

Local Government Insurance Trust

RISK MANAGEMENT BULLETIN

No. 75

February 17, 1999

**Male Employees Entitled to Same Rights as Birth Mothers
under FMLA**

The following article from the Baltimore Sun involves a Maryland State Trooper who filed suit alleging that the State of Maryland violated the Family Medical Leave Act (FMLA) because the State denied his request to exercise his rights under the Act when his first child was born.

The LGIT Employment Law Hotline received the same request where our Hotline Attorneys advise our Member that “a male employee is entitled to exercise his rights under FMLA for the birth of a child.”

JURY FINDS BIAS BY STATE POLICE

*By Eric Siegal
Baltimore Sun*

In a decision with national implications, a Baltimore federal court jury found that Maryland State Police illegally discriminated against a veteran trooper by denying him extended leave to care for his newborn daughter because he is a man.

After about three hours of deliberation, a U.S. District Court jury found that the state police violated the federal Family and Medical Leave Act and state law and awarded Trooper 1st Class Howard Kevin Knussman \$375,000 in damages.

An attorney with the national office of the American Civil Liberties Union in New York, who helped argue Knussman's case, said it was the first to raise the issue of sex discrimination in the application of the FMLA.

The statute was enacted five years ago to ensure the rights of employees to take time off from work to be at home after the birth of their children, or to care for sick family members.

“This verdict will send a clear message to employers that it is illegal sex discrimination to deprive a father, who wants to be with his children of his rights,” said Sara L. Mandelbaum, senior staff attorney with the ACLU's women's rights project.

About 4 million requests a year are made under the act, she said.

*Sponsoring Organizations*

When the verdict of the jury of five women and four men was read in court, Knussman, 41, turned and hugged his wife, Kimberly.

Mrs. Knussman, who attended most of the 2-1/2 week trial with the couple's daughters, Paige, 4, and Hope, 2, wept quietly.

Knussman, a paramedic with the state police's medical evacuation helicopter division, said he was "relieved and grateful" with the verdict.

The Easton resident had testified he was told that he wasn't entitled to extended leave because his wife wasn't "dead or in a coma."

"I'd like to be able to go back to work and hold my head high and serve the citizens of Maryland," said Knussman, who was granted extended leave for the birth of his second child.

Assistant Maryland Attorney General Donald E. Hoffman, who represented the state police, said the agency would "almost certainly" file a motion with Judge Walter E. Black, Jr., to set aside the verdict.

"We're certainly disappointed," he said.

Col. David B. Mitchell, state police superintendent and one of four officials named with the state in the case, said he believe his agency's actions were "gender neutral." He added that he continued to support all of those involved.

"I stand behind the Knussman family; I stand behind the police accused" of discrimination, said Mitchell.

Since it was filed four years ago, Knussman's case has drawn national attention. He has appeared on President Clinton's radio show, testified before a congressional commission studying the impact of the Family Medical Leave Act, and been mentioned in Hillary Rodham Clinton's book, "It Takes a Village."

The case has its origins in late 1994, shortly before Mitchell took over as head of the state police. That's when Knussman began seeking leave in anticipation of the impending birth of his first child — a request that took on added urgency because of health problems his wife experienced during pregnancy.

Under the federal statute, employees can take up to 90 days of paid or unpaid leave for a family emergency. A Maryland law, enacted in 1994, allows state employees up to 30 days of paid leave after the birth of a child if they are primary care providers and up to 10 day if they are secondary providers.

Knussman, who was granted 10 days of leave in December 1994, claimed that state police had failed to properly inform him that he was entitled to paid leave under federal law, and that they discriminately assumed he was the secondary care provider under the state statute. He said he suffered anxiety and depression as a result of the discrimination.

In closing arguments yesterday, Knussman's attorneys, Mandelbaum and Robin Cockey of Salisbury, said both instances constituted a violation of the trooper's rights.

"Mothers primary, fathers secondary — that was the mantra of the Maryland State Police," said Mandelbaum.

But an attorney for the state police said officials acted reasonably in the Knussman case.

Assistant Attorney General Betty Stemley Sconion said officials provided all employees — men and women — with a packet of information on the federal law. She said they were not out of line in insisting that Knussman offer evidence that he was his daughter's primary caregiver instead of simply documenting his wife's medical problems.

"It's a management issue, it's not gender-based," Sconion said.

"No one ever told Kevin Knussman, 'You can't be a primary caregiver.'" That was his perception," she added.

* *The Hotline is a phone service available to members of the liability Program that provides up to 30 minutes of free legal advice on employment matters. This service is provided by LGIT, with the assistance of Daniel Karp, Esquire, of the Law Firm of Allen, Johnson, Alexander & Karp.*

