

The Letter Of The Law Proves Equally Applicable To Employees In FMLA Disputes

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In many instances, it is the employer who is penalized for failing to strictly comply with the letter of the law in relation to FMLA leave and notices. Recently, however, an employee in the process of changing medical providers learned the hard way of the equal application of such requirements to both employer and employee, after the Court tossed her suit in finding such transition does not automatically absolve her of the requirement to submit a valid Certification of Health Care Provider (CHCP) to obtain FMLA leave in a timely manner.

In rejecting the employee's FMLA interference claim (along with her FMLA retaliation allegations and state law claims), the U.S. District Court for the District of Massachusetts, in its opinion [found here](#), opined as to the burden an employee must meet to demonstrate it was impracticable to comply with the letter of the law pertaining to FMLA certifications. In doing so, the Court found the employee must demonstrate that a diligent effort was made, albeit unsuccessfully, to obtain the certification in a timely manner if equitable tolling is to apply. Further, the court rejected any notion that an employer's history of providing some leniency as to the deadline for accepting such certifications warranted a finding that the employee was free to submit her certification at any time.

Specifically, in *Brookins v. Staples Contract and Commercial, Inc.*, an employee suffering from a recurrence of breast cancer incurred a series of absences for which it was suggested she might want to apply for FMLA leave (after having used such leave on multiple occasions in the past). Despite requests that she provided her CHCP for such leave within 15 days, the employee failed to do so, and her request for FMLA was thus denied. Ultimately, she was terminated for her unexcused absenteeism. As a result, she filed suit, alleging FMLA interference, among other claims. Notably, the employee conceded that her certification had not been provided to Staples within the statutorily-required 15 days of its request for same, but argued that she had not been able to obtain such certification because: (1) her former doctor declined to provide a CHCP due to the fact that he was no longer the attending physician; and (2) her prospective doctor declined to provide a CHCP without having treated her yet.

In rejecting these circumstances as an acceptable excuse for failing to meet the submission deadline, the Court noted a host of factors undermining any claim that the employee had acted diligently in attempting to obtain the certification, such as that the employee had made only a single call to each

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provider, had not explained the conundrum she faced, had failed to provide either doctor with a copy of the CHCP form itself for review or consideration, had not sought certification from any of the other doctors she saw for medical reasons in that surrounding time frame, and had made no effort to request additional time from Staples or explain her dilemma until after her deadline for submission of the form had passed. The Court further refused to consider Staples' past leniency on accepting late submissions as a basis for finding the employee could submit certification at any time. Instead, the Court rigidly applied the statutory requirements and granted summary judgment in Staples' favor on the interference claims, and confirming that it is not only employers – but also employees who seek to benefit from the law – that must show diligence in complying with the FMLA.