

EMPLOYER AND EMPLOYEE DUTIES AND OBLIGATIONS UNDER FMLA CONSIDERED

In January, a federal court presiding over California considered the nature of both employers' and employees' duties and obligations under the Family Medical Leave Act (FMLA). The court held that under the FMLA, an employer may request from an employee information about specific medical conditions and medications when the employee raises these issues as justification for failure to comply with the employer's overtime policy.

In this case, the employee argued that she was taking medication that made her drowsy and interfered with her ability to work overtime under the company's overtime policy. The employee's job required her to work with natural gas and drive long distances at night, and required overtime during busy periods.

Her employer recognized the potential of a medical condition compromising job performance and of a FMLA issue. Therefore, the employer requested the employee to obtain information from her doctor as to the specific medical condition and how it affected her ability to work overtime. The employer also eventually asked the employee to have her physician complete a FMLA Certification of Health Care Provider form.

The employee never provided a complete certification from her doctor and never provided information regarding her medical problem. Her physician never addressed whether she could work overtime, whether the medication she took affected her job performance or safety, and whether she had a serious medical condition. The employee refused to provide additional information and was ultimately terminated.

The court found that while the employer had complied with its duties and responsibilities under the FMLA, the employee had "failed to shoulder her burden."

According to the court, the employer had both the right and the responsibility under the FMLA to inquire further. The court found that the employer was justified in considering the failure to cooperate as insubordination. (Bailey v. Southwest Gas Company, 9th Circuit, No. 00-15796 (January 17, 2002).)

What are the obligations under the FMLA?

This case discusses the following obligations of employer and employee:

- Employees must give employers 30 days' notice if they plan to take a foreseeable leave of absence for reasons covered by the FMLA. If the leave is unforeseeable, notice must be given as soon as practicable.
- Employers must determine if the employee's leave request is covered by the FMLA and notify the employee accordingly. The employee need not expressly assert their FMLA rights or even mention the FMLA.
- Employers that lack sufficient information to determine if the leave request qualifies under the FMLA can inquire further to determine if the FMLA applies.
- Employees must explain the reasons justifying the requested leave to allow the employer to determine whether the FMLA is implicated.

- Employers may deny leave when an employee fails to explain the reason or does not state a qualifying reason.
- Employers may require that the employee obtain, in a timely manner, a written certification by a health care provider regarding the medical condition necessitating the leave.

For more information on FMLA, HR California *Online and Preferred* members can review Chapter 30 of the Labor Law Digest - **By the Book**. The **2002 California Labor Law Digest**, is also available to purchase at the Chamber's **online store**

LABOR DEPARTMENT ISSUES GUIDELINES ABOUT NEW BENEFIT CLAIMS REGULATION

The U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) recently released guidelines to help employee benefit managers comply with the new benefit claims regulation published in 2000 for pension, health, and disability claims.

The claims regulation, published on November 21, 2000, establishes new rules for processing group health and disability benefit claims for plans governed by the Employee Retirement Income Security Act (ERISA). The regulation sets new, shorter time frames, additional disclosure requirements and new standards for making claims decisions.

The regulation applies to new pension and disability claims filed on or after January 1, 2002, and applies to new group health claims only for plan years beginning on or after July 1, 2002. The regulation will be fully effective by January 1, 2003.

The PWBA's question and answer document attempts to answer many of the frequently asked questions about the new regulation. The document focuses primarily on compliance with the rules governing the processing of group health and disability claims.

What should you do?

Review the guidelines on the Department of Labor's **website**, or call (800) 998-7542 to obtain free printed copies.