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The Irregular Results of Using Regular Mail for FMLA Notices

Both the federal FMLA and Connecticut's FMLA require employers to provide general notices of employees' rights under the FMLA, and employee-specific notices of rights and obligations when an employee takes FMLA leave. Under a recent Third Circuit Court of Appeals decision, an employer's failure to give proper notice may give rise to an FMLA violation.

In *Lupyan v. Corinthian Colleges, Inc.*, the plaintiff denied receiving the required notice. When the plaintiff informed her employer, Corinthian Colleges, Inc. ("CCI") that she was able to return to work, CCI informed her that her employment was being terminated due to low student enrollment and her failure to return to work following her 12 weeks of FMLA-protected leave. The plaintiff claimed that this was the first time she had any knowledge that she was on FMLA leave and brought suit alleging that CCI's failure to give her notice she was on FMLA leave interfered with her rights under the FMLA.

The trial court granted summary judgment in favor of CCI. The court based its decision on the "mailbox rule," a legal presumption that a letter properly mailed with postage reached its destination in a timely fashion and was received by the individual to whom it was addressed.

The Third Circuit, however, did not agree and reversed the trial court. The Third Circuit held that the mailbox rule created only a rebuttable presumption that the plaintiff received the FMLA notice, and the plaintiff rebutted the presumption simply by saying she had not received it. Specifically, the court took issue with the fact that CCI sent the FMLA letter by regular mail with no certified letter receipt, tracking number, or signature. Since there was no direct evidence of receipt, the court determined that where only ordinary mail is used to send an FMLA notice, nothing more than the sworn statement of the plaintiff is required to defeat summary judgment. The court continued:

In this age of computerized communications and handheld devices, it is certainly not expecting too much to require businesses that wish to avoid a material dispute about the receipt of a letter to use some form of mailing that includes verifiable receipt when mailing something as important as a legally mandated notice. The negligible cost and inconvenience of doing so is dwarfed by the practical consequences and potential unfairness of simply relying on business practices in the sender's mailroom.

Although the Third Circuit covers only Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands, all employers should take steps to document receipt of

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FMLA notice letters in some manner, either by confirmation of hand delivery, by email with read receipt, or by sending the letter via registered mail with a return receipt requested or signature required. The cost to send the notice in a traceable fashion is negligible, as the Third Circuit mentioned, but documentation of receipt could be worth quite a lot if it means getting a case dismissed on summary judgment versus the alternative cost of paying for a trial.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.