SPECIAL REPORT

EMPLOYEE BENEFITS & HUMAN RESOURCES

Seminar focuses on handling FMLA benefit issues

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DeWITT — Central New York employers should have a policy for handling the federal Family and Medical Leave Act (FMLA), which provides employees with up to 12 weeks of unpaid, job-protected leave per year.

The legislation also requires that employers maintain an individual's group-health benefits during the leave.

The recommendation was part of an Oct. 19 seminar detailing how business owners can handle certain situations arising from FMLA requirements. The labor-law attorneys at Mackenzie Hughes, LLP of Syracuse organized the event held at Drumlins Country Club in DeWitt.

About 55 people attended the workshop, according to the law firm.

An FMLA policy should explain how the employer is going to count the 12-month period in which the employee can take the time off, says Jacqueline (Jackie) Jones, labor-law attorney at Mackenzie Hughes.

"If the employer's policy doesn't explain how that 12-month period will be counted, then whatever method of counting is most favorable to the employee … will be used," says Jones.

The options for determining the 12-month period include a full calendar year, or any fixed 12-month period of time, such as July 1 to June 30.

The policy also needs to explain what happens with benefits when the employee is on leave and whether the worker will be required to complete a health-care certification, says Jones.

The forms that the U.S. Department of Labor publishes in administering the FMLA are "great forms" to use because they're very detailed and ask all the questions that an employer is supposed to ask when an employee goes on leave, she adds.

A business doesn't have to require the employee complete a health-care certification before taking the leave, although most employers do, says Jones.

"It's your first step in controlling your FMLA leave and making sure employees don't abuse that leave."

If the employee is required to fill out a health-care certification, either for his own condition or a family member's medical condition, the doctor has to explain the type of leave that's needed, whether it's one instance of leave, or whether it's intermittent leave caused by episodic flare-ups, Jones says.

"And if it's intermittent leave, the doctor has to certify about how many times that's going to happen," she explains.

Several of the seminar attendees had questions about requests for intermittent

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Christian (Chris) Jones, labor-law attorney with Mackenzie Hughes, LLP, at the law firm's FMLA seminar at Drumlins Country Club on Oct. 19.

FMLA: *To qualify for FMLA leave, the employee must have 12 months of service with the employer*

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leave, which Jones says is used "in pretty small increments of time."

"I mean one day here, one day there or even a couple hours here, a couple hours there," she adds.

For intermittent leave, a company can't require the employee to use leave time in increments greater than an hour, says Jones.

Qualifying scenarios

To qualify for FMLA leave, the employee must have 12 months of service with the employer, although it doesn't have to be consecutive weeks, says Christian (Chris) Jones, labor-law attorney at Mackenzie Hughes.

"Any time the individual is on the payroll for any part of a week would be considered a week of service and 52 weeks would be considered to equal 12 months," he says.

If an employee meets that condition, the person also has to have worked at least 1,250 hours in the 12 months preceding the leave.

"So, vacation time or other time off or leave time would not constitute hours worked for purposes of this 1,250 hour requirement," Chris Jones says.

But Jones also notes that such time may count as service for purposes of the 12-month requirement.

He also used his portion of the workshop to discuss if influenza (the flu) is considered a serious health condition for which an employee could take FMLA leave.

FMLA regulations stipulate that conditions such as the common cold, the flu, earaches, upset stomachs, and ulcers are not considered serious health conditions.

However, Jones says the definition of a serious health condition includes conditions which cause the employee to be "incapacitated for three consecutive days" and to have received treatment at least twice from a health-care provider in a 30-day period, or one time from a health-care provider resulting in a regimen of continuing medical treatment.

The treatment could include a regimen of prescription medication, he adds.

"So there may be perhaps the odd case of the flu being serious enough that it does incapacitate an employee for three or more consecutive days and that it does require the type of medical treatment as defined in the regulations," Jones says.

He also discussed another scenario for possible FMLA leave in which a parent would have to care for an adult child.

An adult child can qualify as a family member for purposes of the FMLA only if the individual isn't capable of caring for him or herself due to a physical or mental disability.

The regulations define the term "incapable of self care" to mean that the individual requires active assistance or supervision to provide daily self-care in at least three activities of daily living. "These can include such things as bathing, dressing, eating, cooking, cleaning, shopping, paying bills, taking public transportation, those types of things," he says. ❑

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