

Employers Must Comply with the FMLA When Evaluating Time-Off Requests to Attend School IEP Meetings

By Scott Mirsky

SUMMARY: An employee's request to attend a school meeting to discuss a child's Individualized Education Program ("IEP") must be evaluated under the lens of the Family and Medical Leave Act ("FMLA"). If the child has a serious medical condition, then the employer must provide FMLA leave so that an employee can attend their child's IEP meeting.

In a recent blog, we reminded D.C. employers that they must provide an employee 24 hours of leave during any 12 month period so that an employee can attend school-related events involving their children. This leave would certainly include time-off to allow a parent to attend an Individualized Education Program ("IEP") meeting concerning his/her child. Along the same lines, the U.S. Department of Labor ("DOL") recently addressed if the Family and Medical Leave Act ("FMLA") is triggered if an employee needs to take time-off to attend an IEP meeting. Under the FMLA, an employer with 50 more employees must provide eligible employees with up to 12-weeks of leave (which can include intermittent leave) to "care for a family member . . . with a serious health condition." In its Opinion Letter, the DOL concluded that an employee's leave associated with an IEP meeting is covered under the FMLA if the child has a serious medical condition.

The children who were the subject of the recent DOL Opinion Letter had qualifying serious health conditions under the FMLA and the employer had already approved intermittent FMLA leave to allow the mother to take the children to various medical appointments. The employer, however, would not approve the use of FMLA leave to attend IEP meetings. To the contrary, the DOL explained that the employer must allow the children's mother to use her FMLA leave for IEP meetings.

The DOL based its decision on the fact that the IEP meetings were held to review the children's education and medical needs, well-being, and progress. In these particular IEP meetings, the attendees (which included a speech pathologist, school psychologist, occupation therapist and/or physical therapist) reviewed recommendations from the children's doctors, reviewed test results, and made recommendations for additional therapy. Therefore, the DOL concluded that FMLA leave should be granted for IEP meetings discussing a child with a serious medical condition. Additionally, the DOL made clear that its Opinion Letter would also apply to any similar meetings under any applicable state or local law (regardless of the term used for the meeting).

To ensure compliance with this recent DOL Opinion Letter, employers should closely review all requests for leave from employees who have children with serious health conditions. As a reminder, employees requesting time off do not need to specifically use the term "FMLA," or some other "magical" word, when requesting FMLA leave. Rather, if the employee provides sufficient information to the employer that FMLA may apply, the onus is on the employer to request additional information to make an appropriate determination.

If you have questions regarding your leave obligations to employees, please contact the employment attorneys at Paley Rothman.