FMLA May Limit Enforcement of Absence Policies

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A recent Seventh Circuit Court of Appeals case, *Davis v. Illinois Department of Human Services* (May 14, 2025), provides a good reminder for employers to be cautious when addressing employee absences that could be protected by FMLA.

THE CASE

Dyamond Davis became pregnant and suffered from severe morning sickness. After missing several days of work due to morning sickness, DHS gave Davis its FMLA packet to complete. Davis's FMLA medical certification form asked if the condition would "cause episodic flare-ups periodically preventing the employee from performing his/her job functions," and her doctor stated "no." DHS approved Davis's FMLA for continuous leave after the birth, and intermittent leave for medical appointments.

Davis was ill due to morning sickness and told her supervisor she needed to use FMLA leave. Davis's supervisor knew Davis was pregnant, and reminded Davis to note her absence as FMLA-related on her timecard. Davis wanted to use four hours of holiday time, which complied with DHS's paid leave substitution policy. Davis was not aware she only had three hours and thirty minutes of accrued holiday time. Davis did not record her absence from work as FMLA-related because DHS had not yet approved her FMLA leave. Davis did have other types of accrued leave she could have used to complete the four hours of leave, but DHS determined that thirty minutes of her absence was an "unauthorized absence" which resulted in Davis's termination.

Davis sued claiming DHS interfered with her FMLA-protected rights. One key question before the court was whether Davis was eligible to take FMLA leave. DHS argued that morning sickness was a "flare-up" not certified for FMLA by Davis's doctor. The court disagreed because morning sickness could qualify as a "serious health condition" under the FMLA requiring ongoing treatment by a medical professional. The court emphasized that Davis' absences due to severe morning sickness is why DHS provided her with an FMLA packet in the first place. That showed DHS was aware that Davis would likely need intermittent leave for morning sickness going forward. Additionally, the court stated that DHS should have known that Davis's medical certification was incomplete and should have notified Davis in writing of the deficiency and given her time to supplement or amend the certification.

DHS argued Davis did not comply with DHS's policy on substituting accrued paid leave which allowed them to terminate Davis for failing to follow its absence procedures. The court stated that an employer cannot discipline or terminate an employee who qualifies for approved FMLA leave, even if an employee does not correctly record their paid leave substitution.

CONCLUSION

Employers should be cautious when disciplining employees for absences when they have knowledge that the absences might qualify for FMLA. If the employee's current certification does not cover the absences, employers should ask the employee to supplement or amend the certification rather than move to discipline or termination. This case is another example of courts or administrative agencies holding employers to a higher standard of knowledge about FMLA (or other laws). Employers should have a better understanding than employees of how the laws operate and should take steps to make sure employees understand their obligations and options. Employers with questions regarding FMLA and employee absences should reach out to a member of the Boardman Clark Labor & Employment Practice Group.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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