

# Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

MAY 13 - MAY 26, 2022

*Congratulations to the new attorneys who just passed the Bar Exam. Welcome to the central Ohio legal community.*

**Jill Snitcher, Esq.**  
Executive Director  
jill@cbalaw.org



## HOW INCREASED WORKPLACE FLEXIBILITY IMPACTS FAMILY AND MEDICAL LEAVE

**W**e have heard a lot about hybrid and remote work coming out of the pandemic. Most companies, and especially those in professional services industries, have found that not only can efficient work be done from home or places other than the office, but often it's better quality for a variety of reasons. One of these reasons is the ability to better balance self-care and family time with work. For companies that are able to embrace these options, there is also enhanced trust built into the relationship between employee and employer, as the employer is trusting the employee to be a professional and continue to deliver. A less-discussed topic, though, is that of the slow evolution of what time away from the office looks like in light of the fact that this "work from



**SARAH PEREZ, ESQ.,**  
Perez Morris

anywhere" culture is so prevalent.

For many, there's no real distinction between work and home. These lines are particularly blurry when employees are on a prolonged time away from the office, such as for maternity or parental leave, although this fuzziness has also crept into vacation time. When employees reach a comfort and routine having work and home lives seamlessly blended, it's more difficult to disconnect. They look and feel like one and the same. Said another way, working from a location outside the office with your family around is just another day in the office for many.

From a legal perspective, there are still certain types of leave that need to be taken without work creeping in. For example, the Family and Medical Leave

Act still requires that companies with more than 50 employees within a 75-mile radius offer up to 12 weeks unpaid leave for an employee's own serious health condition or to care for a family member. Employers cannot interfere with eligible employees taking this leave and also cannot retaliate against any employee for taking leave. It is tempting for employers and employees alike to want to stay connected to ongoing projects or issues as they arise, even while the employee is on protected leave. However, this may give rise to an FMLA interference claim. Similarly, although distinct, if an employee declines to stay plugged into work remotely while on leave and is disciplined or overlooked for a promotion or opportunity upon return, there may be a risk the employee feels retaliated against.

To combat this risk, managers need to be re-trained and reminded on how to handle leaves of absence in the new normal of

### EDUCATION & EVENTS

- Wednesday, May 18 • 12 – 1 p.m.  
**What to do if Your Employee Steals From You or Your Clients**  
1.0 CLE Hour
- Thursday, May 19 • 1:30 – 4:45 p.m.  
**2022 Animal Law Update**  
3.0 CLE Hours

All classes listed are offered by the Columbus Bar Association through Zoom. To register, call 614-221-4112 or enroll online at [www.cbalaw.org](http://www.cbalaw.org).

remote and hybrid work. While the lines between work life and home life easily blur during a normal workday, the laws have not caught up, nor are they likely to. Employers must maintain boundaries and ensure employees are not working while on protected leave and must also ensure employees who take this leave are not penalized upon their return for truly checking out and not working remotely. ■

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## ANALYZING THE "SETTLE-OR-FIGHT" DECISION

"Should I fight, or cave a little and focus on making widgets?" Here are six questions I ask clients about that question in any dispute.

### 1. How strong is our position?

Dispassionately evaluate your position now – not months and a chunk of fees later. Too often, companies emotionally dive in without taking a hard look at likelihood of success. Lawyers need to have the intestinal fortitude to tell clients what they don't want to hear about this.

### 2. What's everything that's at stake?

Often, there is an obvious target – the



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number in a contract, invoice or complaint. Are there also fees provisions in the fine print of that boilerplate contract? Statutory fees or penalties?

### 3. Might settlement create costly precedent?

Settlement might affect future disputes. For example, an employer might choose not to settle a small dispute because there are more employees with the same issue. If the employer

gives in to one, others may not be far behind.

But can't everybody agree not to share the details of the settlement? That might work, but experience tells us interested

bystanders seem to find out somehow, and it is hard to prove a violation of a confidentiality provision.

### 4. Is there a principle at stake, and what's it worth?

There is nothing wrong with emotions; just make sure to identify and distinguish them from cold, hard analysis. Sometimes clients say, "I'd rather pay you than pay them." That's valid if it is fully informed. If a business is making a decision based on what is *right*, try to quantify "right." There will be no formula, but trying to "price" principle is a useful exercise.

### 5. What might it cost to fight?

It is common to initially underestimate fees. Sometimes increased fees result

from unanticipated twists and turns. But, it is human nature to be unduly optimistic at the outset, not only about the outcome but also about cost. Again, the lawyer can't be afraid to give it to the client straight. (Here would be a good place to consider the time and energy that will be required.)

### 6. How would the other side answer these questions?

While we critically evaluate our position, it is important to ponder your adversary's position. You cannot know with certainty how they would answer these questions, but think through them from their perspective too. ■

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# Annual Meeting

THURSDAY  
**JUNE 9**  
4:30-6:30pm

**THE FIVES**  
500 Reach Blvd.

Cocktails  
Appetizers

Meet the new Board  
Network and connect  
Free parking

TICKETS:  
[www.cbalaw.org](http://www.cbalaw.org)