

FABULOUS MANAGEMENT OF FMLA

Session Topics

What does "care" mean?

How does an employer develop a "good faith" defense in an FMLA retaliation case?

Time permitting: When does an employer have "notice"?

Time permitting: Counting hours for married couples.

This information is not intended to constitute legal advice and should not be relied upon in lieu of consultation with legal advisors from your own agency, board, commission, the AG's Office or DAS.

FABULOUS MANAGEMENT: SCENARIO ONE, CARING FOR PARENTS.



FABULOUS MANAGEMENT: SCENARIO ONE, CARING FOR PARENTS.



Fabulous Management: Scenario Two, Caring for parents.



FAB MANAGEMENT:

❖ What does the certification indicate?

- If the certification is silent as to the length of time needed for care, it is permissible to discuss with employee about how much time is really needed to get mom calmed down.
- Get certification updated.
- Reassignment.
- If the employee requests intermittent leave, is the doctor confirming that it is medically necessary?

FABULOUS MANAGEMENT: CARING FOR CHILDREN, SCENARIO ONE.



FABULOUS MANAGEMENT: CARING FOR CHILDREN, SCENARIO TWO.



FABULOUS MANAGEMENT: CARING FOR CHILDREN, SCENARIO THREE.



FABULOUS MANAGEMENT: CARING FOR CHILDREN, SCENARIO FOUR.



FAB MANAGEMENT:

- ❖ Use common sense;
- ❖ Employ compassion;
- ❖ Consider the children.

FABULOUS MANAGEMENT: FRAUD,
SCENARIO ONE



FABULOUS MANAGEMENT: FRAUD,
SCENARIO TWO



FAB MANAGEMENT:

❖ Addressing suspected fraud:

- Refuse to accept vague language in a certification.
- Second opinion on first certification.
- Recertification when there's a change in circumstances, like usage exceeds recommended days/hours in certification.
- Contact the doctor for clarification.
- Consider a provision in handbook that provides that employees must not continue or establish secondary employment while on FML.
- Consider a home treatment rule, where leaving town must be related to care.
- Thorough investigation.
- Talk with AGO/Prosecutor/City Law Director about collections.

FABULOUS MANAGEMENT: NOTICE ISSUES



FAB MANAGEMENT:

❖ Notice issues:

- The time an employee has to notify and the information that the employee must provide depend upon whether leave is foreseeable or unforeseeable.
- Flexibility given to employee will depend upon circumstances.
- Employer "is expected to obtain any additional required information through informal means."







State Employer FMLA Basics

1. State employers are subject to the FMLA regardless of how many employees they have. (29 CFR 825.105 and 108).
2. Ohio does not have a state law that provides more generous family leave than the FMLA. (29 CFR 825.701).
3. Triggering events:
 - a. The employee requests leave 30 days in advance for a foreseeable covered absence. (29 CFR 825.302).
 - b. The employee requests leave as soon as practicable for an unforeseeable absence. (29 CFR 825.303).
 - c. The employee has called in for three days and requires leave for self-care or care of immediately family members. (29 CFR 825.102).
 - d. The employer has “notice” that the employee’s absences may be for an FMLA qualifying reason.
4. Qualifying reasons for leave:
 - a. Child birth. (29 CFR 825.120).
 - b. Caring for child after birth or upon adoption or foster care of new child. (29 CFR 825.121).
 - c. Caring for spouse, child or parent with a serious health condition. (29 CFR 825.124).
 - d. Employee has a serious health condition that makes the employee unable to perform an essential function of his job. (29 CFR 825.123).
 - e. Employee’s spouse, child, or parent is a member of the military being called to military duty and there is a qualifying exigency. (29 CFR 825.126).
 - f. Employee’s spouse, child, parent or next of kin is a military service member and requires care of a serious injury of illness. (29 CFR 825.124).
5. Employee eligibility:
 - a. Has the employee been employed by the state for at least 12 months? These do not have to be consecutive. (29 CFR 825.110).
 - b. Has the employee been in active work status (OAC 123:1-47-1(A)(3)) for 1,250 hours within a 12 month period? (29 CFR 825.110).
 - c. Has the employee used any FML looking back over the last 12 month period? (29 CFR 825.200 (b)(4)).

6. Due Dates:

- a. Upon notice that the employee needs leave the Notice of Eligibility and Rights and Responsibilities is completed and provided to the employee. (29 CFR 825.300 (b)(1)).
- b. The employee provides a completed certification to the employer within 15 days of the employer's request. More time may be necessary if the employee, in good faith, cannot provide the certification within 15 days. (29 CFR 825.305 (b)).
- c. The employee is provided 7 days to cure an incomplete or vague certification. (29 CFR 825.305 (c)).
- d. The employer has 5 days to designate the leave as qualifying. (29 CFR 825.300 (b)(1)).

7. Recertification, Verification and Clarification:

- a. For an employee or qualified family member's serious health conditions lasting beyond a year, an employee may be asked to recertify annually. (29 CFR 825.305 (e)).
- b. Generally, an employer can request recertification every 30 days if the employee has been absent. The time for recertification can be longer or shorter depending on the leave specified by the physician. In all cases, an employer can request recertification every six months in connection with an absence. (29 CFR 825.308).
- c. Usage change or suspicious use of leave may justify earlier recertification by the employer. (29 CFR 825.308 (c)).
- d. A health care provider, human resources personnel, management official or a leave administrator may contact the physician to verify the authenticity or to obtain clarification of the certification, but a HIPAA qualified release signed by the employee is required. (29 CFR 825.307 (a)).