

FMLA – Have You Made A Proper Request For Medical Certification?

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Having a comprehensive and compliant FMLA policy is important, but if you neglect to provide the required notice(s) to an employee who requests FMLA leave you could find yourself before a jury of your peers. Indeed, a recent decision by the federal court in Detroit, *Barker v. Genesys Pho LLC* (E.D. Mich. July 24, 2014), reminds us that implementing a good FMLA policy will do you no good if you don't follow the FMLA notice requirements. In *Barker*, the Court held that a jury would have to decide whether the employer violated the FMLA by terminating an employee who was absent due to a dog bite. The employee called her supervisor to report her injury and hospitalization due to complications, telling him she would not be at work. The employee admitted that her supervisor likely told her to fill out FMLA paperwork, but the employer presented no evidence that it notified the employee *in writing* that (1) she had to submit a medical certification and (2) the consequences for failing to do so within 15 days. Although the employer argued the 15-day period for submitting the certification was triggered when the employee called to report her absence, the Court disagreed. "[T]he fifteen-day period to provide a certification begins (if at all) *on the date the employer properly requests the certification, not* on the date that the employees seeks or begins leave." (citing 29 CFR § 825.305(b) (2009)). The Court refused to dismiss the FMLA claim because there was a question whether the employer provided the employee with *written* notice that a certification must be completed and timely submitted, and that the employee could be fired for failing to submit the form on time. As a result, a jury will get to decide whether this employer violated the FMLA by terminating the employee. The practical suggestion today is not to let the technical requirements of the FMLA regulations trip you up. Make it a habit of providing each of the notices required under the FMLA regulations so you can defend your personnel decisions.

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