

HR Weekly Podcast
April 23, 2014

Today is April 23, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. Today's topic deals with a recent Department of Labor, or DOL, investigation into Family Medical and Leave Act, or FMLA, violations by a clinic in Houston, Texas, and the subsequent penalties as a result of the findings of the investigation.

The FMLA states that an employee returning to work from FMLA leave is entitled to job restoration to the same or an equivalent position with the same pay, benefits, and other employment terms and conditions. In this case, the Houston Ear Nose & Throat Clinic, LLP was found to have placed an eligible employee returning from FMLA leave into a part-time position with "fewer working hours and without the same benefits held before taking FMLA leave," according to a DOL press release. The clinic "was charged with several additional FMLA violations [including]...failing to keep the proper records required by FMLA; and failing to have a current FMLA policy reflecting the most recent provisions of the law."

The clinic was ordered to pay \$17,390 in back wages and other expenses. The clinic also agreed to reinstate the employee to the previously held full-time position with the same pay rate and benefits, pay all back wages due, ensure that all eligible employees taking FMLA leave are properly provided with the required notices, maintain the necessary records, update its written FMLA policy, and conduct FMLA training with its managers.

FMLA's recordkeeping requirements are in accordance with those of the Fair Labor Standards Act. Even if a covered employer has no employees eligible for FMLA leave, the following records must be made and kept for a minimum of three years and be available for inspection, copying, and transcription by DOL representatives: basic payroll and identifying employee data including name, address and occupation, rate or basis of pay, daily and weekly hours worked per pay period, additions to or deductions from wages and total compensation; designated FMLA leave and dates the leave was taken; hours of FMLA leave if the leave was taken in less than full-day increments; copies of employee notices of leave furnished to the employer, if in writing, and copies of all general and specific notices required by the FMLA and its regulations that were given to employees; any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave, employee benefits' premium payments, and records of any dispute between employer and employee concerning the designation of leave as FMLA leave.

In a press release from DOL, its regional administrator Cynthia Watson stated: "No employee should have to worry about their job when facing a serious health condition. Coming back to work with the same seniority and benefits following an FMLA-related absence is not an option, it is the law. This employee's reinstatement and subsequent collection of back wages should send a clear message to other employees that compliance with the FMLA is critical."

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