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FLORIDA
EMPLOYMENT LAW LETTER

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DISCRIMINATION

Recent settlement highlights EEOC's focus on vulnerable workers

by Jeff Slanker and Rob Sniffen
Sniffen & Spellman, P.A.

The Equal Employment Opportunity Commission's (EEOC) Strategic Enforcement Plan (SEP) highlights several areas in which the agency is increasing its focus, including the protection of vulnerable immigrant and migrant workers. That focus was recently underscored by the agency's settlement of a case involving allegations of national origin and race discrimination against an Alabama employer that employed Indian workers through the federal H2-B program.

The $5 million settlement should serve as a warning to Florida companies that employ immigrant or migrant workers to make sure they are in compliance with all of the applicable laws. Indeed, as this settlement makes clear, the SEP provides a road map for employers and their attorneys on where the EEOC's enforcement focus lies.

EEOC's strategic initiatives

The EEOC's SEP for fiscal years 2013 through 2016 provides an overview of the areas in which the agency plans to focus its attention in addition to its general goals of eliminating discrimination in the workplace. Part of the SEP emphasizes its goal of protecting vulnerable immigrant and migrant worker populations that may be discriminated against given their lack of proficiency in English, their citizenship status, or other factors that would allow or foster activities made illegal by the federal civil rights laws.

The specific initiative in the SEP states:

> **Protecting Immigrant, Migrant and Other Vulnerable Workers.** The EEOC will target disparate pay, job segregation, harassment, trafficking and discriminatory policies affecting vulnerable workers who may be unaware of their rights under the equal employment laws, or reluctant or unable to exercise them.

That focus was evident in the EEOC's settlement of a recent case involving an Alabama employer's alleged national origin and race discrimination against immigrant employees.

Recent settlement agreement

Signal International, LLC, is an Alabama company that builds and repairs ships. The company employs a significant number of guest workers from India under the federal H-2B guest worker program. The EEOC alleged in its lawsuit against Signal that it subjected its Indian guest workers to adverse living and working conditions.

Signal recruited workers from India through the H-2B program to work in its facilities in Texas and Mississippi

Law Offices of Tom Harper, Stearns Weaver Miller, P.A., and Sniffen & Spellman, P.A., are members of the *Employers Counsel Network*

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AGENCY ACTION

EEOC touts 2015 accomplishments in annual report. The Equal Employment Opportunity Commission (EEOC) released its annual Performance and Accountability Report in November, claiming record results in its enforcement efforts for the 2015 fiscal year. The agency reported that it secured more than $525 million for victims of discrimination in private, state and local government, and federal workplaces. This included $356.6 million for victims of employment discrimination in private-sector and state and local government workplaces through mediation, conciliation, and settlements; $65.3 million for charging parties through litigation; and $105.7 million for federal employees and applicants. The agency also reported statistics related to systemic cases—those that address patterns or practices of discrimination or policies that have a broad impact on a region, industry, or group of employees or job applicants. In fiscal year 2015, the EEOC resolved 268 systemic investigations before filing litigation, obtaining more than $33.5 million in remedies. In litigation, the agency resolved 26 systemic cases, six of which included at least 50 victims of discrimination and 13 of which included at least 20 victims.

DOL proposes rule on apprenticeship programs. The U.S. Department of Labor (DOL) announced a proposed rule on November 5, 2015, designed to update existing equal employment opportunity regulations for registered apprenticeship programs. The proposed rule aims to ensure equal opportunity for all Americans to take part in apprenticeship programs regardless of race, sex, color, national origin, disability, age, genetic information, or sexual orientation. Among other things, the proposed rule would extend protections against discrimination to include a broader swath of the workforce, clarify the affirmative steps employers and sponsors must take to ensure equal opportunity in apprenticeships, provide new apprenticeship programs with more time to develop initial affirmative action programs, and clarify the outreach, recruitment, and retention activities expected of employers.

OSHA requests comments on whistleblower guidance. The Occupational Safety and Health Administration (OSHA) announced in November that it was seeking comments on a draft document intended to help employers develop a program to protect employees from retaliation when they raise concerns about workplace conditions or activities that could harm workers or members of the public. Comments on the document, "Protecting Whistleblowers: Recommended Practices for Employers for Preventing and Addressing Retaliation," were accepted until January 19, 2016. ✤

after hurricanes Katrina and Rita. The EEOC contended that the workers were subjected to a pattern and practice of discrimination based on their national origin and race that resulted in unfavorable working conditions. For example, according to the EEOC, the workers were forced to pay $1,050 a month to live in containers the size of a double-wide trailer set up in overcrowded, unsanitary, and guarded camps, while non-Indian workers weren't required to live in the camps.

The EEOC settled the matter for $5 million after filing suit against Signal in federal district court. The press release on the settlement can be found on the EEOC's website in the "Newsroom" section.

Takeaway for employers

Employers should be aware of the EEOC's aims and goals in the SEP because any facet of your business that overlaps with the initiative will undoubtedly be subject to extra scrutiny by the agency if the opportunity for investigation arises. As this settlement indicates, companies that employ immigrant or migrant workers, including H2-A and H2-B guest workers, should be particularly careful to ensure compliance with the applicable federal and state laws.

Robert J. Sniffen is the founder and managing partner of the Tallahassee firm of Sniffen & Spellman, P.A. He can be reached at 850-205-1996 or rsniffen@sniffenlaw.com. Jeff Slanker is an attorney with Sniffen & Spellman, P.A., in Tallahassee. He can be reached at 850-205-1996 or jslanker@sniffenlaw.com. ✤

REDUCTION IN FORCE

Employers, be warned: The WARN Act may apply to you

by Lisa Berg
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

If you are considering implementing a reduction in force (RIF), closing a business, or reducing employees' hours, you need to be aware of potential legal issues under the federal Worker Adjustment and Retraining Notification Act (WARN) Act.

Who is covered?

The WARN Act requires covered employers that anticipate a "plant closing" or "mass layoff" to give affected employees at least 60 calendar days' advance notice. The notice period is intended to provide workers an opportunity to find new employment or obtain job training before their termination. Employers that fail to provide the required notice under the WARN Act will be liable for back pay and benefits for the period for which notice wasn't given in addition to civil money penalties (with some exceptions).

The WARN Act also requires covered employers to provide advance notice of a mass layoff or plant closing to the chief elected local government official and the state's agency that carries out rapid response activities. In Florida, that's the Reemployment and Emergency Assistance Coordination Team.

The WARN Act applies to employers with 100 or more employees, excluding part-time employees, or 100 or more employees, including part-time employees, who work a total of at least 4,000 hours per week excluding overtime. Workers on temporary layoff or leave who have a reasonable expectation of recall are counted as employees.

The employer's size is determined by counting the number of employees on the date on which notice of the layoff or closing would be due, unless that number isn't representative of the normal size of the workforce. Private-sector for-profit and nonprofit employers are covered, as are public and quasi-public entities that operate in a commercial context and are separately organized from the regular government.

What are the WARN Act's key definitions?

A "plant closing" is a permanent or temporary shutdown of a single site of employment, or a shutdown of

ASK ANDY

Working during FMLA leave

by Andy Rodman
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

Q *I have an administrative assistant who is out on Family and Medical Leave Act (FMLA) leave for her own serious health condition. At the time she began her leave, she was in the middle of a project. Can I ask her to finish the project at home during her leave if she's feeling up to it? I would pay her for the work.*

A I recently spoke on FMLA issues at the annual Legal Update sponsored by the Greater Miami Society for Human Resource Management (GMSHRM). The issue you raise—asking employees to work during FMLA leave—generated a fair amount of discussion, so I appreciate the opportunity to address it in this column.

In a nutshell, the answer to your question is "no." An employer is prohibited from interfering with an employee's exercise of FMLA leave rights. Interference can take many forms, but it generally includes conduct that would discourage an employee from using FMLA leave. Asking an employee to "work" during her FMLA leave, even if you pay her for the work, is the type of conduct that would discourage employees from continuing their FMLA leave or requesting FMLA leave in the future.

But what is prohibited "work"? Fortunately, the courts have provided some guidance. Clearly, asking an employee to finish a project during her FMLA leave would be regarded as work, triggering a potential FMLA interference claim. On the other end of the spectrum, courts have explained that reasonable limited contact with an employee on FMLA leave to inquire about the location of files or the status of a particular project or to obtain some institutional knowledge wouldn't rise to the level of FMLA interference. Unfortunately, many scenarios fall somewhere in the gray area between the ends of the spectrum.

When assessing a particular scenario, use common sense and good judgment. If you were in the employee's shoes, would you feel "violated" under the same set of facts? Keep in mind that while an employee on FMLA leave doesn't have the right to be left alone or completely excused from responding to reasonable discrete inquiries as a professional courtesy, her right to take FMLA leave isn't conditioned on her willingness to remain on call during the leave. As a best practice, your default should be to leave the employee alone.

What if you learn that an employee on FMLA leave has been performing work at home, even though you didn't ask her to? Generally speaking, if you truly didn't know (and shouldn't have known) that an employee was working from home during FMLA leave, then the work she performed probably wouldn't form the basis of an interference claim. But once you know the work is being performed, the prudent course of action would be to put an end to it—tell the employee to stop!

Most important, supervisors should be trained on the "do's and don'ts" of asking employees to work during FMLA leave. In my experience, supervisors are the ones most likely to pick up the phone to call employees during their FMLA leave.

Andy Rodman is a shareholder and director at the Miami office of Stearns Weaver Miller, P.A. If you have a question or issue that you would like Andy to address, e-mail arodman@stearnsweaver.com or call him at 305-789-3256. Your identity will not be disclosed in any response. This column isn't intended to provide legal advice. Answers to personnel-related inquiries are highly fact-dependent and often vary state by state, so you should consult with employment law counsel before making personnel decisions. ✤

WORKPLACE TRENDS

Study finds employees reluctant to embrace wellness programs. A new survey reports that despite the array of wellness programs being offered, U.S. employers are finding it difficult to engage employees in the programs. The survey by global professional services company Towers Watson found that 88% of employers offering financial incentives for participation in wellness programs will reassess their incentives over the next three years. The Global Benefit Attitudes Survey found that health is a clear employee priority, but employees haven't connected to their employers' well-being programs. Just one-third said the well-being initiatives offered by their employers encouraged them to live healthier lifestyles. In addition, 71% of employees prefer to manage their own health, and 32% said the initiatives offered by their employers don't meet their needs. Forty-six percent of those surveyed said they don't want their employers to have access to their personal health information, and 30% don't trust their employers to be involved in their health and well-being.

Survey shows most career moves involve changing employers. A Gallup poll finds that 93% of U.S. adults say that the last time they made a career move, they left their employer to do so. Gallup found this to be true whether the respondent said the job change took place 30 years earlier or within the past year. No matter how long ago in that time frame the change occurred, no more than 10% took a new job in the same company. Roughly one in three (31%) said they changed jobs in the past three years. Gallup's report says the numbers show significant problems for employers, including turnover-related expenses and damage to team dynamics because of the loss of group rapport or an employee's unique expertise and contributions. Also, teams must shoulder the burden of extra work until a replacement can be trained.

Poll examines effect of holidays on productivity. Worried that your employees were more focused on the holidays than their work over the last couple of months? A poll from financial staffing company Accountemps shows those worries may be unfounded. Thirty-two percent of workers polled said they become more productive the week before a major holiday, while 22% of professionals reported that their output slips. "The holidays are a hectic time for many professionals, and people react differently under pressure," said Bill Driscoll, a district president for Accountemps. "For some, upcoming holidays spur them to move faster and more efficiently, while others are slowed down by the feeling of being pulled in many directions." ✤

one or more facilities or operating units within a single site of employment, if the shutdown results in an "employment loss" during any 30-day period at the single site of employment for 50 or more employees, excluding part-time employees.

A "mass layoff" is a RIF that does not result from a plant closing and results in an employment loss at the single site of employment during any 30-day period for:

- At least 33 percent of the active employees (excluding part-time employees) and at least 50 employees (excluding part-time employees); or
- At least 500 employees (excluding part-time employees)

An "employment loss" is defined as a termination (other than a discharge for cause, voluntary departure, or retirement), a layoff exceeding six months, or reduction in an employee's work hours of 50 percent or more during each month of any six-month period.

A "part-time employee" is an employee who works an average of 20 hours or fewer per week or has been employed for less than six of the 12 months preceding the date on which WARN notice is required. "Affected employees" include workers who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer.

Aggregation of employment losses

Two or more separations over any 90-day period that do not, by themselves, satisfy the threshold levels in a 30-day period also can be counted together to trigger the notice requirements. Exceptions to the 60-day notice period will be recognized for:

- **Natural disasters.** This exception applies if a plant closing or mass layoff is the direct result of a natural disaster such as a flood, earthquake, drought, storm, tidal wave, or tsunami.
- **Faltering company.** This exception, which is construed narrowly and doesn't apply to mass layoffs, covers situations where:
  - The employer was actively seeking capital or business at the time the 60-day notice would have been required;
  - There was a realistic opportunity that the company would obtain the financing or business it sought;
  - The financing or business would have been sufficient to enable the employer to avoid or postpone the shutdown; and
  - The employer reasonably and in good faith believed that giving notice would have prevented it from obtaining the needed capital or business.
- **Unforeseeable business circumstances.** This exception applies to plant closings or mass layoffs that are caused by some "sudden, dramatic, and unexpected" event that wasn't reasonably foreseeable and was outside the employer's control at the time notice would otherwise have been due.

Bottom line

Employers contemplating reducing their employees' work hours, closing a facility, or conducting a large-scale RIF are

well-advised to plan in advance and consult with competent employment counsel to avoid incurring potential liability under the WARN Act.

Lisa Berg is an employment lawyer and shareholder at the Miami office of Stearns Weaver Miller, P.A. You may reach Lisa at lberg@stearnsweaver.com or 305-789-3543. ✤

ACCOMMODATIONS

EEOC's 2015 guidance on pregnancy accommodation and leave

In June 2015, the Equal Employment Opportunity Commission (EEOC) issued updated guidance on pregnancy discrimination. In addition to addressing the issue of light duty and accommodations, the guidance spends a considerable amount of time addressing leave as a form of pregnancy accommodation.

The EEOC's guidance reiterates the Pregnancy Discrimination Act's (PDA) rule that an employer may not compel an employee to take leave because she is pregnant, as long as she is able to perform her job. The guidance reminds employers that compelling a pregnant employee to take leave would be a violation of Title VII of the Civil Rights Act of 1964, even if the employer believes it is acting in her best interest.

Practical impact of EEOC's guidance

While employers may not force pregnant workers to take leave, they must allow women with physical limitations resulting from pregnancy to take leave on the same terms and conditions as other employees who are similar in their ability or inability to work. So, for example, an employer couldn't fire a pregnant employee for being absent if her absence fell within the provisions of its sick leave policy.

This also means an employer can't require employees who are disabled by pregnancy or related medical conditions to exhaust their sick leave before using other types of accrued leave if it doesn't impose the same requirement on employees who seek leave for other medical conditions. Similarly, an employer can't impose a shorter maximum period for *pregnancy-related* leave than for other types of medical or short-term disability leave.

It's important to note, however, that Title VII doesn't require an employer to treat pregnancy-related absences more favorably than absences for other medical conditions.

EEOC's guidance on parental leave

For purposes of determining Title VII's requirements, the EEOC cautions that employers should carefully distinguish between leave related to any physical limitations imposed by pregnancy or childbirth and leave for purposes of bonding with a child and/or providing care for a child ("parental leave").

According to the EEOC's guidance, leave related to pregnancy, childbirth, or related medical conditions can be limited to women affected by those conditions. However, parental leave must be provided to similarly situated men and women on the same terms.

Best practices for reducing violations

The EEOC's guidance contains a number of suggested "best practices" for employers looking to reduce the chance of pregnancy-related PDA and Americans with Disabilities Act (ADA) violations and to remove barriers to equal employment opportunity:

- Develop, disseminate, and enforce a strong policy based on the requirements of the PDA and the ADA. This would include things such as making sure the policy addresses the types of conduct that could constitute unlawful discrimination and provides multiple avenues for filing a complaint.
- Train managers and employees regularly about their rights and responsibilities regarding pregnancy, childbirth, and related medical conditions.
- Conduct employee surveys and review employment policies and practices to identify and correct any policies or practices that may disadvantage women affected by pregnancy, childbirth, or related medical conditions or that may perpetuate the effects of historical discrimination in the organization.
- Respond to pregnancy discrimination complaints efficiently and effectively. Investigate complaints promptly and thoroughly. Take corrective action, and implement corrective and preventive measures to resolve the situation and prevent problems from arising in the future.
- Protect applicants and employees from retaliation. Provide clear and credible assurances that if applicants or employees report discrimination or provide information regarding discrimination based on pregnancy, childbirth, or related medical conditions, you will protect them from retaliation.

Leave-related best practices

The EEOC's guidance also includes a list of what the agency considers "best practices" for employers relating to leave:

- If there is a restrictive leave policy (such as restricted leave during a probationary period), you should evaluate whether the policy disproportionately affects pregnant workers and, if so, whether it is necessary for business operations. To ensure compliance with the law, you should make sure the leave policy notes that an employee may qualify for leave as a reasonable accommodation.

UNION ACTIVITY

UAW, German union form partnership. The United Auto Workers (UAW) and German trade union IG Metall announced in November 2015 the launch of the Transnational Partnership Initiative (TPI), a joint project to explore new models of employee representation in the United States. The UAW statement said one goal of the TPI is to "collaborate to improve wages and working conditions for employees at German-owned auto manufacturers and suppliers in the U.S. South." The statement said the unions believe some German manufacturers exploit low-wage environments in the South. Another goal is to "expand on the principle of 'co-determination' between management and employees by establishing German-style works councils or similar bodies to promote employee representation."

Union pushing for postal banking. The American Postal Workers Union has launched a campaign calling on the postmaster general to implement postal banking. The union says 28 percent of U.S. households are underserved by traditional banks, and those people turn to payday lenders and check cashers that charge significant fees. The union said postal banking can serve the public by offering affordable, nonprofit financial services, including paycheck cashing, bill payment, savings accounts, and small loans. The union also said banking services can strengthen the Postal Service, establish a new source of revenue, and help protect postal jobs.

Laborers' union blasts Obama on Keystone XL Pipeline. President Barack Obama's decision against the Keystone XL Pipeline drew harsh fire from the Laborers' International Union of North America, whose general president, Terry O'Sullivan, issued a statement saying the decision shows "an utter disdain and disregard for salt-of-the-earth, middle-class working Americans." The statement also said the decision shows the president "cares more about kowtowing to green-collar elitists than he does about creating desperately needed, family-supporting, blue-collar jobs."

Government employee union announces membership milestone. The American Federation of Government Employees (AFGE) announced in October that it had reached 300,000 active members. "This is a remarkable achievement, especially in light of the continued threats to labor unions in general and public-sector unions in particular," AFGE National President J. David Cox Sr. said. Growing the union is one of the main objectives of AFGE's Big Enough to Win plan, the union's road map for the next decade. The union said its effort includes adding new organizers to help locals with recruiting efforts, holding organizing institutes and train-the-trainer sessions, and holding recruitment drives at workplaces across the country. ✤

- Consult with employees who plan to take pregnancy or parental leave to determine how their job responsibilities will be handled in their absence. This will alleviate any possibility that the employee leaves a "hole" in the work plan and hopefully eliminate the need to contact the employee during leave.
- If a particular accommodation requested by an employee can't be provided, explain why and offer to discuss the possibility of providing an alternative accommodation. ✤

LOCAL ORDINANCES

11th Circuit finds Miami-Dade living wage ordinance constitutional

by Tom Harper
The Law and Mediation Offices of G. Thomas Harper, LLC

In November, the U.S. 11th Circuit Court of Appeals (whose rulings apply to all Florida employers) declined to change its September ruling that the Miami-Dade living wage ordinance is constitutional.

Miami-Dade ordinance

The ordinance, enacted back in 1999, applies to employees of contractors that have contracts with the county worth more than $100,000 per year for a number of job categories, including security, transportation, clerical, maintenance, and food preparation work.

The ordinance also includes record-keeping and administrative requirements for covered contractors. For example, contractors must submit two reports each year containing certified payroll information on each employee's earnings and an employment activity report detailing the race, gender, wages, and ZIP code of any employees who are hired or terminated.

The county sets the living wage rate each year, and it has historically been higher than the Florida or federal minimum wage. The living wage is annually indexed to inflation, as defined by the Consumer Price Index (CPI) calculated by the U.S. Department of Commerce for Miami-Dade County. Employees who work for contractors at Miami International Airport are covered by the ordinance.

Case before the court

Amerijet International, Inc., is an all-cargo airline that carries property and mail between the United States, the Caribbean, and Latin America. In 2010, the Miami-Dade Department of Small Business Development began investigating Amerijet's pay practices for cargo handlers. Amerijet claimed the living wage ordinance didn't apply to its business because federal airline regulations preempt it.

Amerijet was unable to resolve the matter with the county. After determining that it wasn't financially feasible to pay its cargo handlers the living wage rate, Amerijet began outsourcing its cargo-handling services for other airlines to another

contractor and laid off its cargo handlers in April 2011. A group of the laid-off employees sued Amerijet for back wages. Amerijet then filed its own suit, asking the federal court to decide whether the living wage ordinance applied to its business.

In September, the 11th Circuit affirmed a lower court's decision and found that the law wasn't preempted by federal regulations. According to the appellate court, Miami-Dade's ordinance is constitutional. *Amerijet International, Inc. v. Miami-Dade County, Florida,* Case No. 14-11401 (2015).

Bottom line

Florida has many local ordinances that apply to employees. Check county and city rules where you have operations to ensure you're complying with local employment-related requirements. This Miami-Dade ordinance requires contractors to keep certain employee records.

You may reach Tom Harper at tom@employmentlawflorida.com. ✤

FAMILY AND MEDICAL LEAVE

Your FMLA obligations when an employee wants privacy

The Family and Medical Leave Act (FMLA) can be tricky when an employee wants his health condition to remain private. For example, what do you do if you learn from a coworker that an employee has cancer? The employee has taken three- to four-day periods of accrued paid time off (PTO) on several occasions without explanation. Since no explanation is required under your PTO policy, you have granted the leave without question.

The absences have not affected the employee's performance, and his work is as good as ever. According to the coworker, the employee is receiving chemotherapy and needs to take time off for treatment, and from time to time, he needs additional time off to recover. The employee is a private person and has shared none of this with you.

FMLA requirements

You are responsible in all circumstances for designating leave as FMLA leave once you have knowledge the leave is being taken for an FMLA-qualifying reason. If you don't have sufficient information about the employee's reason for leave, you should inquire further with him to determine whether the leave potentially qualifies for FMLA protection.

Your determination of whether the leave is FMLA-qualifying must be based only on information received from the employee or his spokesperson. Once you know the leave is being taken for an FMLA-qualifying reason, you must notify the employee.

When an employee seeks FMLA leave, he doesn't have to expressly assert rights under the FMLA or even mention the Act. However, he must provide at least verbal notice sufficient to make you aware that he needs FMLA leave and its anticipated timing and duration. In all cases, you are expected to inquire further if necessary to obtain more information about whether the employee is seeking FMLA-protected leave.

Under the FMLA, the employee has an obligation to respond to your questions designed to determine whether the absence is potentially FMLA-qualifying. Failure to respond to reasonable inquiries may result in denial of FMLA protection if you are unable to determine whether the leave qualifies under the Act.

Failure to respond to reasonable inquiries may result in denial of FMLA protection.

Finally, with regard to notice, when you have enough information to determine whether leave is being taken for an FMLA-qualifying reason, you must notify the employee of that designation in writing within five business days, absent extenuating circumstances. If you require paid leave to be substituted for unpaid FMLA leave, you must tell the employee when you designate the time as FMLA.

And in the 'real world'

The technical requirements of the FMLA are pretty clear. If you become aware of information indicating an employee may be eligible for FMLA leave, you are legally entitled to ask him for more information about his condition and whether the leave taken (or to be taken) is FMLA-qualifying.

Asking an employee who wants privacy to certify that he has cancer and needs leave for medical treatment

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2-10 Final Pay: Understanding Your Rights and Obligations When the Employment Relationship Ends

2-11 5 Ways HR Can Create Organizational Alignment to Business Strategy ✤

can feel like an invasion of privacy. However, it's your responsibility to make such inquiries to determine FMLA eligibility.

When certifying the need for FMLA leave, you may, but aren't required to, use the U.S. Department of Labor's (DOL) optional Form WH-380-E for medical certification of the employee's serious health condition. When requesting such certification, you must also advise the employee of the consequences of failing to provide adequate certification. This may be accomplished by using the DOL's Notice of Rights and Responsibilities Form WH-381.

The employee then must provide you with the requested certification within 15 calendar days, unless doing so isn't practicable under the particular circumstances despite the employee's diligent, good-faith efforts or you provide more than 15 calendar days to return the requested certification.

In addition to certifying leave to be taken, you should determine whether leave the employee already has taken can be retroactively designated as FMLA-qualifying. You may retroactively designate leave as FMLA leave with appropriate notice to the employee, provided your failure to designate leave in a timely manner doesn't cause him harm or injury. In all cases in which leave would qualify for FMLA protections, you and the employee may mutually agree that leave be retroactively designated as FMLA leave.

Keeping it confidential

The FMLA requires you to maintain records and documents relating to medical certifications and recertifications of employees or their family members as confidential medical records. The records must be maintained in separate files from the usual personnel files. Also remember that if the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA) applies, the records must be maintained in conformance with the laws' confidentiality requirements.

As far as supervisors and managers, they may be informed of necessary restrictions on work duties and necessary accommodations. First-aid and safety personnel may be informed, as appropriate, if the employee's condition might require emergency treatment.

Finally, government officials investigating compliance with the FMLA (or other pertinent laws) must be provided relevant information upon request. As for everyone else (i.e., coworkers)—they don't need to know. ✤

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Editorial inquiries should be directed to G. Thomas Harper at The Law and Mediation Offices of G. Thomas Harper, LLC, 1912 Hamilton Street, Suite 205, Post Office Box 2757, Jacksonville, FL 32203-2757, 904-396-3000. Go to www.EmploymentLawFlorida.com for more information.

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