

## Intermittent FMLA Leave May Not Be a “Blank Check”

Posted on the [Iowa Employer Law Blog](#) by [Ann Holden Kendell](#) on August 28, 2010

Intermittent FMLA leave can be a complicated issue for Iowa employers and often seems like a “blank check” for FMLA leave. Intermittent FMLA leave can also create confusion as to the ability of an employee to perform the essential functions of a job. Depending on the type of work an employee does, our federal appellate court may have given Iowa employers some direction in handling these difficult situations.

In *Wisbey v. City of Lincoln, Nebraska*, (7/06/2010) the Eighth Circuit found that an emergency dispatcher’s FMLA application for six months of intermittent leave indicated she was unfit for duty. Wisbey stated on her application that her “own serious health condition renders [her] unable to perform the functions of [her] position.” Wisbey suffered from a recurring cycle of depression and anxiety that interfered with her sleep and energy level, motivation and concentration. Based on the medication certification noting these issues, the city had Wisbey submit to a fitness for duty examination that revealed she was not fit for her emergency dispatcher duties as described in her job description and she was terminated. The appellate court upheld the dismissal of Wisbey’s claims.

**What does this mean for Iowa employers?** While employers are entitled to have employees submit to fitness for duty examinations, it is important that the employer have a legitimate, non-discriminatory reason to doubt the employee’s capacity to perform the duties and that the request be structured carefully to elicit information about the employee as it relates to job functions and not just health information generally. Also, the job description was important for the physician making the evaluation of fitness for duty. Therefore, employment policies on fitness for duty examinations and job descriptions should be accurate and up to date, and the management personnel sending employees for such examinations should be trained to make sure these situations are handled appropriately.

**But Iowa employers should be careful...** One of the key issues for the court was Wisbey’s position as an emergency dispatcher; therefore, Iowa employers should use caution in applying this ruling without advice of counsel.

If you have questions about the FMLA, please contact attorney Ann Holden Kendell at 515-246-4555/[akendell@dickinsonlaw.com](mailto:akendell@dickinsonlaw.com), or another member of the firm’s [Iowa Employment Law and Labor Law Group](#) at [employmentlaw@dickinsonlaw.com](mailto:employmentlaw@dickinsonlaw.com).