

Is Your Business Prepared to Handle an Employee's Request for Leave Under the FMLA?

Fulton County, Georgia was not prepared to handle Ralph Cooper's request for FMLA (Family Medical Leave Act of 1993) leave on July 13, 1998. In the case of Cooper v. Fulton County, 458 F3d 1282, 2006 WL 2242727 (11th Cir. 2006), the Eleventh Circuit Court of Appeals affirmed the summary judgment in favor of Ralph Cooper and the damages awarded to Cooper in the amount of \$248,828.41 in back pay and \$58,031.59 in pension contributions and liquidated damages for violation of Cooper's rights under the FMLA. The mistakes made by Fulton County were technical in nature and serve as a lesson to employers on the costs of mishandling FMLA leave requests.

Cooper was an employee of Fulton County for nearly twenty years. On June 22, 1998, Cooper went to the hospital complaining of chest pains. He did not report to work that day or for several days thereafter. On July 6, 1998, the County Court Administrator had a letter hand delivered to Cooper advising him that the County policy required an original signed doctor's excuse for each day of his continued absence. Cooper was also informed that if he did not return to work or provide the required doctor's excuse by July 8, 1998, he would declare Cooper's position abandoned. On July 8, 1998, Cooper provided certificates from a medical clinic which accounted for his absences and stated he could return to work on July 13, 1998. On July 13, 1998, Cooper returned to work but after two hours he reported to his supervisor that he was too ill to work. On July 14, 1998, Cooper requested FMLA leave due to blurred vision, extreme headaches and "passing out." Two phone calls were made by Cooper's supervisor requesting a written medical excuse. Cooper did not respond. On August 4, 1998 Cooper was hand delivered another letter from the County Court Administrator instructing him to provide medical certification for his absence by August 10, 1998. Cooper failed to do so and his employment was terminated on August 10, 1998.

FMLA entitles eligible employees to take up to twelve (12) workweeks of leave during any twelve month period because of a "serious health condition" of the employee, for the birth or adoption of a child, and/or to take care of a child, spouse, or parent with a serious health condition. Implementing regulations require employers to furnish employees with written guidance about their rights and obligations under the statutes, as well as written guidance about the employer's specific policies relative to FMLA leave. 29 CFR § 825.301. Employers may require that employees furnish medical certification to verify eligibility for leave. 29 U.S.C. § 2612(a). Employers must provide written guidance to employees of their rights and obligations under the FMLA; notice of the medical certification requirement, if one exists, and of the anticipated consequences for failing to comply with providing medical certification, every time an employee requests FMLA leave. Such notice must be written unless the employee has within the preceding six months been given the written notice. Otherwise oral notification is sufficient. When the leave is unforeseeable employers must allow employees at least fifteen (15) calendar days to comply with a request for medical certification. 29 CFR § 825.305(b). An employer who fails to give the required written notices cannot take adverse action against employees for failing to comply with any provision that is required to be included in the notice. An employee does not have to mention the FMLA or expressly assert rights under the FMLA to invoke its protection.

Fulton County violated Cooper's rights under the FMLA as follows: (1) Failing to allow Cooper the necessary 15 days to submit medical certification when it requested the medical certification on August 4, 1998, because the leave was unforeseeable; (2) Failing to inform Cooper in writing about the consequence of his failure to provide the requested medical

certification; and (3) Failing to provide Cooper with any guidance on his rights and obligations under the FMLA.

The following is a more complete list of points that should be addressed in the written notice an employer gives to an employee after he or she makes a request for FMLA leave:

1. The leave will be counted against the employee's annual FMLA entitlement;
2. Whether a medical certification will be required, the necessary time to submit it, and the consequences of failing to do so;
3. The employee's right to substitute paid leave and whether the employer will require paid leave to be substituted for FMLA leave and the requirements for any such substitution;
4. Requirements for employee payment of the employee's share of health insurance premiums, arrangements for making such payments, and consequences for failing to make timely payments;
5. Whether the employee will be required to provide a fitness for duty certificate prior to being restored to employment;
6. Whether the employee is considered a key employee and if so, the potential that he or she may be denied restoration and the conditions for such restoration to be denied;
7. The employee's right to job restoration to the same or to an equivalent job upon return from leave; and
8. The employee's potential liability for the employer's share of health insurance premium payments made by the employer during unpaid FMLA leave if the employee fails to return from FMLA leave.

There is a prototype for this notice available from the Wage and Hour Division of the U.S. Department of Labor for the employer's written response, and it may be found at <http://www.dol.gov/esa/whd/forms/WH-381.pdf>, or by making a request to Wage and Hour Division—1-866-487-9243.

Liquidated damages are awarded presumptively to an employee when an employer violates the FMLA unless the employer demonstrates its violation was in good faith and it had a reasonable basis for believing that its conduct was not in violation of the FMLA. Liquidated damages are equal to the wages lost, benefits, and interest. In *Cooper v. Fulton County* the court affirmed the award of liquidated damages. The court agreed with the district court's ruling that Fulton County had acted in good faith, but Fulton County did not have a reasonable basis for believing that its conduct was compliant with the FMLA. Neither the County Court Administrator nor Fulton County Personnel Director had read the FMLA statutes or regulations, consulted with an attorney, or contacted the U.S. Department of Labor.

If you have any questions about FMLA leave requests, please contact us.

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