

FMLA Rights Triggered Once Employer Notified of Need for Leave

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A recent Connecticut District Court decision highlights the need for employers to affirmatively determine if a request for leave is covered by the FMLA, even if the employee does not specifically request “FMLA leave.” [McNamara v. Trinity College](#), 2013 U.S. Dist. LEXIS 6045 (D. Conn. Jan. 15, 2013). The employee worked for Trinity College and requested a leave to care for his wife who was undergoing hip replacement surgery. The employer never informed the employee of his FMLA rights, and did not treat his two week absence as FMLA protected leave. Instead, it issued him a written warning for poor attendance.

Shortly thereafter, the employee required more time off to care for his sick daughter. Again, Trinity failed to cover the leave under the FMLA, and instead terminated the employee for missing work.

The employee filed suit in federal court claiming retaliation for taking FMLA leave. To state a prima facie case of retaliation, an employee must show he exercised rights protected by the FMLA; was qualified for the position; suffered an adverse employment action; and the adverse action occurred under circumstances giving rise to an inference of retaliatory intent. Trinity argued that the employee could not have been retaliated against when he never asked for, or was placed on, FMLA leave.

The Court, however, sided with the employee. It found Trinity failed to properly categorize the absences as FMLA protected leave. The Court noted that once the employee notified his employer of the need for leave and the reasons, the employer had an obligation to

inquire further, if necessary, to determine if the requested leave was covered under the law. In particular the Court cited Department of Labor regulations that state: When an employee seeks leave for a FMLA qualifying reason, the employee need not expressly assert rights under the FMLA, or even mention the FMLA. In all cases, the employer must inquire further of the employee if more information is required to determine whether the requested leave is covered under the law.

Here, Trinity knew or should have known that the requested time off was covered by the FMLA. Since Trinity failed to inquire further, or properly categorize the leave as FMLA protected, it could not later argue the employee's retaliation claim was invalid because he was never placed on FMLA leave to begin with.

A key takeaway for employers is that once an employee reveals a need for leave, the employer must make any inquiries necessary to determine if the leave qualifies as FMLA leave. It is not necessary for the employee to specifically request "FMLA leave" for the employee's rights to be triggered. A failure to grant the leave, or any retaliation for taking the time off, will cause an employer to be found in violation of the law.

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