

HR Weekly Podcast 10-08-2014

Today is October 8, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's topic discusses a recent federal circuit court of appeals' decision which addressed how legally mandated notice should be given.

Lisa Lupyan worked for the Corinthian Colleges for three years, prior to having personal difficulties which required her to take a leave of absence. Her supervisor recommended that she apply for short-term disability. She went to her doctor and received a certification diagnosing her with depression. Using this information, Corinthian's HR department determined she was eligible for FMLA leave. While filling out paperwork for this leave, the Corinthian's representative instructed Lupyan to initial the box marked "Family Medical Leave" on the Request for Leave form; however, Lupyan said the representative did not discuss any of her FMLA rights. The HR Department mailed a letter to Lupyan outlining that her leave was designated as FMLA leave and explained her rights and responsibilities under this statute. Lupyan claimed she never received the letter.

Lupyan was out of work for more than 12 weeks covered by FMLA, and when she returned to work, Corinthian terminated her based on low student enrollment and because she had not returned within the FMLA timeframe. Lupyan said that this was the first time anyone told her she had been out on FMLA leave. As a result, she sued based on her claim that Corinthian had never told her that her leave fell under FMLA leave.

For many years, courts have abided by the common law "mailbox rule." Under this rule, if a letter "properly directed is proved to have been either put into the post office or delivered to the postman, it is presumed...that it reached its destination at the regular time, and was received by the person to whom it was addressed." Since the only evidence Corinthian could provide that the letter was mailed were affidavits signed four years after the alleged mailing date, the court decided the "mailbox rule" should not apply in this case.

The court said:

In this age of computerized communications and handheld devices, it is certainly not expecting too much to require businesses that wish to avoid a material dispute about the receipt of a letter to use some form of mailing that includes verifiable receipt when mailing something as important as a legally mandated notice. The negligible cost and inconvenience of doing so is dwarfed by the practical consequences and potential unfairness of simply relying on business practices in the sender's mailroom....

...[J]ustice should not give way to expediency or the rigid application of a common law presumption that was adopted long before modern forms of communication and proof could have ever been imagined."

In this case, the federal appellate court indicated that, if employers want to maximize their chances of dismissing an FMLA claim before a trial, they should use "some form of mailing that includes verifiable receipt" when sending FMLA notices. Thank you.