

HR Weekly Podcast 09/10/2014

Today is September 10, 2014, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic concerns the disclosure of a return date under the Family and Medical Leave Act, or FMLA.

In January 2011, Suzan Gienapp, an employee of the Harbor Crest Nursing Home in Fulton, Illinois, informed her manager that she needed time off from work to care for her adult daughter who was undergoing medical treatment for thyroid cancer. Gienapp sent in an FMLA form but did not identify on the form an expected return to work date. Harbor Crest did not ask Gienapp to complete the blank answer on the FMLA form or pose written questions to her as the 12 weeks of FMLA leave continued.

The physician's statement on the FMLA form indicated that Gienapp's daughter's recovery was uncertain and at the very least would require assistance through July 2011, which was beyond the 12 weeks of leave provided under the FMLA. Despite Gienapp's periodic communication with Harbor Crest during her absence, Harbor Crest assumed that Gienapp would not return to work by the end of her 12 weeks of FMLA leave based upon the physician's statement and hired a replacement for Gienapp. When Gienapp returned to work on March 29, 2011, she was informed that she was no longer employed with Harbor Crest.

After exhausting administrative remedies, litigation occurred. Summary judgment was granted in favor of Harbor Crest by the federal district court, which ruled that Gienapp had forfeited her FMLA rights by not indicating exactly how much leave she would take. This decision was reversed, however, by the United States Seventh Circuit Court of Appeals, which distinguished between the United States Department of Labor's regulations pertaining to situations involving "foreseeable" leave and those involving "unforeseeable" leave. Gienapp's situation was viewed as one involving unforeseeable leave, which is governed by 29 U.S.C. Section 825.303, because her daughter's recovery was uncertain. The Seventh Circuit stated that, while Harbor Crest instructed Gienapp to call in monthly and it was agreed that she did, the information exchanged during those telephone calls was disputed, making summary judgment for Harbor Crest inappropriate.

Detailed information regarding the Family and Medical Leave Act can be found at www.dol.gov. If you have questions about this topic, please contact your HR consultant at 803-896-5300. Thank you.