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***SADOWSKI V. UNITED STATES POSTAL SERVICE:
ONE STEP CLOSER TO DELIVERING A RESOLUTION
TO THE DISPUTE ON INDIVIDUAL LIABILITY FOR
PUBLIC EMPLOYEES UNDER THE FAMILY AND
MEDICAL LEAVE ACT OF 1993***

LEILA EARLY*

INTRODUCTION

The Family and Medical Leave Act of 1993 (FMLA)¹ was enacted to balance work and family life by allowing employees to take unpaid leave for certain periods of time for specific medical and family related reasons.² The FMLA allows eligible employees to take up to twelve weeks of unpaid leave each year without the fear of losing their jobs for the birth or adoption of a child, providing care for a family member, or their own serious medical conditions.³ Employers are prohibited from discriminating or retaliating against employees who choose to exercise their rights under the FMLA.⁴

Even though the FMLA has an extensive definition of “employer,” deciding who is included, and therefore who can be held personally liable for FMLA violations, has been the subject of numerous debates in our district and circuit courts.⁵ The difficulty in deciding personal liability lies in the differing definitions of the term “employer” found in other employment statutes, such as Title VII of the Civil Rights Act of 1964 (Title VII)⁶, the Americans with Disabilities Act of 1990 (ADA)⁷, and the Fair Labor Standards Act of 1938 (FLSA)⁸. Title VII

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1. 29 U.S.C. §§ 2601-2654 (2006).
2. 29 U.S.C. § 2601(b) (2006).
3. 29 U.S.C. § 2612(a) (2006).
4. 29 U.S.C. § 2615 (2006).
5. *See infra* Background pp. 7-14.
6. 42 U.S.C. § 2000e(b) (2006).
7. 42 U.S.C. § 12111(5) (2006).
8. 29 USC § 203(d) (2006).

and the ADA define “employer” as a person engaged in an industry affecting commerce who has a certain number of employees and any agent of such a person.⁹ The FLSA and FMLA have a broader definition of “employer,” which also includes “any person who acts, directly, or indirectly, in the interest of an employer.”¹⁰ The FMLA defines “employer” as follows:

The term “employer” –

- (i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar work-weeks in the current or preceding calendar year;
- (ii) includes –
 - (I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and
 - (II) any successor in interest of an employer;
- (iii) includes any “public agency” as defined in section 203(x) of this title; and
- (iv) includes the General Accounting Office (Government Accountability Office) and the Library of Congress.¹¹

The FMLA’s definition of “employer” is ambiguous when applying it to supervisors of public agencies because the individual liability provision is separate from the provision which includes public agencies.¹²

There is a nationwide split of authority at the appellate and trial levels on the issue of whether public employees can be held liable in their individual capacities for violations of the FMLA.¹³ The Fourth Circuit has not addressed this issue directly, but the district courts within the Fourth Circuit are split. Some courts have held that public employees may not be sued in an individual capacity under the FMLA,¹⁴ while other courts have concluded that public employees may be found individually liable under the FMLA.¹⁵ In the title case *Sadowski v. United States Postal Service*,¹⁶ the District Court of Maryland overturned its previous holding that public employees could be held liable for violations of the FMLA in light of subsequent case law.¹⁷

9. See 42 U.S.C. § 2000e(b) (2006); 42 U.S.C. § 12111(5)(A) (2006).

10. See 29 U.S.C. § 203(d) (2006); 29 U.S.C. § 2611(4)(A)(ii)(I) (2006).

11. 29 U.S.C. § 2611(4)(A) (2006).

12. For the individual liability provision, see 29 U.S.C. § 2611(4)(A)(ii)(I) (2006); For the provision which includes public agencies, see 29 U.S.C. § 2611(4)(A)(iii) (2006).

13. *Sadowski v. United States Postal Serv.*, 643 F. Supp.2d 749 (D. Md. 2009).

14. See *Keene v. Rinaldi*, 127 F. Supp. 2d 770, 775 (M.D.N.C. 2000); *Miller v. County of Rockingham*, No. 06-0053, 2007 WL 990135 (W.D. Va. Mar. 30, 2007).

15. See *Sheaffer v. County of Chatham*, 337 F. Supp. 2d 709, 728 (M.D.N.C. 2004); *Cantley v. Simmons*, 179 F. Supp. 2d 654, 657 (S.D.W. Va. 2002); *Knussman v. Maryland*, 935 F.Supp. 659 (D. Md. 1996).

16. *Sadowski*, 643 F. Supp.2d 749.

17. *Id.* at 754.

This case note examines the implications of the *Sadowski* court's recent decision, taking the position that under the FMLA, public agency employers, particularly supervisors, cannot be held individually liable for FMLA violations. The note first presents the facts of the case at bar and the holding of the court. The note then identifies and discusses the interpretation of the FMLA's definition of employer in both statutory rules and case law precedent. Finally, future implications of the holding are examined for both the public agency supervisors involved and the district and circuit courts who are faced with deciding cases related to individual liability for public agency employers under the FMLA.

THE CASE

In *Sadowski v. United States Postal Service*, the District Court of Maryland interpreted the FMLA's definition of employer, addressing the issue of whether public employees may be held liable in their individual capacities for violations of the FMLA.¹⁸ In *Sadowski*, plaintiff Gary Sadowski, a former United States Postal Service (USPS) employee, sued the USPS as well as his former supervisors alleging violations of the FMLA.¹⁹ The court held that the FMLA did not permit supervisors to be held liable in their individual capacities.²⁰

In 1987, Sadowski became employed at the USPS, and he worked at the Baltimore Processing and Distribution Center.²¹ His supervisors were Rodney Walls and Edward Weche.²² In September 2006, at the recommendation of his physician, Sadowski applied for twelve weeks of leave under the FMLA because of high blood pressure and insomnia.²³ Sadowski began his leave on September 24, 2006, and he received notice from the USPS on November 2, 2006, that his request for FMLA leave had been approved.²⁴ Sadowski also received a letter from the USPS dated October 30, 2006 indicating that he was on Absent Without Leave (AWOL) status and directing him to complete additional paperwork.²⁵ Sadowski alleged that Walls changed his leave status to AWOL.²⁶ Sadowski filed the additional paperwork and later received a notice to appear at a pre-disciplinary interview on Novem-

18. *Id.* at 752.

19. *Id.* at 750.

20. *Id.* at 757.

21. *Id.* at 750.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 750-51.

ber 30, 2006.²⁷ After the interview, the USPS terminated Sadowski's employment by notice signed by Walls and Weche.²⁸

Sadowski filed his complaint against the USPS, Walls, and Julie Weche (as the personal representative of the estate of Edward Weche) on September 22, 2008, alleging that he was entitled to twelve weeks of leave under the FMLA and that Defendants retaliated against him by terminating his employment for attempting to use this leave.²⁹ Defendants filed a motion to dismiss the claims against Walls and Weche, alleging that public employees may not be held individually liable under the FMLA.³⁰

The court held "the language of the FMLA prohibits public employees from being found individually liable,"³¹ and thus granted the motion to dismiss the claims against individual defendants Walls and Weche.³² The *Sadowski* holding overturned *Knussman v. Maryland*,³³ a previous decision by the same court. In reaching this conclusion, the court discussed and analyzed how different circuits, as well as how district courts within the Fourth Circuit, have interpreted the FMLA's definition of "employer."³⁴ The Sixth and Eleventh Circuits, as well as some district courts within the Fourth Circuit, have held that public employees cannot be held individually liable under the FMLA.³⁵ The Sixth Circuit's rationale is that the section containing the definition of "employer": 1) "segregates the provision imposing individual liability from the public agency provision,"³⁶ 2) "an interpretation that comingles the individual liability provision with the public agency provision renders certain provisions of the statute superfluous and results in several oddities,"³⁷ and 3) "the FMLA distinguishes its definition of employer from that provided in the FLSA by separating the individual liability and public agency provisions."³⁸ The Fifth and Eighth Circuits, as well as some district courts within the Fourth Circuit, have held the exact opposite – that public employees may be held individually liable under the FMLA – based on their textual interpretation

27. *Id.* at 751.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 754.

32. *Id.* at 757.

33. *Knussman v. Maryland*, 935 F. Supp. 659 (D. Md. 1996).

34. See *infra* Background 7-14.

35. See *Mitchell v. Chapman*, 343 F.3d 811 (6th Cir. 2003); *Wascura v. Carver*, 169 F.3d 683 (11th Cir. 1999); *Keene v. Rinaldi*, 127 F. Supp. 2d 770, 775 (M.D.N.C. 2000); *Miller v. County of Rockingham*, No. 06-0053, 2007 WL 990135 (W.D. Va. Mar. 30, 2007).

36. *Mitchell*, 343 F.3d at 832.

37. *Id.*

38. *Id.*

and plain reading of the statutory definition.³⁹ More specifically, these circuits “interpreted the text of the FMLA as permitting a public employee to be individually liable if the public employee violated the FMLA and ‘acted, directly or indirectly, in the interest of an employer.’”⁴⁰ Additionally, the Eighth Circuit found no grounds “to distinguish employers in the public sector from those in the private sector in terms of individual liability.”⁴¹

In *Knussman v. Maryland*, the District Court held that “liability under the FMLA is essentially the same as liability under the FLSA.”⁴² Because the Fourth Circuit indicated in *dicta* that individual liability suits may proceed against public employees under the FLSA,⁴³ “a claim for individual liability against public employees under the FMLA ‘is not foreclosed.’”⁴⁴ The development of more comprehensive case law in the thirteen years after *Knussman* prompted the court to re-examine this issue in *Sadowski*. The re-examination led to the overturning of *Knussman* and the court’s adoption of the rationale of the Sixth Circuit⁴⁵ and a North Carolina District Court case,⁴⁶ concluding “the language of the FMLA prohibits public employees from being found individually liable.”⁴⁷

The court’s rationale for its new holding was three-fold. First, there are four distinct and independent subsections of the definition of “employer” under the FMLA that separates the provisions of individual and public agency liability.⁴⁸ Second, an interpretation of the definition of “employer” under the FMLA “would render certain provisions of the statute superfluous.”⁴⁹ Finally, while the majority of courts have found that public employees may be held personally liable for FMLA violations, they did so on the basis that “the FMLA must be interpreted the same as the FLSA.”⁵⁰ But the court notes a material differ-

39. See *Modica v. Taylor*, 465 F.3d 174 (5th Cir. 2006); *Darby v. Bratch*, 287 F.3d 673 (8th Cir. 2002); *Sheaffer v. County of Chatham*, 337 F. Supp. 2d 709, 728 (M.D.N.C. 2004); *Cantley v. Simmons*, 179 F. Supp. 2d 654, 657 (S.D.W. Va. 2002); *Knussman v. Maryland*, 935 F.Supp. 659 (D. Md. 1996).

40. *Sadowski v. United States Postal Serv.*, 643 F. Supp.2d 749, 754 (D. Md. 2009) (citing 29 U.S.C. § 2611(4)(A)(ii); *Modica*, 465 F.3d at 184; *Darby*, 287 F.3d at 681).

41. *Darby*, 287 F.3d at 681.

42. *Knussman*, 935 F. Supp. at 664.

43. *Sadowski*, 643 F. Supp. 2d at 754 (citing *Brock v. Hamad*, 867 F.2d 804, 808 n. 6 (4th Cir. 1989)).

44. *Id.* (citing *Knussman*, 935 F. Supp. at 664).

45. *Mitchell v. Chapman*, 343 F.3d 811, 812 (6th Cir. 2003).

46. *Keene v. Rinaldi*, 127 F. Supp. 2d 770, 775 (M.D.N.C. 2000).

47. *Sadowski*, 643 F. Supp. 2d at 754.

48. *Id.*

49. *Id.* at 755.

50. *Id.* See, e.g., *Modica v. Taylor*, 465 F.3d 174, 186-87 (5th Cir. 2006); *Wascura v. Carver*, 169 F.3d 683, 685-86 (11th Cir. 1999); *Cantley v. Simmons*, 179 F. Supp. 2d 654, 658 (S.D.W. Va. 2002).

ence in the statutes – the location of the public agency provisions – and concludes that it was Congress’s intent to differentiate the FMLA from the FLSA by shielding personal liability of public agency employees only in the FMLA.⁵¹ Because the court held that employees could not be found individually liable for FMLA violations, they granted the motion to dismiss the claims against Walls and Weche.⁵²

BACKGROUND

Congress created the FMLA as a means to relieve the pressure on working families in the United States⁵³ by entitling certain employees to reasonable leave for medical and child care reasons.⁵⁴ The FMLA provides eligible employees up to twelve weeks of unpaid leave per year if the employee is unable to work due to the birth or adoption of a child, the care of an immediate family member’s serious health condition, or the employee’s own serious health condition.⁵⁵ Under the FMLA, an employer is prohibited from discriminating against an employee who chooses to take advantage of this leave.⁵⁶

In interpreting the FMLA, courts have compared it to other related legislation, such as Title VII of the Civil Rights Act, the ADA, and the FLSA. Title VII and the ADA are very similar in their definitions of employer as a person engaged in an industry affecting commerce who has a certain minimum number of employees and any agent of such a person.⁵⁷ The majority of courts have held that supervisors, managers, and other employees, in either the public or private sector, are not subject to personal liability for violations of Title VII or the ADA.⁵⁸ The FLSA, on the other hand, defines “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency.”⁵⁹ Many courts have construed this definition broadly and have allowed for individual liability of public employees for FLSA violations.⁶⁰ Moreover, the Fourth Cir-

51. Sadowski, 643 F. Supp. 2d at 756.

52. *Id.* at 757.

53. See S. Rep. No. 103-3, at 8 (1993).

54. See 29 U.S.C. § 2601(b)(1)-(5) (2006) (defining the purpose of the Act).

55. 29 U.S.C. § 2612(a)(1)(A)-(D) (2006).

56. See 29 U.S.C. § 2615 (2006).

57. See 42 U.S.C. § 2000e(b) (2006); 42 U.S.C. §12111(5)(A) (2006).

58. See, e.g., *Lissau v. S. Food Serv., Inc.*, 159 F.3d 177, 181 (4th Cir. 1998) (holding “supervisors are not liable in their individual capacities for Title VII violations”); *Healy v. Henderson* 275 F. Supp. 2d 40, 43-45 (D. Mass 2003) (holding “and any agent” language of Title VII does not provide for individual liability and respondeat superior is the intended meaning of the phrase).

59. 29 U.S.C. § 203(d) (2006).

60. See, e.g., *Luder v. Endicott*, 86 F. Supp. 2d 854, 866 (W.D. Wis. 2000); *Kilvitis v. County of Luzerne*, 52 F. Supp. 2d 403, 414 (M.D. Pa. 1999); *Jama v. INS*, 22 F. Supp. 2d 353, 371 (D.N.J. 1998); *Marshall v. Miller*, 873 F. Supp. 628, 632 (M.D. Fla. 1995).

cuit held that an individual was properly sued as an “employer” responsible for complying with the FLSA because “he hired and directed the employees who worked for the enterprise.”⁶¹ Similar factors related to control and supervision of employment have been analyzed by courts in determining individual liability for violations of the FLSA.⁶²

The majority of jurisdictions have held that individual supervisors are liable for FMLA violations.⁶³ The courts found interpretations of the FLSA, as opposed to other employment statutes, more applicable due to the similar language and the fact that the regulations used by the FMLA mirrored those used within the FLSA.⁶⁴ Some courts then analogized the factors used to hold individual employees liable for FLSA violations to situations involving FMLA violations, concluding that as long as the defendant exercised some control over the alleged FMLA violation, that supervisor could be found individually liable.⁶⁵

However, a minority of jurisdictions do not impose individual supervisor liability for violations of the FMLA.⁶⁶ In those cases, they distinguish the FMLA’s definition of employer from the FLSA’s, which differentiate between persons and employers.⁶⁷ Moreover, the FMLA and FLSA were enacted for different purposes and provide different rights and remedies.⁶⁸ For example, the court in *Frizzell v. Southwest Motor Freight, Inc.*⁶⁹ held that the definition of employer should be interpreted the same under the FMLA and Title VII, because individual liability under these statutes would be inconsistent with the limitations to only reach employers with a certain number of employees.⁷⁰

61. *Brock v. Hamad*, 867 F.2d 804, 808 n. 6 (4th Cir. 1989).

62. *See, e.g., Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983); *Donovan v. Agnew*, 712 F.2d 1509, 1511 (1st Cir. 1983); *Reich v. Circle C. Invs., Inc.*, 998 F.2d 324, 329 (5th Cir. 1993); *Donovan v. Sabine Irrigation Co., Inc.*, 695 F.2d 190 (5th Cir. 1983).

63. *See, e.g., Rasic v. City of Northlake*, 563 F. Supp. 2d 885 (N.D. Ill. 2008); *Haybarger v. Lawrence County Adult Prob. and Parole*, No. 06-862, 2007 WL 789657 (W.D. Pa. Mar. 14, 2007); *Sheaffer v. County of Chatham*, 337 F. Supp. 2d 709 (M.D.N.C. 2004); *Cantley v. Simmons*, 179 F. Supp. 2d 654 (S.D.W. Va. 2002); *Knussman v. Maryland*, 935 F.Supp. 659 (D. Md. 1996); *Freemon v. Foley*, 911 F. Supp. 326 (N.D. Ill. 1995).

64. *See Freemon*, 911 F. Supp. at 330.

65. *See supra* note 62.

66. *See, e.g., Miller v. County of Rockingham*, No. 5:06CV00053, 2007 WL 990135 (W.D. Va. Mar. 30, 2007); *Mitchell v. Chapman*, 343 F.3d 811 (6th Cir. 2003); *Keene v. Rinaldi*, 127 F. Supp. 770 (M.D.N.C. 2000); *Wascura v. Carver*, 169 F.3d 683 (11th Cir. 1999); *Frizzell v. Southwest Motor Freight, Inc.*, 906 F. Supp. 441 (E.D. Tenn. 1995).

67. *Id.*

68. *Compare* 29 U.S.C. § 202 (2006) (the FLSA’s purpose), *and* 29 U.S.C. §§ 215-16 (2006) (its rights and remedies), *with* 29 U.S.C. § 2601 (2006) (the FMLA’s purpose), 29 U.S.C. §§ 2614-15 (2006) (its rights), *and* 29 U.S.C. § 2617 (2006) (its remedies).

69. *Frizzell v. Sw. Motor Freight, Inc.*, 906 F. Supp. 441 (E.D. Tenn. 1995).

70. *Id.* at 449.

The Fifth and Eighth Circuits, as well as the majority of district courts, have held that employees within a public agency may be held individually liable for FMLA violations.⁷¹ The courts in *Modica v. Taylor*⁷² and *Darby v. Bratch*⁷³ determined that the FMLA plainly includes in the definition of employer “any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer.”⁷⁴ Furthermore, the FMLA includes public agencies as employers.⁷⁵ Therefore, the Fifth Circuit reasoned, “if a public employee ‘acts, directly or indirectly, in the interest of an employer,’ he satisfies the definition of employer under the FMLA, and therefore, may be subject to liability in his individual capacity.”⁷⁶ The Fifth Circuit rejected all of the arguments set forth in *Mitchell v. Chapman*⁷⁷ which held public employees may not be held individually liable for FMLA violations.⁷⁸ For example, the court found that “Congress’s use of the word ‘and’ following clause (iii) suggests that there is some relationship between clauses (i) – (iv).”⁷⁹ *Mitchell* also stated “Congress’s use of the em dash following the term ‘employer’ indicates a relationship between the clauses such that ‘employer’ ‘means’ what is provided for in subparagraph (i) and ‘includes’ what is provided for in subparagraphs (ii), (iii), and (iv).”⁸⁰ In response to the *Mitchell* holding that commingling the individual liability provision and the public agency provision renders the statute superfluous, the *Modica* court stated that the definition of employer actually “relieves plaintiffs of the burden of proving that a public agency is engaged in commerce.”⁸¹ Finally, the *Modica* court concluded “the fact that Congress, in drafting the FMLA, chose to make the definition of ‘employer’ materially identical to that in the FLSA means that decisions interpreting the FLSA offer the best guidance for construing the term ‘employer’ as it is used in the FMLA.”⁸²

71. See *Modica v. Taylor*, 465 F.3d 174 (5th Cir. 2006); *Darby v. Bratch*, 287 F.3d 673 (8th Cir. 2002); *Sheaffer v. County of Chatham*, 337 F. Supp. 2d 709, 728 (M.D.N.C. 2004); *Cantley v. Simmons*, 179 F. Supp. 2d 654, 657 (S.D.W. Va. 2002); *Knussman v. Maryland*, 935 F. Supp. 659 (D. Md. 1996).

72. *Modica v. Taylor*, 465 F.3d 174 (5th Cir. 2006).

73. *Darby v. Bratch*, 287 F.3d 673 (8th Cir. 2002).

74. 29 U.S.C. § 2611(4)(A)(ii)(I) (2006).

75. 29 U.S.C. § 2611(4)(A)(iii) (2006).

76. *Modica*, 465 F.3d at 184; accord *Darby*, 287 F.3d at 681. (“If an individual meets the definition of employer as defined by the FMLA, then that person should be subject to liability in his individual capacity.”).

77. *Mitchell v. Chapman*, 343 F.3d 811 (6th Cir. 2003).

78. *Modica*, 465 F.3d at 184-87.

79. *Id.* at 185.

80. *Id.* (citing *Sheaffer v. County of Chatham*, 337 F. Supp. 2d 709, 728 (M.D.N.C. 2004), which quotes *Morrow v. Putnam*, 142 F. Supp. 2d 1271, 1273 (D. Nev. 2001)).

81. *Id.* at 186.

82. *Id.* at 186 (quoting *Wascura v. Carver*, 169 F.3d 683, 686 (11th Cir. 1999)).

Moreover, the Code of Federal Regulations (CFR) provides: “Employers covered by FMLA also include any person acting, directly, or indirectly, in the interest of a covered employer to any of the employees of the employer, any successor in interest of a covered employer, and any public agency.”⁸³ It goes on to explain that:

An “employer includes any person who acts directly or indirectly in the interest of an employer to any of the employer’s employees. The definition of “employer” in section 3(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(d), similarly includes any person acting directly or indirectly in the interest of an employer in relation to an employee. As under the FLSA, individuals such as corporate officers “acting in the interest of an employer” are individually liable for any violations of the requirements of the FMLA.”⁸⁴

In sum, these courts reach the conclusion that “individual public agency employees can be considered ‘employers’ under the FMLA and that individual liability is permitted under the FMLA.”⁸⁵ The court’s decision came after looking at a “plain reading of the statute, the implementing regulations under the FMLA, the similarity of the definitions of ‘employer’ under the FMLA and the FLSA, the majority rule that individual liability is permitted under the FLSA, and the growing case law supporting individual liability under the FMLA.”⁸⁶

The Sixth and Eleventh Circuits and some district courts, on the other hand, have held that the FMLA precluded individual liability claims asserted against public agency supervisors.⁸⁷ In *Wascura v. Carver*⁸⁸, the Eleventh Circuit compared the definition of employer under the FLSA and the FMLA, stating that “decisions interpreting the FLSA offer the best guidance for construing the term ‘employer’ as it is used in the FMLA.”⁸⁹ The court concluded, based on a previous holding, that because “employer” under the FLSA did not include a public official in his individual capacity, similarly the FMLA’s definition does not either.⁹⁰

In *Mitchell*, on the other hand, the Sixth Circuit went through a much more detailed analysis of the statutory text but reached the same conclusion that the FMLA does not impose individual liability on public agency employees.⁹¹ The court’s rationale for its holding was

83. 29 C.F.R. § 825.104(a) (2010).

84. 29 C.F.R. § 825.104(d) (2010).

85. *Cantley v. Simmons*, 179 F. Supp. 2d 654, 658 (S.D.W. Va. 2002).

86. *Id.*

87. *See Miller v. County of Rockingham*, No. 5:06CV00053, 2007 WL 990135 (W.D. Va. Mar. 30, 2007); *Mitchell v. Chapman*, 343 F.3d 811 (6th Cir. 2003); *Keene v. Rinaldi*, 127 F. Supp. 770 (M.D.N.C. 2000); *Wascura v. Carver*, 169 F.3d 683 (11th Cir. 1999).

88. *Wascura*, 169 F.3d 683.

89. *Id.* at 686.

90. *Id.* at 686-87.

91. *Mitchell*, 343 F.3d 811.

three-fold. First, the section defining employer “explicitly separates the individual liability provision and public agency provision in two distinct clauses.”⁹² Therefore, they reasoned, under a plain reading of the statute, there is no interrelationship between clauses (ii)-(iv).⁹³ Second, the “commingling of clauses (i)-(iv) into the term ‘employer’ yields an interpretation that renders other provisions of the statute superfluous, as well as creates several oddities.”⁹⁴ For example, commingling clauses (i) and (ii) with the public agency provision makes §2611(4)(B) redundant.⁹⁵ Moreover, the CFR states that “public agencies are covered employers without regard to the number of employees employed.”⁹⁶ Finally, the court found that “a definition of employer that incorporates the individual liability provision and public agency provision into a single clause is substantially similar to, if not identical, to the FLSA’s definition of employer.”⁹⁷ The court noted that in other sections of the FMLA where they adopt provisions of the FLSA, the FMLA refers directly to the FLSA rather than restating the provision verbatim.⁹⁸ Here, the FMLA modified the employer definition by explicitly taking “public agency” out of it, thus “disconnect[ing] it from liability based on a person acting directly or indirectly in the interest of an employer.”⁹⁹ The *Mitchell* court cited the *Keene v. Rinaldi*¹⁰⁰ decision, in which the Middle District of North Carolina reasoned that “a better way to view the situation is that the FMLA corrected the ambiguity of the FLSA, as opposed to letting the ambiguity of the FLSA control the interpretation of the FMLA.”¹⁰¹

The *Keene* court also analyzed the statutory text of the FMLA in detail.¹⁰² The court noted the order in which the Act was written “suggests that subsection (4)(A)(ii) was not intended to modify the latter subsections (4)(A)(iii) and (iv)” because “had Congress so intended, it surely would have made this intent crystal clear by placing subsection (4)(A)(ii) last in the statute.”¹⁰³ Because Congress did not, the court limited individual liability to private employers but not for public employers defined in subsections (iii) and (iv).¹⁰⁴ Additionally, the subparts of subsection (4)(A)(ii) can only both be applied to private

92. *Id.* at 829.

93. *Id.* at 829-30.

94. *Id.* at 830.

95. *Id.* at 831.

96. *Id.* (quoting 29 C.F.R. § 825.104(a)).

97. *Id.*

98. *Id.* at 831-32.

99. *Id.* at 832.

100. *Keene v. Rinaldi*, 127 F. Supp. 2d 770 (M.D.N.C. 2000).

101. *Id.* at 775.

102. *Id.* at 774-78.

103. *Id.* at 776.

104. *Id.*

persons or organizations, but only one of them applies to public agencies.¹⁰⁵ Finally, the CFR states that “individuals such as corporate officers” may be individually liable, but does not mention individuals working for public agencies.¹⁰⁶

ANALYSIS

This note agrees with the *Sadowski* court’s decision to overturn prior case law and take the position that the FMLA does not provide for individual liability for public agency employees based on the reasoning of the Sixth and the Eleventh Circuits. Taking the opposite approach “mainly serves to laden FMLA cases with personal disputes and antagonisms and matters of office politics,” which is “contra indicative of the purpose of the FMLA.”¹⁰⁷ The *Keene* court highlights that “the intention of the language appears to simply be to ensure that someone will be responsible for paying for or rectifying a FMLA violation.”¹⁰⁸ Additionally, exposing individual public employees to individual liability does not add anything to the claim against the employer, since punitive damages are not available under the FMLA.¹⁰⁹ Therefore, allowing for individual liability for employees is duplicative and unnecessary.

Moreover, the FMLA definition of employer is distinct from the FLSA’s definition of employer. The cases have highlighted that the FLSA provides for individual liability.¹¹⁰ However, the FLSA provides for penalizing both the person and employers, while the FMLA makes no such distinction.¹¹¹ Because no distinction is made, Congress likely did not intend individual liability for FMLA violations. The Eastern District of Tennessee held that the “employer” definition should be interpreted the same under both Title VII and the FMLA, reasoning that it was Congress’s intent to incorporate respondeat superior principles under Title VII.¹¹² Therefore, individual liability would be inconsistent with the limitation to only reach employers with a certain number of employees. Extending this reasoning to the FMLA leads to the same conclusion: that employees who violate the Act were not intended to be held individually liable.

105. *Id.*

106. *Id.* (citing 29 C.F.R. §§ 825.104, 825.108).

107. *Id.* at 777.

108. *Id.*

109. *Rasic v. City of Nortlake*, 563 F. Supp. 2d 885, 892 (N.D. Ill. 2008) (citing *Cianci v. Pettibone Corp.*, 152 F.3d 723, 728-29 (7th Cir. 1998)).

110. *See supra* notes 46-48.

111. *See supra* note 53.

112. *Frizzell v. Sw. Motor Freight, Inc.*, 906 F. Supp. 441, 449 (E.D. Tenn. 1995).

Finally, because there is so much disarray in the district courts within the Fourth Circuit on this issue,¹¹³ it is recommended that the Fourth Circuit rule on the issue of public agency employee individual liability under the FMLA to clear up the confusion. The dispute amongst the circuit courts could also be resolved if the Supreme Court of the United States granted certiorari on a case debating this issue. However, until then, attorneys in many circuits will have to rely on case law in their jurisdiction to determine whether public agency employees could be subject to liability under the FMLA.

CONCLUSION

The result in *Sadowski v. United States Postal Service* is aligned with the purposes of the FMLA and will serve to prevent duplicative and unnecessary claims against individual public employees. The court's textual analysis, adopted from the *Mitchell* and *Keene* courts, illustrate that under both a plain reading of the statute as well as how it relates to similar employment statutes, individual liability for public employees who violate the FMLA is precluded.¹¹⁴ The Fourth Circuit has not yet ruled on this issue, and the district courts within the Fourth Circuit reach inconsistent results. This could lead to local and state public agency employees within the Fourth Circuit's jurisdiction being held individually liable for FMLA violations. Ultimately, because of the split findings on this issue at the appellate and district level, as well as the relative infancy of the FMLA, the Supreme Court of the United States should grant certiorari to a case on this point in order to resolve the dispute and provide guidance to the circuit and district courts.

113. Compare *Miller v. County of Rockingham*, No. 06-0053, 2007 WL 990135 (W.D. Va. Mar. 30, 2007) (agreeing with the Sixth Circuit that the FMLA does not impose individual liability on public agency employers) and *Keene v. Rinaldi*, 127 F. Supp. 2d 770 (M.D.N.C. 2000) (construing the FMLA as not including public agency supervisors as employers for the purposes of individual liability) with *Sheaffer v. County of Chatham*, 337 F. Supp. 2d 709 (M.D.N.C. 2004) (holding that the plain meaning of the statute allows individual liability for public agency employees), *Cantley v. Simmons*, 179 F. Supp. 2d 654 (S.D.W. Va. 2002) (finding that individual public agency employees are considered "employers" under the FMLA and can be held individually liable for FMLA violations), and *Knussman v. Maryland*, 935 F. Supp. 659 (D. Md. 1996) (concluding, based on FLSA case law, that individual public employees may be held liable in their individual capacities under the FMLA).

114. *Sadowski v. United States Postal Serv.*, 643 F. Supp.2d 749, 757 (D. Md. 2009).

