

Northern New England

MONDAY MORNING MINUTE

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Sending FMLA Notices to Employees by U.S. Mail May No Longer Be Sufficient

The Third Circuit Court of Appeals, which governs New Jersey, Pennsylvania, Delaware and the U.S. Virgin Islands, has held that an employer's evidence that it mailed a notice of rights under the federal Family and Medical Leave Act ("FMLA") to an employee on medical leave did not prove that it provided the required notice to the employee, as the employee denied receipt of the letter and the employer had no evidence the employee actually received the notice. This decision strongly suggests employers should send FMLA notice by certified mail, return receipt requested, hand delivery or other means which document actual receipt of the FMLA notice by the employee. Simply mailing FMLA notices (without proof of receipt) may no longer be enough to prove compliance with the FMLA.

In Lupyan v. Corinthian Colleges, Inc., the Third Circuit reversed the trial court's dismissal of an employee's claims against her former employer arising out of her termination following FMLA leave.

Lisa Lupyan worked as an instructor at Corinthian Colleges, Inc. ("CCI"). During the relevant time period, she was dealing with some personal issues and she was battling depression. Her boss encouraged her to take some personal leave. Ms. Lupyan agreed, and she completed a leave of absence request form seeking "personal leave." A short time later, Ms. Lupyan provided complete FMLA medical certification to the College supporting her need for leave. As a result, the College properly converted her request for "personal leave" into one for FMLA leave, and it sent by U.S. mail the appropriate FMLA notices designating her absence as such.

Ms. Lupyan required leave from December through mid-March, which was 14 weeks later. Several weeks thereafter, Ms. Lupyan provided documentation from her physician fully releasing her to return to work. By this point, however, the College told her she no longer had a job because she didn't return to work after her 12 weeks of FMLA leave expired.

Ms. Lupyan claimed that she never received the notices designating her leave as FMLA qualifying and that this was the first time she learned that her

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absence was being classified as FMLA leave. Ms. Lupyán sued the College, alleging that it violated the FMLA when it failed to give her notice that her absence was covered by the FMLA. The issue of whether Ms. Lupyán received the FMLA notices was central to her lawsuit. According to the Court, if the College could show that Ms. Lupyán actually received its FMLA correspondence, her FMLA claims would fail.

The court then analyzed the strength of different forms of notice. Certified mail, for example, offers a “strong presumption” of receipt by the addressee. Regular mail, however, assures only a “weaker presumption.” The court determined that this “weaker” presumption is nullified whenever the addressee denies receipt of the mailing. Accordingly, Ms. Lupyán’s denial of receipt of the FMLA notice allowed her to submit her FMLA claims to a jury.

In its reasoning, the court explained what kind of delivery should be required in today’s world:

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.

Based upon this decision, even employers not located in the Third Circuit should consider sending all FMLA notices by certified mail, overnight mail or email, since these are relatively capable of verifiable receipt. Hand delivery is also sufficient, too, so long as a signature that the employee received the letter is obtained.

Your Jackson Lewis attorney can answer questions regarding this and other employment law issues.



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