Law Offices of Mary L. Topliff
Workplace Wave

What Qualifies as a Request for FMLA/CFRA Leave?

By Mary L. Topliff, Esq.

Requesting a leave of absence seems straightforward. In most situations, employees request leave time and the Human Resources leave administrator will determine whether the time off qualifies for a leave. However, employees sometimes call in sick or tell their manager that they need time off without referring to a leave of absence, much less referring to the federal Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA).

A recent California Court of Appeal case (*Avila v. Continental Airlines, Inc.*, 8/08) clarifies employers' obligations under these leave laws regarding time off requests. Mr. Avila worked for a division of Continental for over six years. Its attendance policy dictated that employees would be terminated if they had seven or more "recordable absences" in a rolling 12-month period. Absences due to short-term disability and approved family medical leave were not recordable.

Mr. Avila was hospitalized for acute pancreatitis and missed four days of work. He thereafter provided two medical forms from Kaiser Permanente, but did not specifically notify his direct supervisor that he had been hospitalized. The following month, plaintiff was absent, which triggered the human resources representative to conclude that he was in violation of the attendance policy. When plaintiff was informed that he was being fired, he informed HR and his manager that he had been hospitalized with pancreatitis. He then formally requested reinstatement. Upon its denial, he brought a lawsuit alleging, among other things, that he was retaliated against in violation of the CFRA.

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Public Speaking

On 9/15/08, Ms. Topliff will be a featured speaker at the NCHRA HR West Annual Conference in Oakland, California, presenting "Integrating Leaves of Absence with Work-Life Balance Programs."

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At issue was whether plaintiff had provided sufficient information to Continental to put it on notice that he needed CFRA-protected leave for a "serious health condition." Continental contended that HR did not receive the Kaiser medical form and had no knowledge that plaintiff was hospitalized with pancreatitis prior to the termination decision. It acknowledged that hospitalization alone qualifies as a "serious health condition" under FMLA/CFRA.

The CFRA regulations do not require employees to use any magic words to request a leave but they must provide at least verbal notice that makes the employer aware that the employee's time off may qualify as FMLA or CFRA-protected leave. The employer bears the ultimate responsibility to designate leave as FMLA/CFRA-qualifying, paid or unpaid and to give notice of the designation to the employee. Thus, the employer must inquire further if more information is necessary to determine whether the time off qualifies under CFRA. FMLA contains similar requirements.

The court noted that calling in sick, by itself, is insufficient notice of the need for CFRA leave. However, in another case, an employee provided sufficient notice when she verbally informed her supervisor that her son was HIV positive, had a high fever and she could not leave him when he was so ill. In another case, an employee provided sufficient notice when she informed her employer that her daughter was too sick for her to come into work. Here, the court found that Mr. Avila provided the medical form to the manager on duty and that the form indicated that he had been hospitalized, which was sufficient notice of his need for CFRA leave. It further held that Continental terminated plaintiff because of his absences, some of which were protected by CFRA, and thus, his termination violated CFRA. It rejected the notion that the decisionmaker's lack of actual knowledge that the absences were covered by CFRA should allow the employer to escape liability since it would encourage managers and HR to remain ignorant of the law and facts relating to leaves.

The practical reality is that medical forms provided by most doctors, including those at Kaiser, do not indicate any detail about an employee's medical condition. As this case points out, the regulations do not require an employee to disclose these details to request a leave. However, the court made a distinction with requesting a disability accommodation and rejected plaintiff's claim in this regard, finding that Mr. Avila had not sufficiently made his employer aware that he had a potentially disabling condition. Thus, employees must be more explicit about their condition when requesting a disability accommodation.

This case highlights the importance of ensuring that medical forms and information about employees' absences are timely processed by someone with a

clear knowledge of leave of absence legal requirements. Employers are well-served by gathering facts and inquiring further to determine if absences are covered by FMLA/CFRA or other laws before making final disciplinary and termination decisions.

How We Can Help

The Law Offices of Mary L. Topliff can help employers:

- Set up internal Human Resources standard operating procedures;
- Implement appropriate absence notification programs;
- Draft communication plans for front-line managers and employees regarding leaves of absence and disability accommodation policies and procedures; and
- Provide advice on individual situations.