

The Alphabet Rollercoaster of Entitlements

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Colin Shive
Tharrington Smith LLP

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Basic Overview of Entitlements

Leave Entitlements

Federal Law:

- FMLA
- ADA

State Law and Policy:

- Workers Compensation
- Short-term/Long-term Disability
- Benefits and Employment Policy Manual

Local Board Policy

Pay and Benefits

Federal Law:

- FLSA
- ACA

State Law and Policy:

- Benefits and Employment Policy Manual
- State Health Plan
- TSERS

Local Board Policy

Family and Medical Leave Act

- FMLA is a federal law that gives eligible employees the right to take up to 12 weeks of leave without losing their jobs.
 - Employee's serious medical condition
 - Serious medical condition of immediate family member (parent, spouse or child).
 - Birth of a child or the placement of a child with the employee through adoption or foster care.
- Does not require that the leave be paid.
- For school system employees, leave will be paid if the employee has paid leave available (i.e. annual/sick/personal etc.)

Leave and the Americans with Disabilities Act

- The ADA prohibits discrimination on the basis of disability and requires employers to provide reasonable accommodations to applicants and employees with disabilities.
- From the EEOC:
 - “A reasonable accommodation can include making modifications to existing leave policies and providing leave when needed for a disability, even where an employer does not offer leave to other employees.”
 - “Employers may be required to modify policies that limit the amount of leave employees can take when an employee needs additional leave as a reasonable accommodation.”
 - “Employer policies that require employees on extended leave to be 100 percent healed or able to work without restrictions may deny some employees reasonable accommodations that would enable them to return to work.”

North Carolina Workers' Compensation Act

- Among other things, provides compensation to employees who miss work as a result of a workplace injury (7 day waiting period)
- “In order to provide an income approximately equal to, but not to exceed, the employee’s weekly salary, earned sick leave days may be used while an employee is receiving workers’ compensation weekly benefits.”
- Separation Due to Unavailability
- Retaliatory Employment Discrimination Act (“REDA”)

Short- and Long-Term Disability

- Short-Term Disability: Monthly benefit of 50% of 1/12th of annual base pay plus 50% of 1/12th of annual longevity payment.
 - Eligibility:
 - One year of contribution to TSERS earned within the 36 calendar months preceding the disability.
 - Waiting period of 60 days from the onset of the disability.
- Long-Term Disability: Payable after conclusion of short-term.
 - An employee approved for long-term disability must terminate employment with the LEA prior to the onset of long-term benefits.
 - 65% of monthly pay (including longevity).
 - Must have five years of contribution to retirement system.

Fair Labor Standards Act

- Federal law that provides employees with the right to receive minimum wage and overtime pay (or compensatory time for public employees in some circumstances).
- Exempt v. Non-Exempt Employees
- Employees v. Independent Contractors
- Employees v. Volunteers

Affordable Care Act

- It still exists

Affordable Care Act

- It still exists, and . . .
- Requires schools systems with 50 or more employees to offer insurance to all full-time employees or pay a penalty.
- Full-time defined by the ACA as 30 hours or more per week.
- Look-back Measurement Method
- Re-hired Retirees

Scenario 1

- Employee has been employed for six months and is informed by her doctor that she requires a major surgery that would require two to three weeks of medical leave.
- Employee meets with HR director, who informs employee that she is not eligible for FMLA leave. Employee cancels the surgery.
- Three months later, Employee again tells the HR director that she requires the surgery and again requests two to three weeks of leave. HR director says that she will forward Employee the required paperwork, but never does. Employee is then terminated two weeks prior to her one-year anniversary of working for Defendant.

Scenario 1

- Employee sues, and Defendant moves to dismiss, arguing that employee was not eligible for FMLA leave.
- Court refuses to dismiss the Complaint: “the FMLA regulatory scheme must necessarily protect pre-eligible employees ... who put their employers on notice of a post-eligibility leave request.”
- “when an employee, before becoming eligible for FMLA leave, puts an employer on notice of his or her intent to take FMLA leave after he or she becomes eligible, the FMLA must be read to allow the employee to make a charge against the employer for an adverse employment action.”
- ADA retaliation claims survived as well.
- Sine v. Rockhill Mennonite Home (E.D. Pa. July 26, 2017)

Scenario 2

- Employee who worked in physically demanding position took 12 weeks of FMLA leave for back pain. On the last day of his leave, he underwent back surgery that would have required him to remain out of work for an additional two or three months.
- Employee requested that Employer continue his medical leave, but Employer denied his request, noting that he had exhausted his FMLA leave. Defendant terminated Employee, but invited him to reapply for a position when he was medically cleared to work.
- Employee sued alleging that Employer had denied him a reasonable accommodation under the ADA in the form of a three month leave of absence after his FMLA leave had expired.

Scenario 2

- The Court ruled in favor of the Defendant. “The ADA is an antidiscrimination statute, not a medical-leave entitlement.”
- “[A] ‘reasonable accommodation’ is expressly limited to those measures that will enable the employee to work. An employee who needs long-term medical leave cannot work and thus is not a ‘qualified individual’ under the ADA.”
- “Intermittent time off or a short leave of absence—say, a couple of days or even a couple of weeks—may, in appropriate circumstances, be analogous to a part-time or modified work schedule But a medical leave spanning multiple months does not permit the employee to perform the essential functions of his job.”
- *Severson v. Heartland Woodcraft, Inc.* (7th Cir. Sept. 20, 2017)

Scenario 3

- Employee has documented performance concerns over a multi-year period, including multiple warning memos and being placed on probation. Employee also suffered from severe anemia and, over a multi-year period, took FMLA leave on several occasions. Twelve days after returning from medical leave, Defendant dismissed Employee for her performance issues.
- Employee sued alleging that the termination was in retaliation for taking FMLA leave.

Scenario 3

- Court rules that FMLA leave need not be the “but-for” cause of termination, but instead an employer can be found liable for retaliation under the FMLA if the leave is a “motivating factor” in dismissing the employee.
- “[E]mployers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under no fault attendance policies.”
- Woods v. START Treatment & Recovery Centers, Inc. (2d Cir. 2017)

Natural Disasters, FMLA, and FLSA

- In the wake of a natural disaster, an employee's mother's basement is flooded. Employee takes three days of leave to clean the basement, arguing that the leave is protected under the FMLA because his mother had hepatitis and the stagnant water was a “breeding ground” for the disease.
- Employer disagrees and dismisses Employee for excessive absences.
- Employee sues for a violation of the FMLA.

Natural Disasters, FMLA, and FLSA

- Court rules in favor of Employer. “The FMLA does not provide leave for every family emergency.” “The FMLA defines need to care for a family member to encompass ‘both physical and psychological care,’ including ‘situations where, for example . . . The family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety.”
- “To fall under the FMLA’s protections, Plaintiff is required to present evidence that his mother's basement had to be immediately cleaned for her basic medical, hygienic, or safety needs and that he had to do it because she could not. Plaintiff fails to make any such demonstration.”
- Lane v. Pontiac Osteopathic Hosp. (E.D. Mich. June 21, 2010)

Natural Disasters, FMLA, and FLSA

QUESTION:

Can a non-exempt employee volunteer without pay to cover another employee's duties when an employee is out of work due to a natural disaster?

Health Insurance Update

- Changes to State Health Plan
 - Beginning January 1, 2018:
 - Monthly Premium for 70/30 plan = \$25/month
 - Monthly Premium for 80/20 plan = \$50/month
 - No more “free plan.”

Health Insurance Update

QUESTION:

What steps can a school district take when an employee who is out on Workers' Compensation fails to pay his or her monthly health insurance premium?

Health Insurance Update

QUESTION:

Doesn't the FMLA require us to maintain an employee's insurance while the employee is out on FMLA leave?

Health Insurance Update

Department of Labor Guidance:

- While an employee is out on leave, “the employee must continue to make any normal contributions to the cost of the health insurance premiums. If paid leave is substituted for FMLA leave, the employee’s share of group health plan premiums must be paid by the method normally used during paid leave (usually payroll deduction). An employee on unpaid FMLA leave must make arrangements to pay the normal employee portion of the insurance premiums in order to maintain insurance coverage. If the employee’s premium payment is more than 30 days late, the employee’s coverage may be dropped unless the employer has a policy of allowing a longer grace period. The employer must provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.”

QUESTIONS?

cshive@tharringtonsmith.com
919.821.4711