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A federal judge has cleared the way for a man to pursue a claim under the Family and Medical Leave Act against the employer that fired him nine days before he would have become eligible to take time off without fear of losing his job.

In an opinion made available Wednesday, U.S. District Judge David H. Coar did not rule on the merits of the allegation that plaintiff Christopher Reynolds was fired because he requested leave to take care of his newborn son.

But Coar rejected the notion that Reynolds could not bring an FMLA claim against his former employer because he had not been on the job for the 12 months required by the statute.

Coar held that the FMLA protects employees who are not yet eligible to take time off but who ask for a leave that would begin after they do become eligible.

Coar noted that whether the FMLA protects only those employees who are actually entitled to leave was an issue that apparently had not been decided by the 7th U.S. Circuit Court of Appeals or by any other judge serving on the U.S. District Court for the Northern District of Illinois.

But reading the FMLA to exclude from its coverage employees who are not eligible for leave would not make sense, Coar said.

He said the FMLA requires eligible employees to notify their employers at least 30 days in advance that they intend to take leave for such foreseeable events as the birth or adoption of a child.

Congress in including this provision in the FMLA clearly intended "to help and protect employers by insuring adequate notice of extended absences by employees," Coar said.

"It would be illogical to interpret the notice requirement in a way that requires employees to disclose requests to leave which would, in turn, expose them to retaliation, or interference, for which they have no remedy," Coar wrote, citing *Potts v. Franklin Electric Co.*, No. 05 C 433, 2006 WL 2474964 (E.D. Okla. Aug. 24, 2006), and *U.S. v. Berkos*, 543 F.3d 392 (7th Cir. 2008). "If employers were not bound by the FMLA before the employee is eligible, then the employee should not be required to give the employer any notice."

Bolstering that reasoning is a provision in the FMLA that protects from adverse employment actions ineligible employees who seek leave on the mistaken belief they are eligible for it, Coar

said.

Coar said his holding also was supported by regulations that the U.S. Labor Department drafted to implement the FMLA.

One of those regulations mandates that the length of an individual's employment by a particular employer be determined by looking at the date on which the individual's leave is to begin, Coar said.

He said another regulation protects prospective employees — "who are by definition not yet eligible for FMLA leave" — from discrimination for having exercised their FMLA rights while working for another employer.

And Coar said Congress in enacting the FMLA intended to help working parents while also accommodating their employers' interests.

Assuming that Reynolds' allegations are true, Coar continued, dismissing his FMLA claim would defeat that goal.

"An employer has no legitimate interest in being able to terminate an 11-month employee for simply requesting foreseeable leave for which he is eligible, when that employer would be clearly prohibited from making that same decision a month later — or, in plaintiff's case, a mere nine days later," Coar wrote. "If the protections of the FMLA are to serve the act's purpose, they must be read to cover scenarios such as plaintiff's."

Coar denied a motion to dismiss the FMLA claim that Reynolds included in a lawsuit he filed against his former employer, Inter-Industry Conference on Auto Collision Repair, or I-CAR.

In his suit, Reynolds said he began working for I-CAR on Aug. 25, 2005, and was fired on Aug. 16, 2006, the day he asked to take leave beginning in November to care for his prematurely born child.

In addition to the FMLA claim, Reynolds' suit includes claims accusing I-CAR of sex discrimination and of violating the Employee Retirement and Income Security Act.

I-CAR contends that it fired Reynolds because of his job performance, not because he asked to take leave.

Coar issued his opinion in *Christopher Reynolds v. Inter-Industry Conference on Auto Collision Repair (a/k/a I-CAR)*, No. 08 C 2115.

The lead attorney in the case for Reynolds is Erika E. Pedersen of Pedersen & Weinstein LLP of Chicago. Reynolds also is represented by Jill S. Weinstein, also of the Pedersen firm.

The lead attorneys for I-CAR are Joshua R. Diller and Mitchell B. Katten, both of Katten & Temple LLP of Chicago. I-CAR also is represented by Nancy A. Temple, of the same firm.