



Handling Medical Certifications Under the FMLA – A Lesson In What Not To Do

The federal appellate court in Chicago recently clarified an employer's duty in handling medical certification forms under the Family Medical Leave Act (FMLA). In that case, Peter Kauffman sued Fed Ex for interfering with his FMLA rights when Fed Ex terminated his employment after a three-day absence that Kauffman claimed qualified as FMLA leave. The court held that Fed Ex could not treat a medical certification form which failed to explicitly specify the duration of the illness as a “negative” certification.

The FMLA entitles eligible employees to take up to twelve weeks of unpaid leave a year for specified reasons, including a “serious health condition.” A serious health condition includes an illness that results in more than three days of incapacity and involves either two treatments by a healthcare provider or one such treatment if it results in a regimen of continuing treatment. An employer may (and should) require a medical certification which identifies the medical condition at issue, the date the condition began, its probable duration, and a statement that the employee is unable to work. (The United States Department of Labor provides a standard certification form on its website.) Under the FMLA, if the employee provides an incomplete certification, the employer must give the employee a reasonable opportunity to provide the missing information. However, if the employee provides a certification that affirmatively states that the employee’s incapacity lasted less than three days (i.e., a “negative” certification), then the employer can deny the request for FMLA leave.

In this case, Kauffman – who, not surprisingly, had a chronic absenteeism problem – missed three days of work due to bronchitis. When he returned, he produced a note from his doctor dated January 2 stating that he could not return to work until January 3. In response to that note, Kauffman’s supervisor provided him with an FMLA certification form which he had his doctor complete. The doctor wrote “bronchitis” next to the box for “incapacity of more than three (3) days due to a serious health condition that also involves treatment two or more times by a health care provider.” The certification form included a question asking when the condition began and the duration of the condition. The doctor wrote simply “1-1-2002.” The doctor also certified that Kauffman could not work at all and required leave. The form noted that a second appointment was also needed.

Fed Ex took the position that Kauffman’s certification amounted to a negative certification because it stated that the condition lasted less than three days (specifically, that Kauffman was only sick on January 1). The court, however, disagreed. While the doctor failed to check any of the available boxes to categorize Kauffman’s condition, his writing of the word “bronchitis” next to the

box regarding an incapacity lasting more than three days “was the equivalent of checking it.” Also, since January 1 was a holiday and the doctor specifically stated that Kauffman would need to miss work, the Court found that the doctor could not have meant that the condition began and ended on January 1. In addition, the court found significant the doctor's original note from January 2 which stated that Kauffman would be unable to work until January 3. Accordingly, the court found that the only reasonable interpretation of the “1-1-2002” notation was that the condition began that day, not that it was the duration of the illness.

The court also rejected Fed Ex’s argument that the doctor's original January 2 note constituted a negative certification. The court found the doctor wrote that note without full knowledge of how the illness would progress (which explains any conflict with the certification form). In addition, the FMLA does not prohibit Kauffman from later providing a certification that contradicts a prior negative certification. Moreover, Fed Ex itself did not treat the note as a negative certification. Instead, after receiving the note, Fed Ex provided Kauffman with the FMLA certification form to apply for FMLA leave, showing that it had not relied on the note as a negative certification.

Stating that it “would not split hairs over the obvious,” the court concluded that the medical certification provided all the information required under the FMLA. Although it lacked the exact duration of the illness, it adequately specified that the illness lasted for more than three days. Moreover, the court stated that even if it had found that the doctor failed to adequately include a stated duration, then the certification would only have been incomplete (not a negative certification). In that case, Fed Ex was required to provide Kauffman an opportunity to provide the omitted information. Because it failed to do so, Fed Ex would still have been liable for interfering with Kauffman's FMLA rights.

The lesson for employers is straightforward – you should carefully scrutinize a medical certification before relying on it as a “negative” certification. Remember, a certification for a serious health condition is sufficient if it states that the employee was incapacitated for more than three days by illness, unable to work, and required either two doctor's visits or one visit which resulted in a regimen of continuing treatment. A negative certification must clearly provide that the illness lasted less than three days or otherwise does not meet the requirements of the FMLA. If a certification is ambiguous or if you are in doubt, the safer course is to offer the employee an opportunity to provide additional information before denying the FMLA leave.

If you would like to speak with an attorney at Gould & Ratner regarding the topic presented in this article, please contact David N. Michael at 312/899-1603 or dmichael@gouldratner.com

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