



DELAWARE

EMPLOYMENT LAW LETTER

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Vol. 20, No. 7
July 2015

FAMILY AND MEDICAL LEAVE

What a difference a day makes under the FMLA

by William W. Bowser

Under the Family and Medical Leave Act (FMLA), an eligible employee can take up to 12 weeks of protected leave for his own "serious health condition," which is defined under the U.S. Department of Labor's (DOL) regulations as a condition "that involves inpatient care . . . or continuing treatment by a health care provider." Although many FMLA cases have focused on the meaning of "continuing treatment," the definition of "inpatient care" has seen little review. A recent decision by the U.S. 3rd Circuit Court of Appeals (whose rulings apply to all Delaware employers) focused on the issue.

Background facts

Jeff Bonkowski worked for Oberg Industries as a wire cut operator and machinist. During a meeting with his supervisors on November 14, 2011, he began to experience shortness of breath. His supervisors gave him permission to go home, and he

clocked out at 5:18 p.m.

Shortly after 11:00 p.m., Bonkowski's wife drove him to the hospital. Although he arrived before midnight, he wasn't admitted to the hospital until shortly after midnight on November 15. As we will see, those few minutes would be very important.

Bonkowski underwent comprehensive tests and was sent home on evening of November 15, after staying in the hospital for about 14 hours. Oberg terminated him because he had walked off the job on November 14 and missed work on November 15. Bonkowski filed suit under the FMLA, claiming his absence from work on November 15 was a qualifying absence under the Act and he was protected from being discharged.

The U.S. District Court for the Western District of Pennsylvania threw out Bonkowski's case, finding he didn't have a serious health condition because he didn't receive inpatient care. The court pointed to the definition of "inpatient care" in the DOL's regulations, which requires an "overnight stay in a hospital."

The court ruled that to have an "overnight stay," Bonkowski would have to be admitted before sunset on one day and discharged after sunrise the following day. Since he wasn't admitted until after midnight on November 15 and was discharged the same day, he didn't have an overnight stay. Bonkowski appealed to the 3rd Circuit.

Appellate court's decision

The 3rd Circuit rejected the "sunset-sunrise" rule used by the district court but still ruled in favor of Oberg. According to the appeals court, an "overnight stay" means a stay in the hospital for a substantial period of time from one calendar day to the next day measured from the time of admission to the time of discharge. Since Bonkowski was admitted after midnight on November 14, his stay didn't constitute an overnight stay. Without such a stay, he couldn't have received inpatient care or have a serious health condition.

The 3rd Circuit rejected the "sunrise-sunset" rule

because the required time in the hospital would vary depending on the season of the year and the geographic location. It also rejected Bonkowski's claim that time spent at the hospital before an actual admission should count because the "calendar day" rule would provide a clear criterion for employers and employees alike. *Bonkowski v. Oberg Industries*, No. 14-1239 (3d Cir., May 22, 2015).

Bottom line

Bonkowski's FMLA claim was erased because of a few minutes waiting at the hospital. While the result may seem harsh, the rule does at least provide a somewhat understandable standard.

This case doesn't resolve what a "substantial" time in the hospital means. In other words, will a stay just before midnight to just after midnight qualify? If not, how many hours in the hospital will be required? Stay tuned.

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