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Pay Attention To Those Doctor's Notes

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It should be obvious to most that an employee seeking FMLA leave must provide some type of notice to his or her employer. The question that often arises, however, is what type of notice suffices to confer an employee with FMLA protection? The FMLA regulations themselves offer little help in answering this question. Pursuant to these regulations, a notice will confer FMLA protection if it:

- Is "sufficient" to make the employer aware that the employee needs FMLA-qualifying leave; and
- Provides the anticipated timing and duration of the leave

But what exactly does a "sufficient" notice look like? Are employees required to expressly invoke the FMLA when requesting FMLA leave? Though courts generally assess the sufficiency of FMLA notice on a case-by-case basis, they are in agreement that employees need not expressly request FMLA leave in order to receive protection. This view was recently re-affirmed by the Eighth Circuit Court of Appeals in the case *Wages v. Stuart Mgmt. Corp.* In *Wages,* the plaintiff, a pregnant employee, began experiencing severe abdominal pain arising from her pregnancy. As a result, the plaintiff's physician gave her a note limiting the amount of time she could work to 20 hours per week. Shortly after the plaintiff gave the note to her employer, she was terminated. The plaintiff's employer rationalized the decision to terminate by asserting that the reduction in hours precluded the plaintiff from completing "the essential functions of her job." The plaintiff then brought both an FMLA interference and retaliation claim. Both the plaintiff and the employer moved for summary judgment, which the district court denied for the employer but granted for the plaintiff. The employer appealed the district court's decision, arguing, in part, that the plaintiff failed to provide adequate notice of a serious health condition. Specifically, the employer asserted that the plaintiff's "doctor's note was insufficient and [the plaintiff] never said or did anything beyond submitting the doctor's note." The Eighth Circuit disagreed, noting that ***"an employee who seeks leave for the first time for a FMLA-qualifying reason . . . need not expressly assert rights under the FMLA or even mention the FMLA."*** The court then determined the doctor's note, by expressly referencing the plaintiff's pregnancy and her need for leave, sufficed under the FMLA. As a result, the court affirmed summary judgment for the plaintiff. Though the court's ruling in *Wages* should come as little surprise to those who follow FMLA jurisprudence, it does offer some important reminders to employers:

- First, and foremost, employers should consider being exceedingly cautious about terminating or disciplining an employee who requests time off as a result of medical illness (even where the termination or discipline is unrelated to the time off request).
- Second, if an employer receives a doctor's note or any other information from an employee suggesting that the employee may have a medical condition, the employer should carefully consider whether

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the FMLA is implicated. If there is any doubt, the employer should consider sending the employee a notice of eligibility and rights under the FMLA.

- Third, employers should consider providing regular FMLA training to managers and supervisors. Untrained managers may not understand how a medical note, or for that matter, an oral notice of a serious medical condition, may implicate the FMLA. This can result in a very expensive FMLA interference of retaliation claim.

- Fourth, employers should consider developing and communicating a formal policy regarding leave requests (which may include a call-in policy for employees who are on leave). The policy should not only explain FMLA rights and responsibilities (which the DOL requires covered-employers to provide anyways), but it should also specify how the employer will implement its FMLA policy.

Though these reminders are not exhaustive, their implementation may help employers avoid potentially expensive FMLA pitfalls.