

## Case Highlight: Employee Notice Requirements Under the FMLA

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This post is one of a continuing series this week providing a useful refresher on the FMLA.

In *Righi v. SMC Corporation of America*, a recent decision from the United States Court of Appeals for the Eleventh District ruled that an employer could ask reasonable questions about the need, scheduling, and length of leave under the Family and Medical Leave Act (FMLA). In addition, the employee was required to provide such information in a timely manner.

In this case, the court found that the failure of an employee to respond to his employer's request for clarification regarding a potential FMLA claim—specifically, ignoring a manager's thirteen phone messages over the course of five days—properly led to his termination. An important fact in this case is the employer had proper FMLA policies in place, and the policy required employees to communicate with the company while on leave.

### *The Facts*

Sales representative Robert Righi abruptly left a training seminar to care for his sick mother after she suffered a medical emergency. The next day, he e-mailed his manager, saying he needed "the next couple days off" to arrange for his mother's care. He added that he had vacation time coming, or he "could apply for the family care act, which I do not want to do at this time."

Given the vagueness of his leave request, the manager contacted Righi on his cell phone to clarify, but his cell phone was turned off. Over five business days, the manager called Righi's cell phone thirteen times. Finally, nine days later, Righi contacted his manager. He was asked to return to the office for a meeting, where he was promptly terminated. Righi subsequently sued the employer claiming that his rights under the FMLA had been violated.

### *The Ruling*

The court held that an employee's failure to comply with the FMLA's notice requirements precludes a claim that the employer interfered with his rights under the statute. In this case, Righi "doom[ed] his FMLA claim because he not only failed to designate his leave as FMLA, but he also failed to give SMC any indication as to when he would be returning to work," the court wrote.

The court also found that Righi's employer properly met its obligation to make further inquiry as to whether he intended to designate his leave as FMLA by making multiple phone calls to him.

Generally, employees are expected to give at least 30 days notice of the need for leave when the need for leave is foreseeable. In cases such as this where the need is unexpected and the duration unknown, the court noted that the employee must notify his employer "as soon as practicable" of the requested leave and at least provide some estimate of the anticipated duration of his leave.

In addition, the court underscored that employers may require their employees to abide by their "usual and customary notice and procedural requirements" when requesting FMLA leave. Here, Righi violated his employer's leave and absence policies, thereby providing a sufficient basis for termination.

### *The Message for Employers*

This case demonstrates that employers can and should make inquiries into an employee's request for FMLA leave, especially when unclear if it is a request for FMLA leave. In addition, employers should have clear policies in place regarding FMLA leave, including the procedures for requesting leave (i.e., is e-mail sufficient?) and any employee requirements with respect to communicating with the employer during leave.

## About Beth Lincow Cole

Employment Law Attorney Beth Lincow Cole has skillfully helped business owners and managers head off the unwanted and unnecessary lawsuits that can arise in the workplace. Drawing on her successful legal experiences both in and outside the courtroom, Beth Lincow Cole understands how to protect employers. By developing solid pre- and post-employment procedures for her clients, she assures that they are legally protected.

Beth Lincow Cole has worked for large regional and national law firms, focusing solely on employment issues, on behalf of management within a wide range of industries. Whether you are a start up company with basic questions about personnel files or a larger company with questions about an employee's Family Medical Leave, Beth Lincow Cole can help. Drawing on her experiences, she counsel's companies in the following practice areas:

- Defense in administrative agency matters such as before the DOL, EEOC, PHRC or

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- Department of Labor Audits
- Discrimination
- Downsizing/Reduction in Force
- Drug Testing
- Employment Contracts and Severance Agreements
- Employment Law Compliance
- FMLA and other family leave laws
- Independent Contractors/Contingent Workforce

Please contact the firm to find out how the Law Office of Beth Lincow Cole can protect your company.