FMLA notices by U.S. mail may not be enough

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Most employers send FMLA notices to employees via regular U.S. mail. However, in a game-changing decision, a federal appellate court recently ruled that sending these notices only by U.S. mail (without proof of receipt) may not be sufficient if the employee denies receipt.

What happened

Lisa Lupyan was hired as an instructor by Corinthian Colleges in 2004. In 2007, she requested personal leave because of depression. Shortly afterward, she provided a complete FMLA medical certification to support her need for leave. Consequently, her employer converted her personal leave to FMLA leave and sent her the appropriate FMLA notices via U.S. mail.

Lupyan was terminated when she failed to return to work after the 12 weeks of leave provided by the FMLA. She filed a lawsuit alleging that Corinthian Colleges failed to give her notice that her leave fell under the FMLA. She denied having knowledge that she was placed on FMLA leave. The district court granted summary judgment (pretrial dismissal) in favor of Corinthian Colleges, and Lupyan appealed.

What the court said

The U.S. 3rd Circuit Court of Appeals—which covers Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands—ruled that an employer may not rely on the "mailbox" rule to prove that it provided an employee proper notice under the FMLA. Under the "mailbox" rule, if a letter is proven to have been put in the mail (either by way of the post office or by delivery to a postal worker with proper postage), it is presumed that the letter was received by the person to whom it was addressed.

However, that is not a conclusive presumption of law. Instead, it is a rebuttable inference of fact. If the presumption of mailing is opposed by evidence that the letter was not received, a jury must determine whether the letter was actually received.

The 3rd Circuit noted that certified mail provides a stronger presumption of receipt because it creates evidence of delivery. Regular mail provides a weaker presumption since no receipt or proof of delivery exists. Thus, the court found that Lupyan's statement that she never received the FMLA notices was enough to create a genuine issue of material fact. The appeals court reversed the district court's order granting summary judgment.

The 3rd Circuit noted: "In this age of computerized communicationsand handheld devices, it is certainlynot expecting too much to require businesses that wish to avoid amaterial dispute about the receipt of aletter to use some form of mailingthat includes verifiable receipt when mailing something as important as alegally mandated notice."

Unfortunately, the FMLA regulationsare silent regarding the preferred method of service. *Lupyan v.Corinthian Colleges Inc.,* 761 F.3d 314 (3rd Cir., 2014).

Bottom line

Simply mailing a letter and placing acopy in your file may not be sufficient proof of receipt if an employee denies receiving the letter. This ruling is a wake-up call for employers that send FMLA notices via U.S. mail, regardless of whether they are covered by the 3rd Circuit. Consider sending FMLA notices by traceable means. Although obtaining a signature from certified mail appears to be a safe bet, many employees do not pick up certified mail. Thus, update your policies to inform employees how FMLA notices will be delivered.

Alternatively, it may make sense to send FMLA notices via a delivery service that uses tracking numbers (e.g., overnight or 2-day delivery services that require signatures) or use electronic methods with an electronic receipt you can use to prove the notices were delivered. You may want to consider hand delivering FMLA notices, but be sure to get employees' signatures to confirm receipt. Also, keep delivery records to avoid a factual dispute like the one that allowed Lupyan to proceed with her claim. Lastly, Corinthian Colleges made another mistake by failing to communicate with Lupyan while she was on FMLA leave. Don't fall into that trap.