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Common FMLA Mistakes: In Loco Parentis Relationships: What Am I Doing Wrong??

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"*What did I do wrong?"* and "*Am I doing this correctly?*" are frequent questions from clients regarding FMLA administration. This is the seventh in a monthly series highlighting some of the more common mistakes employers can inadvertently make regarding FMLA administration.

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Labor & Employment
Litigation / Trial Practice
All Federal
2nd Circuit (incl. bankruptcy)

Forgetting to consider whether an employee is entitled to FMLA leave based on an *in loco parentis* relationship.

When an employee requests FMLA leave to care for a family member who is not obviously a child or parent, an initial reaction by the employer might be to deny that request. Under the FMLA, the definitions of "parent" and "son or daughter" includes any other individual who stands *in loco parentis* ("in the place of a parent") to the employee or child. A legal or biological relationship is not required. Failing to recognize the *in loco parentis* relationship could result in an FMLA interference claim.

In *Fitzgerald v. Shore Memorial Hospital*, 92 F. Supp. 3d 214 (D.N.J. 2015), the employee argued that the employer interfered with her FMLA rights when it denied her FMLA request to care for her sick aunt. The employer asked the employee to validate her relationship with the woman the employee referred to as her "adopted mother," her "aunt," and her "stepmother." The employee offered to bring report cards from high school to show that her aunt qualified under the FMLA's *in loco parentis* rule, but she ultimately failed to do so. The employee asserted that her aunt had "signed every paper for [her] from Kindergarten up until [she] was out of school." The court found in favor of the employer, finding that the employee did not fulfill the employer's request to provide sufficient information to support that she was entitled to FMLA leave based on an *in loco parentis* relationship.

In a recent case, *Coutard v. Municipal Credit Union*, 848 F.3d 102 (2d Cir. 2017), the court found that an employer had an obligation to specify the information that it needed to determine whether the employee's ill grandfather satisfied *in loco parentis* standing. The employee's grandfather raised him since before the age of four until the age of fourteen. During that time, the employee's grandfather fed him, clothed him, paid for his education, took him to school, and provided emotional and social support. The employer denied the employee's FMLA leave request on the reasoning that the FMLA did not apply to grandparents. The employee admitted that he did not inform his employer that his grandfather might stand *in loco parentis* to him. Nonetheless, the court determined that the employer failed in its obligations (a) to provide the employee with information regarding his right to seek FMLA leave based on an *in loco parentis* relationship, and (b) to request further information from the employee.

Employers should act diligently when an employee requests FMLA leave to care for an individual who is not obviously a parent or child, and should explore whether an *in loco parentis* relationship exists. An employer may require an employee to provide reasonable documentation or a statement of the family relationship. Employers should keep in mind that a simple statement asserting that the requisite family relationship exists is all that is needed for *in loco parentis* situations where there is no legal or biological relationship.

The United States Department of Labor issued an Administrator's Interpretation that further explains the *in loco parentis* relationship, in the context of the definition of son or daughter, which provides helpful insight: https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm.

Bryant Andrews assisted with this post.

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