

7th Circuit Issues Instructive FMLA Decision

Labor & Employment Law Update

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On Tuesday, the 7th Circuit Court of Appeals vacated an FMLA decision that was in favor of the employer and instructed the lower court to issue a ruling in favor of the employee. The case involved the application of FMLA to an employee caring for an adult child and the issue regarding information the employee must provide about the duration of the leave and return to work status. The court's opinion is instructive on both issues.

Suzan Gienapp worked at a residential nursing care facility. She requested time off to care for her adult daughter who had to undergo treatment for thyroid cancer. Suzan mailed in an FMLA form, but left the section blank about the expected duration of the leave. On the form, one of the physicians stated that the daughter's recovery was uncertain, but that she would require assistance for a period of at least six months. Suzan's leave would expire on April 1st, so the employer assumed Suzan would not return prior to the end of her leave and hired a replacement for Suzan. When Suzan attempted to return to work on March 29th, she was told she no longer had a job.

The employer argued that Suzan failed to tell the employer how much leave she needed and, thus, forfeited her rights under the FMLA – an argument that the district court adopted. The 7th circuit acknowledged that when leave is foreseeable, employees are required to tell their employers how much leave is needed. However, the court viewed Suzan's leave as unforeseeable and the regulations only require employees to follow the employer's policy regarding how the employee is to report the need for leave, when the leave is unforeseeable. In Suzan's case the evidence showed that the employer required monthly telephone calls and Suzan complied with that request. As such, the 7th circuit rejected the argument that Suzan had forfeited her right to FMLA.

The employer also attempted to argue that Suzan should not have been covered by FMLA because her daughter was married and, as such, no longer met the definition of "daughter" under the FMLA. The court swiftly rejected the argument by stating that Suzan did not have to be standing in loco parentis to her daughter to qualify under the FMLA. The employer's other argument was that Suzan cared more for her grandchildren rather than her daughter during the leave. The employer then pointed out that care of grandchildren is not covered by the FMLA. The court stated that there was no evidence that Suzan's care was exclusively for the grandchildren, so it decided whether care for both the

daughter and grandchildren was covered under FMLA. The court concluded that caring for grandchildren while also caring for an eligible relative would not “disqualify” the person for FMLA leave. The court stressed that caring for her daughter’s children could count as “care” for the daughter because it would take a load off the daughter’s mind and provide psychological comfort. The court noted that some forms of psychological care to a covered relative would be too tangential to be covered by the FMLA (without giving examples), but in Suzan’s case the employer argued that providing care to **both** the daughter and grandchildren made Suzan ineligible, which the court rejected.

This case is an important reminder that employers should expect to see more requests for FMLA to care for adult children because of the broader definition of disability under the ADAAA, and employers need to be careful about focusing too narrowly on what it means to “care” for the covered relative. In addition, employers should rely on clear and reasonable call-in or notice policies as an effective and legitimate means for managing FMLA.

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