December 12, 2019

Just When You Thought You Knew What Constituted FMLA Leave

Employers may need to rethink the circumstances under which employees are entitled to take leave under the Family and Medical Leave Act (FMLA), given a recent case making clear that an employee retains entitlement to leave even when a serious health condition was not diagnosed until after employment ended, and a Department of Labor opinion letter granting leave for school care-related meetings.

In *Valdivia v. Township High School*, an employee showed signs of an obvious health issue in the forms of crying, tardiness and decreased performance. Although the employee had previously been a model worker, the employer refused to accommodate the employee's request for time off until the beginning of the next school year. The employee resigned after the school failed to offer her a job for the following school year, was subsequently diagnosed with anxiety and depression, and sued the school for interfering with her FMLA rights. The Seventh Circuit Court of Appeals (covering several jurisdictions in the Midwest) affirmed a jury verdict in the employee's favor and rejected the employer's position that the employee was not entitled to FMLA leave because she was not diagnosed with a serious health condition while employed. The court found the employer was on notice that the employee was suffering from mental health issues and needed leave and was entitled to obtain medical certification as a condition of granting FMLA leave. The court noted the employer could not ignore or reject the employee's leave request because at the time the request was made she had not yet received a formal diagnosis.

On the U.S. Department of Labor (DOL) front, a father sought clarification on whether his wife's attendance at meetings relating to the care of their two children who have qualifying health conditions under the FMLA constitutes a covered reason for intermittent leave under the FMLA. Even though the children's doctors provided certification supporting the wife's need for intermittent leave to attend such meetings, her employer did not approve her request.

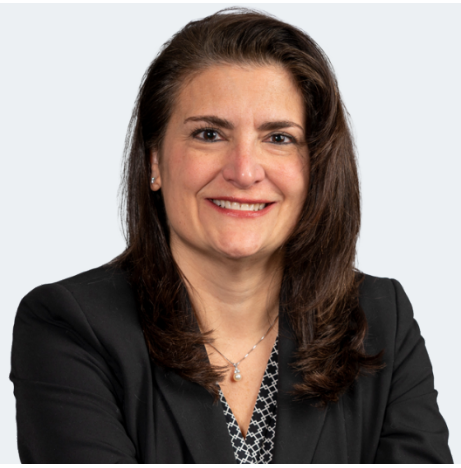
In this instance, the children received pediatrician-prescribed occupational, speech and physical therapy provided by their school district, and four times a year, the school holds Committee on Special Education (CSE) meetings under the Individuals with Disabilities Act (IDEA) with speech pathologists, school psychologists, occupational and/or physical therapists, teachers, and/or school administrators to discuss the children's educational and medical needs, well-being, and progress.

In its August 8 opinion letter, the DOL opined that time taken to attend such meetings should be covered under the FMLA and clarified that caring for a family member includes not only the actual care but also the arrangements for changes in care, which was the purpose of these CSE meetings. Here, the opinion letter stated that the mother's leave was necessary because her attendance at the CSE meetings was "'essential to [her] ability to provide appropriate physical and psychological care' to [her] children." Specifically, FMLA protections are triggered if the meeting is related to discussions regarding necessary medical decisions and progress or to ensure the environment is suitable for a child's care. The DOL made clear the children's doctor did not need to be present at the meetings for the time to qualify as FMLA leave and, in a footnote, the DOL stated that its conclusions applied to any meetings held pursuant to the IDEA.

These two developments make clear that employers should confer with legal counsel prior to denying any FMLA leave requests. Similarly, when employees request an accommodation based on health issues, employers should appropriately consider the request in the context of the circumstances.

Would you like to receive our *Employment and Labor Quarterly Update?* Sign up here.

Authors



Francine Esposito

Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com

Naju R. Lathia

Partner

Parsippany, NJ | (973) 966-8082

nlathia@daypitney.com