist you in performing this analysis, we suggest that you a) add a question to your application form that asks if the applicant has worked for you previously, and b) obtain information from your current employees regarding their prior employment with you (and maintain that information in their personnel files).

*For more information on this recent court decision, please contact:*

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