

# What a Trip – Employee's Travel to Vegas With Terminally Ill Mother Is Covered By FMLA

## Labor & Employment Law Update

By Beverly Alfon on February 10, 2014

A few weeks ago, the Seventh Circuit federal appellate court (Illinois, Indiana and Wisconsin) held that an employee's absence from work was protected by the Family Medical Leave Act – even though she was on vacation with her terminally ill mother in Las Vegas. *Ballard v. Chicago Park District*, Case No. 13-1445 (7<sup>th</sup> Cir. Jan. 28, 2014).

There was no question that Ballard provided daily care to her mother. However, when she requested FMLA leave to travel with her mother to Las Vegas, Ballard's employer denied the request. Ultimately, the employer terminated her for the unauthorized absences that she accrued as a result of the Vegas trip.

The question before the Court was whether or not the family-care provisions of the FMLA entitle an eligible employee to leave "[i]n order to care for" a family member with a serious health condition, even if it is for travel unrelated to medical treatment. 29 U.S.C. § 2612(a)(1)(C). The Seventh Circuit held that the FMLA broadly refers to "care" and does not limit it by geography or to ongoing "medical treatment". The court reasoned that,

"...[the mother's] basic medical, hygienic, and nutritional needs did not change while she was in Las Vegas, and [Ballard] continued to assist her with those needs during the trip. In fact, as the district court observed, [Ballard's] presence proved quite important indeed when a fire at the hotel made it impossible to reach their room, requiring Beverly to find another source of insulin and pain medicine. Thus, at the very least, Ballard requested leave in order to provide physical care. That, in turn, is enough to satisfy 29 U.S.C. § 2612(a)(1)(C)."

It should be noted that the Seventh Circuit's decision is contrary to the positions of the 1<sup>st</sup> Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island) and 9<sup>th</sup> Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington), which have held that travel unrelated to *medical treatment* is not supported by the FMLA. However, the 7<sup>th</sup> Circuit Court countered, "[N]one of those cases explain why certain services provided to a family member at home should be considered 'care,' but those same services

provided away from home should not be.”

**Bottom Line: If you are an Illinois, Indiana or Wisconsin employer and an FMLA-eligible employee seeks leave to care for his/her family member with a serious health condition, that protected leave extends to basic care for the family member – regardless of the location of the care.**

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