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Proper FMLA Notice Makes For Informed Employees And Compliant Employers

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A recent federal district court case serves as an important reminder to all employers that an employee is not required to use any magic language to request leave under the Family and Medical Leave Act (FMLA). When an employee requests qualifying FMLA leave, the employer must provide written notice of the employee's rights and responsibilities, to ensure that employers allow their employees to make informed decisions about leave. Failure to provide the proper notices may constitute interference in violation of the FMLA.

Under the FMLA, that notice must include the employee's obligation to obtain any certification, right to substitute paid leave, duties with regard to payment of health benefit premiums, the fact that the leave may count against the employee's FMLA entitlement, and whether the employee is considered a "key employee." See [29 C.F.R. §825.300\(c\)](#) for further details about the FMLA notice requirements. Department of Labor (DOL) form WH-381, Notice of Eligibility and Rights & Responsibilities, satisfies this obligation.

A federal district court in New Jersey recently grappled with FMLA notice requirements in [Rick Stowell, v. Black Horse Pike Regional School District](#). Over the summer break, a teacher had been diagnosed with and hospitalized for acute pancreatitis. A few months into the school year, the teacher's condition prompted him to begin seeing a gastroenterologist for the constipation, cramping, pain, and general discomfort. As a result, the teacher required five days of sick leave in November, and later in April he required surgery and further extended days of sick leave. Overall, the teacher's condition during that school year resulted in 17 medical condition-related absences, more than he had taken in prior school years.

The teacher testified that during the school year he was met with

“exasperated tones” and “expressions of irritations” at his requests for sick leave. Triggering the current lawsuit, the administration informed the teacher at the end of the school year that his contract would not be renewed based on his teacher performance in the classroom. The teacher argued that the true reason his contract was not renewed was because the school did not want to accommodate any further leave that his medical condition might require.

Among other claims, the teacher alleged FMLA interference and retaliation. To support his interference claim, the teacher alleged that he did not receive the required individualized notice of his right to take FMLA leave. The teacher argued that he was prejudiced because he did not know he could use FMLA leave, and was “constrained in that he could only utilize leave in accordance with sick days,” and was “forced to come to work while suffering from pain.” The school argued that the teacher had been informed of the right to take FMLA leave by notices posted in the teacher lounges, staff handbooks, and on the school website.

Finding against the school on summary judgment, the court held that a reasonable jury could find that the teacher would have taken more time off than his allotted sick days if he had proper notice of his ability to take FMLA leave. Further, the court found that the teacher had provided adequate notice of his FMLA qualifying condition to support a retaliation claim, because he provided notice of his condition at the beginning of the school year; the teacher’s sick day notices referenced various medical exams related to his condition; and the administration was aware that his subsequent surgery was related to his condition.

It is not always easy, however, for an employer to decipher when an employee is requesting leave that may be covered by the FMLA to trigger the individualized notice requirements. For example, when an employee exhibits signs of panic attacks or erratic, emotional behavior requiring leave, does the employer have a duty to inquire further?

One way employers can help to alleviate ambiguous notices is to implement a clearly established policy that requires employees to submit FMLA qualifying leave in writing or to contact a specific individual. While such policies can be helpful to the employer, written notice and procedural requirements must be consistently enforced to be effective.