CLIENT NEWS BRIEF

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NINTH CIRCUIT HOLDS THAT FMLA LEAVE REQUESTS MUST BE SUPPORTED BY SUFFICIENT MEDICAL DOCUMENTATION

The Ninth Circuit Court of Appeals has reiterated in Lewis v. United States (9th Cir. 2011) (_____ F.3d _____) ("Lewis") that an employee must comply with the statutory medical certification requirements for leave under the Family Medical Leave Act (FMLA). (5 U.S.C. §§ 6382 et seq.) The Lewis court held that an employee's medical certification, for purposes of taking an FMLA leave for the employee's own health condition, must include a statement of "the appropriate medical facts" that support the particular diagnosis. However, this case does not affect the requirements an employee in California must meet before taking leave pursuant to the California Family Rights Act (CFRA).

In Lewis, the Ninth Circuit specifically addressed what "sufficient" medical certification triggers an employee's leave rights under the FMLA. In 2006, appellant Janet Lewis was employed by the United States Air Force (the "Agency"). Ms. Lewis requested an unpaid FMLA leave. The Agency provided Ms. Lewis with a medical certification form for her FMLA leave request, and she submitted the medical certification form and two doctor's notes. Upon review, Ms. Lewis's supervisor informed her that the documents were insufficient to support her FMLA leave request. Ms. Lewis refused to submit additional information. The Agency subsequently converted Ms. Lewis to absent without leave ("AWOL") status, and Ms. Lewis was later dismissed due to her AWOL status. Ms. Lewis appealed her dismissal.

In Lewis, the Ninth Circuit first summarized the leave requirements under the FMLA. Specifically, an employee is entitled to FMLA leave if he or she has a "serious health condition that makes the employee unable to perform the functions of the employee's position." (5 U.S.C. § 6382(a)(1)(D).) An employee may be required to provide medical certification to support a leave under the FMLA. (5 U.S.C. § 6383(a).) Medical certification must include the "appropriate medical facts within the knowledge of the health care provider regarding the condition." (5 U.S.C. § 6382(b)(3).)

The Ninth Circuit focused on the question of whether Ms. Lewis's medical certification included "the appropriate medical facts" because, if it did not, Ms. Lewis was not entitled to FMLA leave and could be dismissed for being AWOL. The Court determined that Ms. Lewis's medical certification form and doctor's notes provided only conclusory information relating to Ms. Lewis's diagnosis and her necessary medical treatment. The Court found that this medical certification contained neither a summary of the pertinent medical facts to support the diagnosis, nor an explanation for why Ms. Lewis could not perform her work duties.

The Ninth Circuit further rejected Ms. Lewis's claim that a dispute regarding the adequacy of an employee's medical certification must be resolved through a second or third medical opinion. The court held that "(t)he need for second or third opinions is triggered only when an employer has reason to doubt the validity of the medical certification" – but not when the employer doubts the sufficiency of the documentation.

The Lewis decision permits an employer to require that employees meet at least the minimum threshold with regard to medical certification in support of an FMLA leave request. Under Lewis, an employee's FMLA leave request may be denied due to "insufficient documentation" if the employee fails to submit medical certification of his or her serious health condition rendering the employee unable to perform the functions of the position, including the appropriate and known medical facts which support the requested FMLA leave.

This case is discussed for your information to show that courts, including the Ninth Circuit, are willing to interpret and enforce procedural requirements of the medical leave laws in ways that consider the employer's operational interests. For California employers, however, the more liberal terms of the California Family Rights Act (CFRA) will control. The FMLA's statutory medical certification requirements do not apply to California employees seeking leave under the CFRA. Unless and until the Legislature chooses to amend the CFRA to give greater balance to the employer's operational interests, a California employer may not require a detailed or comprehensive medical certification. Under the present provision of the CFRA, employees are not required to provide medical certification detailing the medical facts supporting the diagnosis. While Lewis does not change the California standard for medical leave requirements, it is important for employers to be aware of the FMLA medical certification provisions that allow employers to enforce more stringent medical certification requirements.

For further detailed information regarding the FMLA and medical certification requirements, please do not hesitate to contact one of our eight offices located statewide or consult our website.

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