The Legal Strategist

S. BARRETT & ASSOCIATES, P.C.

WWW.SBARRETTLAW.COM

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I am often asked by clients what, as an employer, must they do to accommodate employees for leave and disability. The answer will depend on several factors, including the size of the business and what the company has done in the past for similar situations. This Quarters Feature Topic discusses when small business can be treated the same way as large corporations when it comes to employee matters. This article was adapted from an article which appeared in Inc. magazine.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on *The Legal Strategist* tab of our web site, please contact our office to set up a consultation.

Scott Barrett

TEXAS ESOTERIC FACTS

The first suspension bridge in the United States was the Waco Bridge. Built in 1870 and still in use today as a pedestrian crossing of the Brazos River.

FEATURE TOPIC: When "Big Company" laws can apply to Small Business

Quick quiz: You have 35 employees. One of your junior analysts is pregnant. Do you have to allow her to take 12 weeks off for childbirth, recovery, and bonding and provide her with the job when she returns? The answer appears to be a simple no. The Family Medical Leave Act (FMLA) only applies to businesses with 50 or more employees (within a 75 mile radius), so obviously you are in the clear. Thirty-five employees is fewer than 50, so whew! You're under no obligation to allow her any leave at all.

But laws are never that simple.

Discrimination laws come into play when you reach 15 employees. Pregnancy is covered by those laws--requiring that it be treated like any other disability. So, if your disability policy allows someone to take leave for cancer, a broken leg, knee surgery or anything else, you are required to allow the same leave for pregnancy.

So, let's say your disability policy allows staffers to take leave as long as their doctor states they are disabled, with a maximum of six months. In most cases, a woman is considered "disabled" for six weeks after a vaginal birth and eight weeks for a Caesarean section. So, if your employee's doctor clears her for work at six weeks, you can fire her if she doesn't come back at six weeks and one day, correct?

Well, have you ever referred to her leave as "FMLA?" Often times, people use that phrase colloquially to refer to any medical leave, especially those who have come from big companies. The courts have repeatedly ruled that an employee who didn't qualify for FMLA leave should actually be granted the 12 weeks leave because the employees believe that they were eligible and acted accordingly.

Now, this doesn't mean that if an employee comes to you and says, "I need to take time off for illness/childbirth/taking care of a family member. It's my right under FMLA," that you have to grant it. But, if you use the term yourself, use FMLA paperwork for granting disability leave, or forget to check to see if that particular employee meets the qualifications, the courts are on the employee's side.

The reality is, even employment laws that obviously don't apply to you can end up applying to you if you're not careful. And states have their own laws, so just because a federal statute doesn't apply to you, doesn't mean a local law won't.

But keep one more thing in mind: It's not just about doing what you are forced to do under the law. It's about recruiting, developing and maintaining the best employees ever. And that means making sure that they don't jump ship for somebody that can offer them this type of thing.

If you would like more information on the regulations and pitfalls concerning employee matters, please contact Scott Barrett to set up a consultation.