

GONZALEZ  
SABGIO  
HARLAN

## The GSH 60-Second Memo

September 10, 2008

Sponsored by the GSH Employment Group



Jill Pedigo Hall, Esq.

[www.gshllp.com](http://www.gshllp.com)

(414) 277-8500

Want more  
Information on  
this topic?

[CLICK HERE!](#)

### When "But I have a Doctor's Note!" Isn't Enough

By: **Jill Pedigo Hall, Esq.**

Since the Family and Medical Leave Act (FMLA) became law in 1993, employers covered under it have expressed frustration over lack of control over FMLA-related absences. An antidote for this outlook is demonstrated by an employer's measured and successful enforcement of its FMLA procedure in the recent case of *Ridings v. Riverside Med. Ctr.*, 2008 WL 3271916 (7<sup>th</sup> Cir. Aug. 11, 2008). The case exemplifies how a detailed and consistently enforced FMLA procedure can control absenteeism by setting clear procedural expectations in the FMLA process.

In *Ridings*, the Seventh Circuit Court of Appeals (covering Illinois, Wisconsin and Indiana) found that a full-time employee who actively refused to work eight-hour days, but also refused to submit the employer's required FMLA medical certification justifying leave, could be terminated for absenteeism or, alternatively, for insubordination.

Janet Ridings was a full-time exempt employee at Riverside Medical Center ("Riverside"). All exempt employees were required to swipe in and out from the time-keeping system daily. In 2003, after Ridings was diagnosed with Graves disease and underwent surgery, she began leaving work early. Records

show that she would be clocked in for approximately six to seven hours per day. She did not seek permission to work reduced hours, nor did she request FMLA reduced schedule leave. She worked less than full days for the remainder of 2003.

Beginning in January 2004, Riverside began a process to gain control over Ridings' attendance. In late January 2004, Ridings was told that she had to either start working eight hours on-site or submit medical documentation to support her early departures as FMLA leave. Ridings did not change her schedule and her supervisor met with her again on February 25, 2004, making the same request. Ridings still failed to change her work schedule and was given a corrective action regarding her attendance on March 22, 2004. Ridings provided a doctor's note the same day which stated that Ridings, "could not work an eight-hour day because of a medical condition until further notice." On April 1, 2004, Riverside informed Ridings that, based upon her doctor's note, she needed to provide FMLA paperwork. She was provided with an FMLA leave application and a medical certification form. The medical certification form contained a warning at the top of the form in bold type stating the form had to be returned within 15 days or the leave request would be delayed. Riverside's written FMLA policy also states: "If you are requesting leave because of your own serious health condition, you and the relevant health care provider must supply appropriate medical certification.... [T]he medical certification must be given within 15 days after it is requested or as soon as reasonably possible under the circumstances. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided."

Ridings refused to provide the medical certification or the FMLA application, insisting she had not requested leave, and that she supplemented her schedule by working from home and therefore she was not taking leave. Instead of the required forms, she presented Riverside with her attorney's business card. Ultimately, after she was given a total of three written warnings, Ridings was suspended for three days without pay. She was advised in her final written warning issued with her suspension on May 10, 2004, that "if the FMLA paperwork is not presented then further action, up to and including termination may be taken." On May 13, 2004, Ridings returned to work without the completed FMLA paperwork and her employment was terminated.

Ridings sued Riverside for interference with her FMLA rights and also claimed that her termination was unlawful retaliation for her taking reduced hours following surgery. Significantly, the Seventh Circuit affirmed Riverside's authority

**BONZALEZ**  
**SABGIO**  
**HARLAN**

**Office Locations:**

Illinois  
Indiana  
Iowa  
Nevada  
New York  
Ohio

to demand that the employee either work eight-hour days or formally request FMLA leave per the employer's policy and procedure. Under the FMLA, certification for reduced schedule leave must include: the date on which the serious health condition commenced; the appropriate medical facts within the knowledge of the health care provider regarding the condition; the dates on which planned medical treatment is expected; the duration of the treatment; and the doctor's statement of the medical necessity for the type of leave requested and the expected duration of the leave. 29 U.S.C. §§ 2613(b) (1)-(4). In this case, the court ruled that the plaintiff's doctor's note, which did not include any indication of duration, medical condition or medical necessity, did not meet the FMLA's requirements nor did it meet the employer's stated requirements shown in its forms and FMLA policy.

The Court also found that Riverside did not interfere with Ridings' FMLA rights because not only had Riverside given her the FMLA forms she needed, it also gave her more time than the FMLA required to complete them. Because Ridings deliberately neither filled out the forms nor ended her pattern of working reduced hours, the employer did not violate the FMLA by terminating her. Riverside's policies permitted it to terminate Ridings for absenteeism because she did not demonstrate her FMLA entitlement.

The Court also rejected Ridings' claim that Riverside had retaliated against her for her protected activity (working a reduced schedule) in violation of the FMLA. The Court found, "Riverside was entitled to ask Ridings to work a full schedule on the premises because she was a full-time employee; an employee cannot simply inform the employer when and from where she would like to work." Simply stated, Riverside was within its rights to give the plaintiff the choice of working a full schedule on the premises or completing her FMLA paperwork. She did neither. By failing to fulfill her FMLA obligations in providing the required medical certifications, Ridings' conduct was not protected. The court observed. "An employer cannot be deemed to retaliate against an employee by asking her to fulfill her obligations under the FMLA."

The *Ridings* decision encourages employers who want to control medical absences to maintain the following best FMLA practices:

- Maintain a written FMLA policy which among other important requirements, details notice, application and certification requirements, and the consequences to an employee of failing to comply with the same.

Washington D.C.  
Wisconsin

[www.gshllp.com](http://www.gshllp.com)

- Ensure that a comprehensive FMLA notice of rights is given to an employee upon receipt of a notice from the employee that FMLA leave may be required.
- Consistently apply and enforce medical leave policy requirements.
- Document all communications with an employee regarding the employee's medically-related absence.
- Systematize all FMLA leave documentation.
- Consult with counsel when actual or perceived disability impacts FMLA compliance.

*The 60-Second Memo is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.*

*Copyright 2008 Gonzalez Saggio & Harlan LLP. All rights reserved.*