Northwest Ohio Human Resource Association

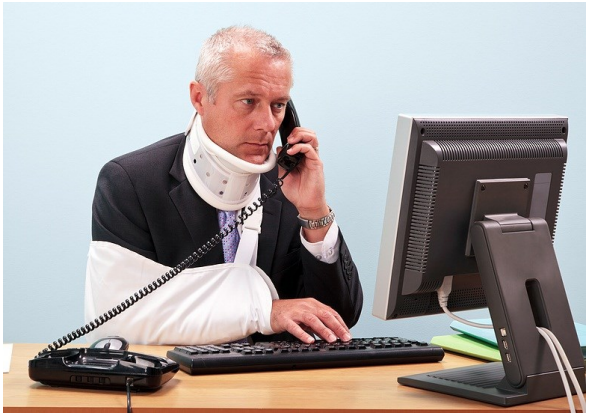
AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

LEGISLATIVE UPDATE

March 2015

Requiring work from employees during FMLA leave may be considered interference

In *Smith-Schrenk v. Genon Energy Services, LLC*, Case No. H-13-2902 (E.D. Tex. Jan. 12, 2015), a former employee of Genon Energy brought a lawsuit against the company for FMLA interference, as well as FMLA retaliation, harassment, constructive discharge, and ADA discrimination.



The plaintiff originally took intermittent FMLA leave to care for her dying mother and due to her own health issues. The plaintiff stated her direct supervisor was hostile toward her request for leave, scheduled meetings that conflicted with plaintiff's intermittent leave requests, and increased her workload. Later, plaintiff went on full-time FMLA. During that leave Plaintiff stated her supervisor required her to work on various projects and reports, totaling approximately 20-40 hours of unpaid work.

On a motion for summary judgment, the Texas U.S. District Court held in favor of the employer on all but one claim—FMLA interference. On that issue, the court acknowledged that "reasonable contact limited to inquiries about the location of files or passing along institutional or status knowledge" was not interference. However, asking employees to perform work while on FMLA leave can be considered interference with an employee's FMLA rights. "By requesting an employee work during FMLA leave, an employer not only discourages the employee from using such leave, but precludes her from using such leave during that period of time." Based on these facts, summary judgment was denied. (The matter has since been settled by the parties.)

While there is no FMLA right to be left alone, employers should be cognizant of the kinds of communications it sends to employees on FMLA leaves, and limit them to required notices, brief general inquiries, and information of institutional importance to avoid crossing the line between matters of general information and requiring or appearing to require an employee on FMLA leave to perform unpaid work.

IRS releases final ACA employer reporting forms

In February, the IRS released its final ACA reporting forms for employers. Those forms, 1094-C, 1095-C, and the accompanying instructions, were previously released in draft form. The final forms may be found on the IRS website at the addresses provided below.

All "applicable large employers" will be required to complete these forms on an annual basis beginning in 2016 for tax year 2015.

- **1094-C:** http://www.irs.gov/pub/irs-pdf/f1094c.pdf
- **1095-C:** http://www.irs.gov/pub/irs-pdf/f1095c.pdf
- **Instructions:** http://www.irs.gov/pub/irs-pdf/i109495c.pdf

FMLA rule changes definition of "spouse"

On March 27, 2015, a final rule change by the Department of Labor will take effect, changing the FMLA definition of "spouse" for same sex couples. Currently, the definition of spouse limits application to couples whose marriages are recognized in the state they reside. With this change, the definition will be expanded from "state of residence" to all marriages recognized in the "place of celebration" – meaning if the couple was legally married in a state that recognizes same sex marriage, they are considered spouses under the FMLA, without regard to whether the state the couple resides in also recognizes the marriage. This is an important change for Ohio employers, who were not previously required to extend FMLA benefits to same sex spouses, but who will now be required to do so if the marriages meet the new definition.

Current definition of "spouse":

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

- §825.102

New definition of "spouse" effective March 27, 2015:

Spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

(1) Was entered into in a State that recognizes such marriages; or

(2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

- 80 F.R. 10000

Although not specifically related to FMLA, a case pending before the U.S. Supreme Court is set to be heard next month on the constitutionality of Ohio's constitutional amendment prohibiting same sex marriages within the state and refusing recognition of same sex marriage performed legally in other states. That case, *Obergefell v. Hodges*, U.S. Supreme Court Case No. 14-556, along with related cases brought challenging similar laws in Michigan, Tennessee, and Kentucky, will be heard next month by the Supreme Court. A ruling from the Court is expected to be released sometime this summer.

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