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FMLA: Court Ruling Delivers a Warning to Employers Who Cannot Prove Employees Received FMLA Notices

Legal Alert

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A federal appeals court ruled this week that an employer's evidence that it mailed a notice of rights under the federal Family and Medical Leave Act ("FMLA") to an employee on medical leave did not prove that it provided the required notice to the employee, as the employee denied receipt of the letter and the employer had no evidence the employee actually received the notice.

The decision sets a new standard in New Jersey, Pennsylvania, Delaware and the U.S. Virgin Islands — the states and territory bound by the decisions of the United States Court of Appeal for the Third Circuit — and strongly suggests employers with employees in those states should send FMLA notice by certified mail, return receipt requested, hand delivery or other means which **document actual receipt of the FMLA notice by the employee**. Simply mailing FMLA notices (without proof of receipt) may no longer be enough to prove compliance with the FMLA.

The Case

In **Lupyan v. Corinthian Colleges, Inc.**, decided August 5, 2014, the Third Circuit reversed the trial court's dismissal of an employee's claims against her former employer arising out of her termination following FMLA leave.

Lisa Lupyan worked as an instructor at Corinthian Colleges Inc. ("CCI"), and initially requested "personal leave" in relation to her mental health condition. Based on Lupyan's subsequent submission of forms from her doctor attesting to her mental health condition, CCI's human resources department determined Lupyan was eligible for FMLA leave.

Though CCI personnel met with Lupyan in mid-December, instructing her to initial a box on her request for leave marked "Family Medical Leave" and altering her projected return to work date, Lupyan alleged that she did not receive any notice or information regarding her rights under the FMLA at that meeting, an assertion CCI did not contest. Instead, CCI claimed it mailed a letter (the "Letter") immediately following the meeting advising Lupyan her leave was designated as the FMLA and summarizing her rights. Lupyan denied receiving the Letter.

Before the expiration of her leave, Lupyan was ready to return to work with some restrictions. CCI informed her she could not work if any restrictions were placed on her return. After her 12 weeks of FMLA leave expired, Lupyan was released by her doctor to return to work without any restrictions or accommodations and she notified CCI accordingly. CCI informed Lupyan that she was terminated because she had failed to return to work within the 12- week period allotted by FMLA and due to low student enrollment. Lupyan claimed the termination communication was her first notice that her leave had been subject to the FMLA and its time limits.

Lupyan filed suit, alleging that CCI interfered with her FMLA rights in failing to provide her the notice required by the FMLA and its regulations, and also claiming that CCI retaliated against her. The District Court dismissed Lupyan's claims, relying, in part, on affidavits from CCI employees attesting that CCI mailed the Letter to Lupyan, thus establishing notice to her of her rights under the FMLA. Lupyan appealed arguing, among other things, the trial court erred because a reasonable jury could reject CCI's claim that it informed her of her rights.

The Ruling

As both the trial court and the Third Circuit noted, the FMLA requires employers to provide employees with both general and individual notice about the FMLA.

Employers meet the general notice requirement by posting a notice of FMLA rights on its premises. To meet the individual notice requirement, employers must also include information regarding the employer's specific FMLA policies in a handbook or similar publication. In addition, and importantly here, regulations issued by the U.S. Department of Labor require an employer give an individual written notice that a particular absence falls under the FMLA, and is therefore governed by it.

In administering FMLA leave, once an employer is on notice an employee is taking FMLA-qualifying leave, the employer must: (1) notify the employee of his or her eligibility to take FMLA leave; (2) notify the employee in writing whether the leave will be designated as FMLA leave; (3) provide written notice detailing the employee's obligations (and rights) under the FMLA and explaining any consequences for failing to meet those obligations; and (4) notify the employee of the specific amount of leave that will be counted against the employee's FMLA leave entitlement.

In Lupyan, the case turned on whether Lupyan's denial of receipt of notice was sufficient evidence for a reasonable jury to determine that CCI had not provided the FMLA-required notice, despite the evidence of mailing.

While the trial court accepted CCI's evidence that the Letter had been mailed and presumably received, the Third Circuit found that, absent other evidence, Lupyan's testimony that she did not receive the Letter was sufficient to create a factual issue for a jury to decide.

Notably, the Third Circuit focused on CCI's lack of evidence that Lupyan received the Letter and specifically noted "the ease with which a letter can be certified, tracked, or proof of receipt obtained." The Court added:

In this age of computerized communications and handheld devices, it is certainly not expecting too much to require businesses that wish to avoid a material dispute about the receipt of a letter to use some form of mailing that includes verifiable receipt when mailing something as important as a legally mandated notice.

As a result, the Third Circuit reversed the order dismissing Lupyan's claims. In addition, the Third Circuit reversed the trial court's dismissal of the retaliation claim finding the unusual nature of Lupyan's termination and its proximity to her leave, could allow a jury to conclude that her request for FMLA leave motivated the termination decision.

The Takeaway

The ruling in Lupyan is a wake-up call for any employer that does not have a process and documentation method to prove it notified an employee of his/her FMLA rights. Simply preserving evidence that the notice was mailed – a common practice by many employers – is no longer be enough to defeat summary judgment, if the employee denies actual receipt. This greatly increases the risks of litigation and liability for employers. Had the employer in Lupyan documented ***receipt*** of the FMLA rights notice it may have avoided liability all together.

In light of this ruling, FMLA-covered employers in the Third Circuit should take precautions to ensure they have strong evidence they properly advised eligible employees of their FMLA rights by: (i) requiring an acknowledging signature or confirmation of receipt for written notices whether they are mailed (e.g., sending them via registered mail with return receipt requested), hand delivered or e-mailed; (ii) if possible, providing a description of FMLA rights in an in-person meeting with the employee so that the employer can offer firsthand competent evidence that notice was given; (iii) tracking and saving acknowledgments to ensure there is a clear record of receipt; and (iv) carefully following each mandatory step of the FMLA notice requirements, including especially notice as to whether the absence is being treated as FMLA leave.

To learn more about best practices for complying with the FMLA or to address other labor and employment issues, we invite you to contact Adam E. Gersh or Katherine C. Oeltjen, or any member of Flaster Greenberg's Labor & Employment Practice Group.

ATTORNEYS MENTIONED

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