

What Does Your SPD Say About FMLA?

Background

The *Family and Medical Leave Act of 1993* (FMLA) generally requires larger employers to provide up to 12 weeks of unpaid leave to employees for births, adoptions or the serious health condition of employees or certain members of their family. In addition to the statute itself, Department of Labor (DOL) regulations detail employers' obligations under FMLA. A worker who thinks that his or her FMLA rights have been violated may either file a private lawsuit or file a complaint with the Department of Labor (DOL) — so careful compliance by employers is critical.

If an employer has any existing written leave policies — such as in an employee handbook or summary plan description — the employer must update the policies to include information about FMLA rights. The policies must be coordinated with other employer policies on leaves, and potentially with state laws as well. In fact, FMLA requirements may present an opportunity to coordinate or standardize leave and continuation policies granted for all causes. Although it is clear that the more customized the FMLA policy, the stronger the employer's position is likely to be in the event of a dispute regarding leave — *communication* of these rules represents a key aspect of FMLA compliance. Even the most comprehensive and well thought out leave policy will be compromised unless meaningful steps are taken to ensure accurate communication to the workforce. An important case decided by the Seventh Circuit underscores how important it is for employers to accurately communicate FMLA rules before enforcing them.

FMLA Worksite Definition

A special FMLA rule excludes any employee who works at a facility more than 75 miles away from a location with 50 other employees. Under this rule, an employer may be subject to FMLA, but certain employees working in remote locations may not be eligible to receive the law's protections. For example, a restaurant chain with 500 employees can deny FMLA requests from workers at any location outside a 75 mile radius of 50 other employees. Congress created this rule to protect employers with lean staffs who would have difficulty covering the employee's position during FMLA leave. Employers with multiple business sites often encounter this special exception to the FMLA rules.

Legal Analysis

In *Thomas v. P. V. Inc.*, 251 F.3d 1132 (2001), a worker who would not have been eligible for FMLA because of the "75-mile radius" rule successfully sued her employer to enforce FMLA protections that she said were detailed in her employer's Summary Plan Description.

The court said that because the company's SPD only provided a general explanation of FMLA and failed to note that some employees could be ineligible, this communicated a promise that *all* employees were fully eligible for FMLA. The court reasoned that if an employer wanted to avail itself of the "75-mile radius" rule, it could have drafted its SPD to mention that rule.

This illustrates a general rule of thumb regarding all benefits described in SPDs. Employers should carefully review their SPDs. More importantly, employers should be aware that to the extent any benefit provision, employer policy, or employment law is misstated — courts are likely to construe that language against the employer and in favor of the participant. The Seventh Circuit includes: Illinois, Indiana, and Wisconsin.

For more information

Willis' Legal & Research Group and HR Partner have a variety of training tools and resources available for employers to keep you in compliance with FMLA regarding both benefits and employment issues. For questions regarding FMLA or any related training issues, please contact LRG or Willis HR Partner through your Willis representative.

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