

HR Weekly Podcast
04-16-2014

Today is April 16, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's topic concerns an employee's notice of the need for leave under the Family and Medical Leave Act, or FMLA.

Under the FMLA, employees are required to provide their employers with notice of their need for leave each time a need arises. If the need for leave is foreseeable, such as a planned medical surgery, adoption, or the planned medical treatment for a serious injury or illness of a covered service member, the employee must provide the employer at least 30 days advance notice or at least as far in advance as possible. If the leave is not foreseeable, however, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures. Employees must provide enough information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. The employee does not have to specifically mention FMLA when requesting leave.

In *Lanier v. University of Texas S.W. Medical Center*, Chrisanne Lanier worked for the University of Texas Southwestern Medical Center as a business analyst in its Information Resources Department. As a business analyst, she was responsible for maintaining the computer systems at the University's hospitals, which required 24-hour on-call coverage support. Each business analyst worked a daytime shift and participated in a rotating schedule of on-call duty. Each rotation lasted for one week, and each business analyst was on-call about once every 12 weeks. During a week when she was on-call, Lanier sent a text message to her supervisor to inform him that her father was in the emergency room and that she would be unable to work that night. Her supervisor responded that another employee would cover Lanier's on-call duty that night. During her make-up on-call rotation a couple of weeks later, Lanier could not be located despite multiple pages. When her supervisor confronted her, Lanier returned her laptop and pager and left the office without explanation. Her supervisor subsequently informed Lanier he was accepting her resignation. Lanier sued the University for interfering with her rights under the FMLA. Lanier claimed that her employer should have known by her text message concerning her father's ER visit that she needed FMLA leave. Lanier also indicated that her supervisor should have inquired further since he was aware that Lanier's father was over 90 and in poor health. The appellate court wrote that, although an employee need not use the phrase "FMLA leave," she must give notice that is sufficient reasonably to apprise her employer that her request for leave could fall under the FMLA. An employer may have a duty to inquire further if statements made by the employee warrant it, but "the employer is not required to be clairvoyant." The appellate court concluded it was unreasonable to expect her supervisor to know that Lanier meant to request FMLA leave based on her text message. Lanier's only request was to be relieved of on-call duty that night. In addition, Lanier had taken FMLA leave previously and clearly knew the procedures for requesting it. According to the appellate court, "[n]o reasonable jury could conclude that the text message Lanier sent was sufficient to apprise [her supervisor] of her intent to request FMLA leave to care for her father."

In another case, *Bosley v. Cargill Meat Solutions Corp.*, Cargill Meat Solutions Corp. employed Tanya Bosley, who occasionally missed work because of illness and previously took leaves of absence under the FMLA. On occasion, when Bosley had an illness-related absence, her coworker would notify Bosley's supervisor of Bosley's absence. On February 1, the coworker arrived to pick up Bosley for work, but Bosley indicated she was staying home due to depression. The coworker informed Bosley's supervisor that Bosley would be absent that day because she was sick. Including a call-in procedure via an automated phone system, Cargill's attendance policy required employees to inform the company of any necessary and unavoidable absences. Under Cargill's policy, an employee's failure to comply with the call-in procedure on three consecutive workdays would result in a voluntary

termination of employment. Bosley was familiar with this call-in procedure and had used it on more than 100 occasions. On February 1, Bosley did not call Cargill. She ultimately missed work the entire month and never used the call-in procedure. During Bosley's extended absence, a new supervisor terminated her based on her failure to call in her absences as required by Cargill's attendance policy. When Bosley subsequently went to Cargill to pick up forms seeking approval of FMLA leave for her absences, she learned of her termination. According to her FMLA paperwork, filed later, her condition was no longer incapacitating around February 25. Bosley later filed suit in the federal district court, asserting claims under the FMLA. The district court ruled in favor of Cargill, finding that Bosley did not meet her obligation to provide notice to her employer of her need for FMLA leave. The **Eighth Circuit Court of Appeals** affirmed this decision. The appellate court explained that an employee must give notice of the need for FMLA leave as soon as practicable under the facts and that such notice should be given within no more than one or two working days of learning of the need. The appellate court acknowledged that the employee's spokesperson may provide the notice if the worker is unable to do so personally. And the appellate court concluded that Bosley could not demonstrate that she gave notice through her coworker since the coworker could not recall telling Bosley's supervisor that Bosley was depressed. Bosley did not contact Cargill until 32 days after she last used the call-in procedure, and she did not contact Cargill for at least five full working days after her depression ceased to be incapacitating. Therefore, Bosley failed to offer any facts justifying her lack of notification.

If you have a question about this topic, please contact your HR Consultant at 803-896-5300. Thank you.