

E*Alert

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Employer May Impose Stricter Return to Work Certification Requirements Pursuant to CBA than Imposed by FMLA

By: Oyvind Wistrom, Esq.

In a case of first impression, the Seventh Circuit Court of Appeals held that an employer may, pursuant to a valid collective bargaining agreement, impose stricter return to work certification requirements upon an employee returning from family or medical leave than those imposed by the Family and Medical Leave Act. *Harrell v. United States Postal Service*, Case No. 03-4204 (7th Cir. 05/04/06).

Rodney Harrell was employed by the United States Postal Service and was absent from work for approximately one month due to fatigue, stress, sleep disturbance and difficulty concentrating. When he attempted to return to work, he submitted a certification from his doctor which was in compliance with the requirements under the FMLA. According to the Postal Service collective bargaining agreement, however, in order to return to work, an employee was required to submit medical documentation outlining the nature and treatment of the illness and injury, the exclusive dates the employee was unable to work and any medicine the employee was taking. The returning employee was also potentially required to be examined by a Postal Medical Officer at the company's expense. After reviewing the certification submitted by Mr. Harrell, the Postal Service determined that the information was insufficient to clear him for duty, since the form did not discuss continuing medications or any restrictions on his ability to return to work. After Mr. Harrell refused to provide further information or submit to an examination by the Company designated doctor, the Postal Service terminated his employment.

The return to work certification requirements included in the collective bargaining agreement were directly at odds with the return to work provisions of the FMLA, 29 U.S.C. § 2614(a)(4), which provides that an employer may impose “a uniformly applied practice or policy that requires each employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid ... collective bargaining agreement that governs the return to work of such employee.” The regulations accompanying the FMLA, however, provide that the certification need only be a simple statement of the employee’s ability to work. 29 C.F.R. § 825.310(c).

The question presented was whether the employer was permitted to impose stricter return to work certification requirements than a simple statement concerning the employee’s ability to work. In seeking to reconcile the apparent inconsistency between the regulations and the applicable CBA, the court relied upon legislative history which indicated that 29 § U.S.C. 2614(a)(4) was “not intended to supersede other valid state or local laws or collective bargaining agreements that, for reasons such as public health, might affect the medical certification required for the return to work of an employee who had been on medical leave.” Ultimately, the court concluded that because the Department of Labor’s regulations reasonably interpreted the FMLA to allow a collective bargaining agreement to impose stricter return to work restrictions than those incorporated into the FMLA, the court deferred to that interpretation and ultimately held that the Postal Service did not violate the FMLA when it required Mr. Harrell to comply with the return to work provisions set forth in its CBA.

Several important lessons can be taken from this case. The case foremost highlights the strict requirements of the FMLA concerning what an employer may legally require of an employee returning to work after a family or medical leave. The case establishes a very limited exception where a collective bargaining agreement imposes stricter return to work certification requirements. An employer seeking to unilaterally implement a policy or handbook with similar return to work requirements would likely be found violative of the FMLA.

If you have any questions about the issues raised by this e-alert, please feel free to contact Oyvind Wistrom at (414) 273-3910 or by e-mail at owistrom@lindner-marsack.com

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