

U.S. Mail Insufficient for Important Notices to Employees

Labor & Employment Law Update

on August 12, 2014

Employers may be appalled to learn that their standard practice of simply mailing (and emailing) notices and other important correspondence to employees may be insufficient to satisfy their obligations under various employment laws.

Recently, an appellate court held that a former employee's claim that she never received individual notice defeated the "Mailbox Rule" presumption, and therefore precluded the employer's ability to obtain summary judgment in a Family and Medical Leave Act (FMLA) matter. *Lupyan v. Corinthian Colleges Inc.*, No. 13-1843 (3rd Cir. 8/5/2014). The Mailbox Rule is an evidentiary presumption that mail will be received by the intended recipient if it is properly addressed, with proper postage, and delivered to the U.S. Postal Service. Employers often conclude (based on this presumption) that their FMLA individual notice mandate is satisfied upon sending such notice via U.S. Mail.

Employer Corinthian Colleges Inc. (CCI) met with employee Lisa Lupyan prior to her leave (though they never specifically discussed her FMLA rights). CCI followed up the same day with an individual letter detailing Lupyan's FMLA obligations and rights. When Lupyan advised CCI that she was ready to return to work 16 weeks later, CCI told her that she needed a full release, which she obtained. However, rather than return Lupyan to work, CCI terminated Lupyan because (i) she had not returned to work within 12 weeks (the amount of FMLA job-protected leave) and (ii) CCI suffered from low student enrollment. Lupyan asserted that she never received the letter, and then sued CCI for FMLA interference and retaliation.

The court found that Lupyan's simple statement indicating "non-receipt" defeated the Mailbox Rule presumption as there was no direct evidence of receipt, creating a jury question. The court noted that sending a notice via certified mail created a strong presumption of delivery because the return-receipt was a form of evidence, and it was "easy" to do so.

The bottom line is that employers are held to a higher standard than their employees. As a result, for best practices, employers should:

- Ensure that any correspondence that may be used as a basis for discipline, termination, or is otherwise legally mandated is sent to the employee in a method that permits tracking and verification of delivery/receipt (g., Certified U.S. Mail with return receipt, UPS/FedEx or other overnight courier, and in-person delivery with the delivery date/time noted and signed on an employer-retained copy).
- As an extra measure of protection, some employers may wish to also enclose a receipt for the employee to sign, along with a stamped, self-addressed return envelope. If not timely received, the employer has an opportunity to follow up with the employee – demonstrating that the employer went beyond its legal obligations.
- Contemporaneously document conversations with employees with an eye towards potential litigation.
- Review handbooks and posters, and use up-to-date forms to ensure compliance with legally mandated general and individual notices.
- Discuss with counsel potential risky terminations.

U.S. Mail Insufficient for Important Notices to Employees