

Insights

FMLA Covers an Employee's Attendance for CSE/IEP School Meetings

January 1, 2020

By: Nancy J. Townsend and Kate Trinkle

On August 8, 2019, the Department of Labor ("DOL") issued its opinion that the FMLA covers employees' attendance at meetings to discuss the Individualized Education Program (IEP) of their children.

Background. The employer denied a mother's request to take intermittent FMLA leave to attend her children's IEP meetings at school, although it had previously approved her intermittent FMLA leave request to care and transport the children for appointments.

As a part of its special education services, the school district holds four meetings per year to discuss the children's progress and develop educational strategy with the children's IEP providers and with school administrators and teachers.

The DOL's Opinion. The DOL opined that attending these meetings for the employee's child with a serious health condition qualifies for intermittent FMLA leave because it is part of caring for a family member with a serious health condition.^[1] Under the FMLA, "to care for" includes "mak[ing] arrangements for changes in care."^[2]

Making arrangements for changes in care includes using FMLA leave to participate in, and aid in making, medical or care decisions on behalf of a family member with a serious condition. Relying on three cases and a previous opinion letter, the DOL concluded that the mother's attendance at the meetings was "essential to [her] ability to provide appropriate physical or psychological care" to her children and, therefore, she was entitled to take intermittent FMLA leave regardless of whether the children's doctors are at the meeting.

Takeaways for Employers. This opinion letter informs that it is important for employers to consider the following:

- An employee's request to use FMLA leave to attend an IEP meeting should be treated like any other request for intermittent FMLA leave.
- Review the request closely to determine the reason for the parent's attendance at the meeting. Disciplinary proceedings or other meetings unrelated to the treatment of a child's serious health condition do not qualify for FMLA leave.
- Educate managers and supervisory staff that this kind of request may be covered under FMLA.
- Update FMLA form requests to ask necessary questions of parents who ask to leave to attend school meetings, to understand the types of meeting that qualify, to allow leave freely, and to avoid any adverse employment action against employees who seek FMLA leave for a proper purpose.

[1] 29 C.F.R. § 825.100(a); *see also* 29 U.S.C. § 2612(a)(1)(C); 29 C.F.R. § 825.112(a)(3).

[2] 29 C.F.R. § 825.124(b).