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NEW DOL RULINGS ON FMLA: SCHOOL CLOSURES AND MEDICAL TRAVEL TIME

The United States Department of Labor recently issued two opinions concerning the Family and Medical Leave Act (FMLA) that we wish to bring to your attention.

The first opinion answers the question of the impact of a school closure of less than one week on the calculation of FMLA leave time.

FMLA entitlement is based on workweeks of leave. Additionally, for those employees who use FMLA leave on an intermittent or reduced schedule basis, the act prohibits the reduction of an employee's statutory leave entitlement "beyond the amount of leave actually taken."

Accordingly, if an employee is on intermittent or reduced schedule FMLA leave and school closes for less than a week such that the employee would no longer be expected to report to work during that time, the time during the school closure should not be deducted from the employee's FMLA leave entitlement.

- ⇒ *For example, if an eligible employee needs FMLA leave each Tuesday afternoon for physical therapy, but the school is closed all day on Tuesday due to inclement weather and the employee was not required to report for work, the employer should not deduct time for that day from the employee's FMLA entitlement.*

Conversely, for an employee using FMLA leave for a full workweek, when a school closes for less than a week, the closure has no impact on the employee's FMLA leave usage, and the employer may deduct a full week's worth of leave from the employee's FMLA leave entitlement.

- ⇒ *In other words, if the employee was on FMLA leave for Monday through Friday of a week, but school is closed on Tuesday, the employee would use a full week of FMLA leave despite not being required to report to work on Tuesday. Whether the closure was planned or unplanned has no impact on the amount of leave an employee uses. Nor are the specific reasons for the temporary closure material to the analysis.*

Additionally, whether an employer requires an employee to report to work on or for a "make up" day in the future does not impact this analysis. An employee's ability to take FMLA leave on a make up day must be evaluated independently of the day that make up day replaces. Generally, if the employee is eligible, has a qualifying leave need, and has an unused leave entitlement prior to the scheduled make up day, the employee may use FMLA leave on that scheduled day.

The second opinion addresses whether FMLA leave may be used for time spent traveling to or from medical appointments.

The FMLA entitles an eligible employee to take leave for a variety of reasons, including leave for an employee's serious health condition, as well as leave to care for a qualifying family member with a serious health condition. The act defines a "serious health condition" to include not only the immediate limitations and effects of a condition, but also "inpatient care" and "continuing treatment" of the condition by a health care provider.

In defining "serious health condition" to incorporate immediate medical treatment as well as ongoing care, the statute makes clear that FMLA leave is appropriately used for time spent in medical appointments to diagnose, monitor, address, or treat an employee's serious health condition. Part of obtaining care and continuing treatment from a medical provider may require the employee to travel to the provider's location.

- ⇒ *As a result, when an eligible employee travels to or from a health care provider for a medical appointment regarding the employee's or family member's serious health condition, the employee may take FMLA leave not only for the actual appointment, but also the time traveling to or from the appointment. By contrast, travel time that is **not** related to the employee's serious medical condition is not protected by the FMLA.*

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Also, the FMLA does not protect misuse of leave.

⇒ *Therefore, FMLA-protected leave for travel time does not encompass travel to or from, or stops for, other unrelated activities. Neither the act nor FMLA regulations require health care providers to furnish information about an employee's travel time on a medical certification.*

The FMLA permits an employer to request “medical facts within the knowledge of the health care provider regarding the condition.” A healthcare provider’s knowledge, however, does not extend to the travel time necessary for a patient to get to and return from a needed appointment. Accordingly, a medical certification need not include any information regarding travel time to be valid under the FMLA and the department’s regulations.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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