

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

SJC-13567

AIMEE BODGE¹ & others² vs. COMMONWEALTH & others.³

Suffolk. May 6, 2024. - September 13, 2024.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
& Wolohojian, JJ.

Family & Medical Leave Act. Employment, Employee benefit plan.
Statute, Construction. Practice, Civil, Motion to dismiss.
State Police.

Civil action commenced in the Superior Court Department on March 10, 2022.

A motion to dismiss was heard by Robert L. Ullmann, J., and the case was reported by him to the Appeals Court.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Samuel Davis for the plaintiffs.

¹ On behalf of herself and all others similarly situated.

² Joao Christian Barros, Hanna Chamberland, Katie Lorenco, Cynthia Pham, and Serena Trodella, on behalf of themselves and all others similarly situated.

³ Colonel of the State Police and Executive Director of the State Board of Retirement.

Anne M. McLaughlin, Assistant Attorney General, for the defendants.

BUDD, C.J. General Laws c. 175M, the Paid Family and Medical Leave Act (PFMLA or act), enables eligible employees to take paid leave to, among other things, bond with their child during the first year after the child's birth, adoption, or placement in foster care. The plaintiffs, all State troopers, brought suit against the Commonwealth and the heads of the State Police and the State Board of Retirement, claiming that the defendants' policy of denying the accrual of benefits, including seniority, length-of-service credit, and vacation and sick time while on PFMLA leave, was a violation of the act. In addition, the plaintiffs claimed the policy discriminated against female employees in violation of G. L. c. 151B, § 4, and G. L. c. 93, § 102. A Superior Court judge dismissed so much of the complaint alleging violations of the PFMLA. For the reasons explained infra, we affirm.

Background. In reviewing the allowance of a motion to dismiss, we "accept as true the allegations in the complaint and draw every reasonable inference in favor of the plaintiff." Heath-Latson v. Styller, 487 Mass. 581, 584 n.8 (2021). Since 2019, the PFMLA has permitted an eligible employee to take leave to bond with his or her child during the first year after the child's birth, adoption, or placement in foster care; arising

out of a family member's covered active duty in the armed forces; or to care for a sick family member. See St. 2018, c. 121, §§ 29 (inserting G. L. c. 175M), 37 (effective date). Each of the plaintiffs sought to take leave in connection with the birth of a child. The defendants informed the plaintiffs that if they took leave under the PFMLA, they would lose their seniority⁴ and would not accrue vacation and sick time, or length-of-service credit while on leave. As a result of these policies, a number of plaintiffs took advantage of other leave options instead, or decided not to take leave at all. Although the policy divesting troopers of their seniority ended in February 2022,⁵ the policy of denying accrual of vacation time, sick time, and length-of-service credit during leave remained in place.

On March 10, 2022, the plaintiffs commenced this action, alleging, among other claims, that denying their right to accrue employment benefits while on leave violates the PFMLA. The defendants thereafter filed a motion to dismiss. The motion

⁴ For the plaintiffs, seniority affected the likelihood that their requests for preferred work locations, schedules, and vacation time would be granted.

⁵ Because the policy of divesting troopers of their seniority during PFMLA leave has been discontinued, we consider only whether the act requires employers to offer accrual of vacation time, sick time, and length-of-service credit while troopers are on leave.

judge allowed the defendants' motion, concluding that the act does not guarantee the accrual of benefits during PFMLA leave. However, the judge stayed the proceedings and allowed the plaintiffs' motion to report the order to the Appeals Court pursuant to Mass. R. Civ. P. 64 (a), as amended, 423 Mass. 1403 (1996), seeking clarification on the interpretation of the act.⁶ We transferred the matter to this court sua sponte.

Discussion. Whether the PFMLA requires that certain benefits accrue while employees are on leave is a question of statutory interpretation that we review de novo. See Arias-Villano v. Chang & Sons Enters., Inc., 481 Mass. 625, 627 (2019). "Our analysis begins with the plain language of the statute, which is the 'principal source of insight into legislative intent'" (citation omitted). Tze-Kit Mui v. Massachusetts Port Auth., 478 Mass. 710, 712 (2018).

Section 2 (e) of the PFMLA guarantees that "[a]n employee who has taken family or medical leave shall be restored to the employee's previous position or to an equivalent position, with

⁶ The judge posed the following question: "Does [§ 2 (f)] of the Paid Family and Medical Leave Act, G. L. c. 175M, §§ 1-11, provide that state employees covered by the Act shall accrue seniority, length-of-service credit, vacation time and sick time while they are on family or medical leave?"

the same status, pay, employment benefits,^[7] length-of-service credit and seniority as of the date of leave." G. L. c. 175M, § 2 (e) (§ 2 [e]). Simply put, when an employee returns from PFMLA leave, he or she is to be put back in the same (or equivalent) position as when he or she left, with no loss of accrued length-of-service credit and vacation and sick time.

Despite the plain language of § 2 (e), the plaintiffs contend that the subsection that follows, G. L. c. 175M, § 2 (f) (§ 2 [f]), provides for the continued accrual of length-of-service credit and vacation and sick time to employees while on PFMLA leave. It states:

"The taking of family or medical leave shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits, plans or programs. During the duration of an employee's family or medical leave, the employer shall provide for, contribute to or otherwise maintain the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave."

G. L. c. 175M, § 2 (f). The plaintiffs point to the first sentence of the provision to argue that § 2 (f) entitles

⁷ The PFMLA defines the term "employment benefits" as "all benefits . . . including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions." G. L. c. 175M, § 1. Therefore, relevant for the purpose of this opinion, § 2 (e) covers sick leave, vacation leave, and length-of-service credit.

employees to continue to accrue benefits while on leave because taking leave "does not affect" the employee's previously held right to accrue those benefits.

However, the first sentence of § 2 (f) does not confer accrual rights. Instead, it ensures that any such rights that the employee already has are "not affect[ed]" while the employee is on leave. Had the Legislature intended for employees to continue to accrue seniority, length-of-service credit, and sick and vacation time during their leave, it specifically would have provided for it. See Fernandes v. Attleboro Hous. Auth., 470 Mass. 117, 129 (2014) ("It is well established that we do not read into [a] statute a provision which the Legislature did not see fit to put there . . ." [citation and quotations omitted]). See, e.g., G. L. c. 176G, § 5 ("interest on such benefits . . . shall accrue").

The second sentence of § 2 (f) supports our interpretation. It specifies that employees do continue to benefit from health insurance during PFMLA leave, thereby drawing a distinction between health insurance benefits and all other benefits. See Arthur D. Little, Inc. v. Commissioner of Health & Hosps. of Cambridge, 395 Mass. 535, 541 (1985) ("[W]here the Legislature has employed specific language in one [portion of a statute], but not in another, the language should not be implied where it is not present" [citation omitted]).

Moreover, the plaintiffs' reading of § 2 (f) is at odds with § 2 (e). See Chin v. Merriot, 470 Mass. 527, 532 (2015) (to ascertain legislative intent, we may "consider . . . other sections of the statute . . . and examine the pertinent language in the context of the entire statute"). Section 2 (e) makes clear that the level of benefits remains unchanged during PFMLA leave. That is, an employee returning from leave receives no less (and no more) of each enumerated benefit than what he or she had at the start of the leave. Under the plaintiffs' reading of § 2 (f), employees would accrue vacation and sick time while on leave and, thus, would return from leave with more accrued time than when they began. We decline to adopt an interpretation that creates an internal contradiction. See DiFiore v. American Airlines, Inc., 454 Mass. 486, 491 (2009) (we read subsections of statutes "in harmony with another, recognizing that the Legislature did not intend internal contradiction").

The plaintiffs make a number of additional arguments, which we address briefly. First, the plaintiffs argue that the PFMLA regulation subverts legislative intent by improperly inserting a "temporal restriction" -- "upon reinstatement" and "previously held" -- around the accrual of benefits that does not appear in the statute. The regulation at issue states, in part:

"Upon reinstatement, taking family or medical leave under [G. L. c. 175M] shall not affect an employee's previously held right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits, plans or programs. Leave periods under [G. L. c. 175M] need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate."

458 Code Mass. Regs. § 2.16(1) (2023). Because, in our view, the regulation is in line with our interpretation of the act, we reject this argument. See Buckman v. Commissioner of Correction, 484 Mass. 14, 24 (2020) ("we look first to the language of the statute, and where it speaks clearly on the topic in the regulation, we determine whether the regulation is consistent with or contrary to the statute's plain language").

The plaintiffs also argue our interpretation contravenes G. L. c. 175M, § 9 (c), which provides that, while on leave, "[a]ny negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment . . . shall be presumed to be retaliation." We do not consider the temporary pausing of benefit accrual during leave as a "negative change" in an employee's benefits. Cf. MacCormack v. Boston Edison Co., 423 Mass. 652, 663 (1996) (retaliation claim rejected where plaintiff failed to show material "disadvantage[] . . . in respect to salary, grade, or other objective terms and conditions of employment"); Gu v. Boston Police Dep't, 312 F.3d 6, 14 (1st Cir. 2002) ("Material changes include 'demotions,

disadvantageous transfers or assignments, refusals to promote, unwarranted negative job evaluations, and toleration of harassment by other employees'" [citation omitted]).

Finally, we are unpersuaded by the plaintiffs' claim that our interpretation contravenes G. L. c. 175M, § 8 (h), which requires that the PFMLA be "liberally construed," with "[a]ll presumptions . . . made in favor of the availability of leave and the payment of family and medical leave benefits." Our reading of the PFMLA does not prevent employers from offering the accrual of benefits during leave; we simply conclude that they are not required to do so under the act.

Conclusion. As the plain language of the G. L. c. 175M does not require an employer to guarantee the accrual of vacation and sick time during an employee's PFMLA leave, we affirm the order dismissing so much of the plaintiff's complaint as alleged violations of the PFMLA, and we remand for further proceedings consistent with this opinion.

So ordered.