

FMLA leave can be Tricky, Tricky, Tricky

Labor & Employment Law Update

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In 2014, the Seventh Circuit Federal Appellate Court that covers federal courts in Illinois, Indiana and Wisconsin, held that an employee's trip to Las Vegas qualified for FMLA leave and was protected by the FMLA because he was providing daily care to his terminally ill mother. *Ballard v. Chicago Park District*, 741 F.3d 838 (7th Cir. Jan. 28, 2014).

This case highlighted the fact that in looking at whether something like a trip to Las Vegas qualifies for FMLA leave, we have to look past the initial issue and ask whether it is to care for an immediate family member (spouse, child or parent – but not parent “in-law”) with a serious health condition.

The Department of Labor (DOL) recently doubled down on this proposition in an August 8, 2019 Opinion Letter in which it concluded that FMLA covers an employee's attendance to school meetings where the employee's child's individualized education program (IEP) would be discussed.

The DOL Opinion Letter is based on a situation where an employee has two children with serious health conditions. The employee has been approved for intermittent FMLA leave to provide care for the children, including taking the children to doctor appointments. However, the employer has denied the employee's request to take FMLA leave to attend meetings at the children's school to discuss the children's IEP.

Public Schools are required to develop an IEP for children with disabilities, including preschool-age children under the Individuals with Disabilities Education Act (IDEA). Under the IDEA, once a child is determined to have a qualifying health condition, parents must be notified and meetings will be held in which an IEP will be developed and reviewed. Those meetings can include participation by a speech pathologist, school psychologist, occupational therapist and/or physical therapist employed or contracted by the school district, all of whom provide services to the child under the child's IEP. Each IEP is designed to meet a child's exact needs.

The DOL determined that attendance to the school meetings to address the IEP is a qualifying reason for taking intermittent FMLA leave. In doing so, the DOL noted that “to care” for a family member with a serious health condition includes “to make arrangements for changes in care.” This includes taking leave to help

make medical decisions on behalf of a hospitalized parent or to make arrangements to find suitable childcare for a child with a disability. See *Romans v. Michigan Dep't of Human Servs.*, 668 F.3d 826, 840–41 (6th Cir. 2012) (holding that an employee was entitled to take FMLA leave to join his sister at a hospital to make a decision regarding whether to keep their mother on life support); *Wegelin v. Reading Hosp. & Med. Ctr.*, 909 F. Supp. 2d 421, 429–30 (E.D. Pa. 2012) (holding that an employee was entitled to take FMLA leave to find a daycare to care for her daughter with an autism spectrum disorder and a visual impairment); see also *Ballard v. Chicago Park Dist.*, 741 F.3d 838, 840 (7th Cir. 2014) (noting that the FMLA “speaks in terms of ‘care,’ not ‘treatment’”). Additionally, an employee may “make arrangements for changes in care,” even if that care does not involve a facility that provides medical treatment. *Wegelin*, 909 F. Supp. 2d at 430 (quoting 29 C.F.R. § 825.124).

This Opinion Letter provides us a lot of great reminders and takeaways:

- When an employee requests time off for school meetings or to change daycares/nursing homes, we need to ask more questions, as those would qualify for FMLA leave if it is with respect to an immediate family member with a serious health condition.
- Not all school meetings would qualify for FMLA leave – for example, disciplinary meetings would likely not qualify for FMLA leave under this opinion.
- Make sure supervisors and managers understand that our FMLA obligations are triggered when they are put on notice by an employee – i.e. an employee telling a supervisor that he needs to take a day off to help move his father into a nursing home, or find a new daycare for his special needs son, or attend a school meeting to talk about his son’s IEP.

That being said, it is also important to recognize that employees are required to provide notice of the foreseeable need for leave and provide appropriate certification to support the leave request – i.e. it should not be a last minute leave request. More importantly, while the FMLA may be Tricky, you just need to keep on Rocking!

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