

# Employee cannot double-dip FMLA leave and unemployment benefits

by Jacob M. Monty  
Monty & Ramirez, LLP

*A recent case breaks ground on whether an employee on Family and Medical Leave Act (FMLA) leave can obtain Texas Workforce Commission (TWC) unemployment benefits. The court refused to implement a judicially mandated paid leave under the FMLA based on a challenge to the interpretation of state and federal law.*

## **Facts**

Julia White was employed by Wichita County. During her employment, she went on FMLA leave for depression and anxiety. After she ran out of her accrued paid leave, she continued her absence on unpaid leave. The employer continued to pay premiums on her health insurance and held her position open. Later, White requested an accommodation, which the employer was unable to fulfill at that time. She applied to the TWC and was approved for unemployment benefits.

On appeal, the TWC tribunal found that White was unemployed because she met the labor code's definition of "totally unemployed"—an individual who does not perform services for wages in excess of a specified amount. The employer's accounts were billed for White's unemployment benefits.

The employer fought the order. It argued that, under the labor code, White had to be unemployed *and* she had to meet other criteria, such as being able and available to work, to be eligible for unemployment benefits. Through the FMLA, an employee is allowed to go on leave to treat serious health conditions that interfere with her ability to perform her job. White went on leave for this purpose. Thus, when she applied for TWC benefits, she was unable and unavailable to work. The court reversed the TWC's decision, finding that White continued to be employed during her leave. The TWC appealed.

## **Ruling**

In its decision, the Texas Court of Appeals, 2nd District, affirmed the lower court's findings, concluding that state and federal law could not be reconciled to allow a person who is employed and on FMLA leave to receive unemployment benefits. The court compared the purpose of the FMLA—to protect an employee's long-term job security when she needs to address a medical condition—and the purpose of the TWC's unemployment benefits—to provide short-term financial aid for jobseekers who are ready and willing to work. A person cannot meet the criteria for one benefit and simultaneously meet the other. In this instance, White qualified for FMLA leave because of her medical condition. For that reason, White did not meet the TWC's criteria and, thus, was not eligible for unemployment benefits. *Tex. Workforce Comm'n v. Wichita Co.*, 02-15-00215-CV, 2016 WL 7157247, (Tex. App.—Fort Worth, Dec. 8, 2016, no pet.).

## **Bottom line**

This decision states that FMLA protection and TWC unemployment benefits are exclusive. This issue had never been addressed before in Texas. Employers should understand the different purposes of these laws in order to avoid the burden of having to pay out two benefits for one employee. The state labor code and federal law address different issues when it comes to a person's economic and employment stability. If an employee meets all the criteria for one benefit, she will only be eligible to receive that one.

*Jacob M. Monty of Monty & Ramirez, LLP, practices at the intersection of immigration and labor law. He is the managing partner and can be reached at [jmonty@montyramirezlaw.com](mailto:jmonty@montyramirezlaw.com) or 281-493-5529.*