

Is Your Holiday Cheer Being Intermittently Dampened by Concerns of FMLA Abuse?

Labor & Employment Law Update

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Have you noticed that an employee's requests for leave tend to occur on a Friday or Monday? Is an employee suddenly unable to work immediately before or after holidays? It is not unusual for employers to experience FMLA abuse, especially around the holidays. The following are a few practices that can help you combat FMLA abuse:

Be Vigilant and Be Aware

Having a system that tracks when employees take FMLA leave can help you identify patterns of abuse and act quickly to investigate and address them appropriately.

Control Scheduling

FMLA regulations require that absences for planned medical treatments be scheduled in a way that least disrupts employers' operations. When dealing with an employee's request for FMLA leave for treatment, therapy or doctor visits, you should contact the employee regarding the frequency, hours of the health care provider and ways that the schedule can be modified to decrease disruptions to your operations.

Question the Employee

It is important to understand that the FMLA allows employers to require employees to keep them informed about his/her plans – which can include:

1. Questions regarding the need for FMLA leave and anticipated return date;
2. Requiring employees to call in to verify that absences are FMLA-related;
3. Calling an employee at home as a means of verification;
4. Requiring written certification from employee attesting that leave is/was FMLA-related. (**IMPORTANT** – Employers cannot require a doctor's note, unless it is being treated as a recertification.)

Request Recertification

Employers can generally only request recertification once every 30 days. However, employers may request recertification more often if the following occurs:

1. An extension of leave is requested by the employee;
2. Circumstances have changed significantly since prior certification – i.e. prior certification states 1-2 days per absence and employee has taken 4 days for past two absences or a pattern of FMLA leave that coincides with holidays/days off;
3. Employer has information that creates an honest belief that employee's stated reason for leave is improper – i.e. employee is recovering from knee surgery, but is still playing in the company softball league.

Investigate

Employers are able to monitor patterns of suspected leave misuse to ensure that an employee's leave is legitimate, including questioning the employee, reviewing social media and even surveillance. (**NOTE** – Information from coworkers about an employee's actions while on leave must be verified, to avoid allegations that the coworker was lying.)

Confront the Employee

After an investigation is done, if there is evidence of FMLA abuse, confront the employee with the evidence and provide the employee an opportunity to explain what occurred. While the employee may deny the abuse, they could surprise you and admit to it.

These tips won't entirely eliminate the problem of employees trying to take advantage of FMLA leave and intermittent FMLA, but they will help decrease FMLA abuse.

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