

Death of a Family Member Ends One Kind of FMLA Leave, But May Begin Another

Posted on the [Iowa Employer Law Blog](#) by [Jill R. Jensen-Welch](#) on August 28, 2010

The Family and Medical Leave Act does not mandate or protect funeral or bereavement leave. Therefore, FMLA leave to care for a covered family member's serious health condition ends if the family member dies. That does not necessarily mean the end of all FMLA. Such a death may signal the beginning of a new FMLA leave for the employee's *own* serious health condition in reaction to that death.

Take the Eighth Circuit Court of Appeals decision issued August 26, 2010, in *Murphy v. FedEx National LTL, Inc.* Susan Murphy and her husband each worked at FedEx as a truck driver. When her husband was hospitalized, Murphy took a short FMLA leave to care for him, but he died quickly and unexpectedly. After three days of bereavement leave, Murphy's manager called to discuss her leave. Murphy was correctly told that her FMLA ended when her husband died. She was asked how much more time she needed and she said she needed 30 days "to take care of things." Even though he did not have authority to approve FMLA leave, her manager said, "Okay, cool, not a problem, I'll let HR know." Human Resources denied the additional 30 days of leave. Apparently, HR did not consider that Murphy, herself, might be experiencing a serious health condition that could qualify for FMLA leave. Without approved leave, Murphy was terminated. As Scooby Doo would say, "Ruh roh." Employers who deny leave and terminate an employee shortly after the death of the spouse are itching for a fight.

Murphy sued, claiming she should have received FMLA for her own serious health condition (depression after the death of her husband), and she thought her manager had approved that for her. The case went to trial on an estoppel theory. That required Murphy to show that she reasonably believed her FMLA leave was approved based on her manager's comment in order to estop the company from later denying it and terminating her. FedEx countered that Murphy knew only *HR* could approve FMLA leave and that Murphy did not give sufficient notice of her own serious health condition to trigger the company's FMLA obligations. The jury found for Murphy.

FedEx appealed, claiming the FMLA estoppel jury instruction was flawed for several reasons, and there was insufficient evidence to send the case to the jury at all. The Eighth Circuit agreed that the jury instruction was deficient because it did not require Murphy to prove that she had given her employer proper *notice* of her need for FMLA leave. The court, however, disagreed with the other ground for appeal. It held that although Murphy never mentioned any diagnosis or symptoms, she put on enough evidence for a jury to find that, considering the totality of the circumstances, she had been seeking FMLA leave for herself. Murphy proved that FedEx knew about the unexpected nature of her husband's death, that she had worked with her husband at the company for many years, and that she said she was unable to work the night shift because it reminded her too much of her husband. In addition, the context of the entire conversation was a discussion about prior FMLA leave and the need for additional leave. Altogether, that was enough evidence for a reasonable jury to decide Murphy had put FedEx on notice of a need for FMLA leave for herself.

Lessons for Employers

- Remember that what a manager says binds the company. If HR, and not managers, gives final approval for FMLA—which is how it should be—then managers must be careful about what they say in response to requests for leave of any kind.
- Managers and HR professionals need to take a very broad view of what constitutes a request for FMLA. While the employee's words are important, pay just as much attention to other facts and surrounding

circumstances. When in doubt, *ask* whether the request might be for some kind of FMLA qualifying reason, or treat it as possible FMLA and provide the paperwork to start the process of evaluating that question more formally.

- Exercise extra caution, and be prepared to be more flexible, when an absence involves the death of an employee's close family member. If you do not show compassion in these circumstances, a jury might do it for you.

If you have questions regarding the FMLA, please contact attorney Jill Jensen-Welch at 515-246-4536 / jjensen@dickinsonlaw.com or another member of the firm's [Iowa Employment Law and Labor Law Group](#) at employmentlaw@dickinsonlaw.com.