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Third Circuit Decision Expands Scope of Employer's FMLA Obligations

By Mary Pat Gallagher

When an employee provides you with a medical certification under the federal Family and Medical Leave Act ("FMLA") that is insufficient or invalid on its face, what are your obligations as an employer? As a recent decision from the United States Court of Appeals for the Third Circuit demonstrates, it may depend on what state you are in.

In [*Hansler v. Lehigh Valley Hospital Network*](#), a divided Third Circuit (which covers Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands) ruled that employers, before deciding on the merits of an FMLA leave request, have an obligation to provide employees with seven days to cure deficiencies in medical certifications submitted in support of FMLA leave even when the certification, on its face, does not demonstrate the existence of a serious health condition. In making this ruling, the Third Circuit recognized that it was disagreeing with other federal courts of appeal, including the First (covering Maine, Massachusetts, New Hampshire, and Rhode Island), Sixth (Michigan, Ohio, Kentucky, and Tennessee), and Seventh (Illinois, Indiana, and Wisconsin) Circuits, which have recognized that employers can deny leave requests based on an invalid or "negative" FMLA certification without further inquiry. As the dissenting judge in *Hansler* stated in the strongly-worded dissent, with this decision, the Third Circuit has fashioned a new rule to fit a sad case.

As alleged in the complaint, Hansler, who was employed by Lehigh Valley Hospital Network ("Lehigh Valley"), submitted an FMLA

request seeking intermittent leave, two times per week beginning March 1, 2013, and lasting for a probable duration of one month, based on her suffering from shortness of breath, nausea, and vomiting during the previous two weeks. Hansler was absent from work five days during the month of March 2013. On March 28, 2013, her employment was terminated because of her absenteeism. Following her termination, Hansler "learned of a letter" dated March 26, 2013, which advised her that her request for FMLA leave had been denied because her condition did not qualify as a serious health condition. After the termination of her employment, Hansler was diagnosed with diabetes and high blood pressure.

Hansler sued Lehigh Valley under the FMLA for interfering with her right to medical leave and for terminating her in retaliation for seeking leave. A federal district court dismissed the complaint, agreeing with Lehigh Valley that Hansler's request for leave was defective because her medical certification indicated that her condition would last only one month. (The FMLA requires that a chronic serious health condition persist for an extended period of time.) The district court concluded Hansler was not entitled to leave or an opportunity to fix her leave request because her certification was "invalid" and "negative on its face" because it described her condition as one for which FMLA leave can be awarded.

On appeal, Hansler argued that Lehigh Valley had to provide her with seven days to cure any deficiencies in her certification before denying her request for leave because the certification was merely "insufficient," rather than "negative on its face." The Third Circuit agreed.

The Department of Labor's regulations for the FMLA state that if an employer finds an employee's certification "incomplete" or "insufficient," it must notify the employee in writing what additional information is necessary to make the certification complete and sufficient. Under the regulations, a certification is "incomplete" if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is "insufficient" if the "employer receives a complete certification, but the information provided is vague, ambiguous, or nonresponsive." An employer may deny requested leave on the basis of an inadequate certification, but it may only do so if it has provided the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure the deficiency.

In reversing the district court's decision, the Third Circuit court noted that the relevant question was not whether Lehigh Valley could have known Hansler was suffering from a chronic condition at the time she requested leave; instead, it is whether the certification was insufficient and/or incomplete. Relying on the Department of Labor's regulations, which make no reference to "negative" certifications, the Third Circuit concluded that Hansler's certification was vague and nonresponsive insofar as it requested intermittent

leave for one month but failed to specify whether the one-month duration referred only to the length of the leave request or to the duration of her condition. Thus, Hansler's certification triggered Lehigh Valley's obligations under the Department of Labor's regulations governing incomplete and/or insufficient certifications. The court distinguished the cases from the First, Sixth, and Seventh Circuits because those cases involved certifications that stated the employees in question would not need to miss any work.

Lehigh Valley has asked the Third Circuit to rehear the case, arguing that the decision wrongly interprets the FMLA by imposing obligations and burdens on employers the statute does not give them (and conversely by relieving employees of obligations the statute gives them).

Pending the final outcome, employers located within the jurisdiction of the Third Circuit should take steps to notify, in writing, any employee submitting an insufficient or incomplete certification that the certification is insufficient. The written notice should identify what additional information is necessary to make the certification sufficient and, unless circumstances otherwise warrant, advise the employee that they have seven calendar days to cure the deficiency.

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