

## No Appetite for Rotten Tomatoes

Peach pie, apple sauce, blackberry jam, zucchini fritters, tomato sauce, corn pudding, crabcakes, roast venison. I have made all these things from the bounty of good old Mr. Larson. Mr. Larson is a farmer, a waterman, and a hunter. And, lucky me, Mr. Larson is a very good neighbor. He lives just down the road from our riverside cottage in sleepy Chestertown, Maryland. Just about every Sunday afternoon, just as I'm lamenting the end of the weekend and my drive back over the bridge, I hear a familiar rap on the door. "Hullew der?", he hollers, peering in through the screen. Mr. Larson was born and raised on the Eastern Shore. He raised his children there and they're raising their children there. My husband once did him a favor. Since then, he frequently drops in to say hello, always with a bag in hand full of what he picked or killed that day. (I'm hoping he'll need another favor someday soon. He raises turkeys, too.)

If I told Mr. Larson about my sister's fondness for tomatoes, I bet he'd toss a few more in the bag for me to pass on to her, but what if I told him that my dad, my child, and my husband all wanted exactly what he picked for me? What would happen if, every time he gave me a bag of fresh corn or a bucket full of apples, he had to give the same to each of my immediate family members? I imagine I wouldn't see much of Mr. Larson anymore or his juicy produce. He's country, but he ain't dumb.

I predict this is similar to what is about to play out between many Maryland employers and their employees. On October 1, 2008, Maryland's Flexible Leave Act took effect. Although the Act has been criticized as "vague," "ambiguous" and other adjectives that make lawyers bristle, the most immediate and significant response likely won't be lawsuits or disputes over its meaning. Instead, we're going to see the quiet, but certain, erosion of the generosity of Maryland's small and mid-size employers toward their employees. This new law will compel many employers to shrink their paid leave policies; others may get rid of them entirely, opting instead to offer higher wages without paid leave benefits to attract employees.

The Act requires that every employer with 15 or more employees that provides any form of paid leave – whether it be sick or vacation leave – allow its employees to use any type of accrued leave to care for a sick immediate family member (child, parent or spouse). Employers who don't offer employees any paid leave, Scrooges though they may be, are not required to implement leave policies to comply with the Act. The Act does not prevent employers from requiring their employees to comply with workplace leave policies, like vacation notice requirements, except if it conflicts with the Act. Of course. Making matters more “vague” and “ambiguous”, a letter published in May 2008 by Assistant Attorney General Kathryn M. Rowe has been interpreted to state that the Act makes it unlawful for an employer to deny leave to an employee with an ill immediate family member (never mind that pesky workplace vacation notice policy). Oh, and the Act has nothing to do with employees' leave rights under the Family and Medical Leave Act, which applies to employers of fifty or more employees. The Maryland Legislature has done a yeoman's job of assuring that any large employer will scratch Maryland off its list of potential places to open up shop or relocate. But that's a rant for another day.

Putting aside the ballyhoo of interpretation and application of the Act, employees of Maryland's smaller and mid-size employers are likely going to be hurt, not helped, by this new law. Here's how: Many of my clients who employ about 15 to 35 employees – who fall outside the grasp of the Family and Medical Leave Act – do not make disability insurance available for their employees. Instead, they implement an in-house policy to allow employees a nice hunk of paid or partially paid leave – say, three or four weeks – in the event the employee falls ill, requires surgery or the like. In response to the mandate of the Flexible Leave Act, three of my clients have already discontinued their generous informal disability policy. Why? Because the Act covers *all* forms of paid leave. So, for example, if the spouse of one of my client's employees requires surgery, my client who provides three weeks of paid disability leave would be forced to provide those three paid weeks of leave for the care of the employee's spouse.

Many employers are willing to subsidize employee disability leave needs to keep their employees happy and healthy, but cannot afford – financially or commercially – long-term employee absences for family members' needs as well as their employees'. As a result, once employees begin to take advantage of the Act (or employers read this column), these employers

will be inclined to offer less paid leave across the board. Many will likely discontinue their in-house disability leave policies entirely. Small and mid-size employers – not covered by the Family and Medical Leave Act – typically accommodate employees as much as possible when family members require medical care. In my experience, these employers don't need a statute to force them to do it. Ironically, the employees that the Maryland Legislature presumably aims to help with the Flexible Leave Act are the very employees that will feel its sting the most.

With Maryland's corn and tomato season long over, Mr. Larson has less to offer these days, but come springtime, I can count on him coming by with the season's first asparagus. Unfortunately for many Maryland employees, the Maryland legislature isn't as reliable. These days, they're just serving up rotten tomatoes.