

# CLIENT ADVISOR

CLP

## Employees Required to Follow FMLA Rules

The Massachusetts Federal District Court recently answered the question: What recourse does an employer have when an employee fails to return his or her medical certification as required by the Family and Medical Leave Act (FMLA)?

The employee in *Brookins v. Staples Contract & Commercial, Inc.* (D.Mass., 2013), was a two time cancer survivor who had previously applied for and taken medical leave from Staples without issue. In 2009, her cancer returned and her attendance began to suffer. At a meeting to discuss her poor attendance, she informed Staples that her cancer had returned. She was advised to apply for FMLA leave so that future medical absences would be excused.

Staples began processing the paperwork, but informed Brookins that she had to submit a certificate of health care provider (CHCP) within 15 days confirming her medical condition and need for leave. Staples sent two notices stating her leave had been tentatively approved subject to receipt of the medical certification by August 16. The last notice stated, "Staples will deny your request unless you return the [CHCP] by the above date."

Brookins called both of her surgeons, but because she was in between doctors, neither would fill out the form. She continued to be absent and submitted doctor's notes for each absence. She did not ask any of these other doctors to fill out the CHCP forms.

On August 18, 2009, she called HR and asked for an extension to submit the CHCP. Her request was noted. Around August 25, 2009, Staples sent Brookins a letter notifying her that her request for FMLA was denied for failure to submit a CHCP. She was terminated 3 weeks later because of her unexcused, unprotected absences. She sued for FMLA interference and retaliation, and claimed disability discrimination and failure to accommodate.

The case was dismissed. The court found no valid claim for FMLA interference. The regulations specifically require an employee to return a completed medical certification with 15 days unless it is not practicable to do so. In this case, the court found no showing of impracticability. Further, it found no retaliation where Staples made the original suggestion that Brookins apply for FMLA leave and there was no dispute that she had been previously warned about her attendance prior to requesting leave.

Although fact specific, the court's decision demonstrates that when an employee does not put forth the necessary effort, the employer will not be penalized for holding him or her accountable for meeting required deadlines. Employers who are interested in following Staples lead should consult labor counsel prior to taking any action.

## CDC Issues Voluntary Guidelines For Managing Food Allergies in Schools

The Federal Centers for Disease Control and Prevention (CDC) has developed and issued voluntary guidelines on how to protect students with food allergies in schools. Developed in consultation with the U.S. Department of Education and a number of other federal agencies, the CDC's "Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Centers," were issued in fulfillment of the 2011 FDA Food Safety Modernization Act. The guidelines include practical information and recommendations for developing or strengthening plans for food allergy management and prevention and are available on the CDC's website (<http://www.cdc.gov/healthyyouth/foodallergies/>).

A recognized leader in this area, Massachusetts issued its own guidelines in this area in the 2002 publication, "Managing Life Threatening Food Allergies in Schools." Although still relevant, schools may wish to consider consulting the *Voluntary Guidelines for Managing Food Allergies* for any changes or updates to best practices and new strategies for creating safe environments for students with allergies.

## HAPPY HOLIDAYS

Happy Holidays from all of us at Collins, Loughran & Peloquin. May the magic and wonder of the upcoming holiday season stay with you throughout the upcoming year.

In recognition of the holidays, we will be closed on the following days:

Tuesday, 12/24/13 (noon)  
Wednesday, 12/25/13  
Tuesday, 12/31/13 (noon)  
Wednesday, 1/1/14

### Reach Us By Email:

Philip Collins  
[pcollins@collinslabor.com](mailto:pcollins@collinslabor.com)

Michael C. Loughran  
[mloughran@collinslabor.com](mailto:mloughran@collinslabor.com)

Leo J. Peloquin  
[lpeloquin@collinslabor.com](mailto:lpeloquin@collinslabor.com)

Tim D. Norris  
[tnorris@collinslabor.com](mailto:tnorris@collinslabor.com)

Joshua R. Coleman  
[jcoleman@collinslabor.com](mailto:jcoleman@collinslabor.com)

Melissa R. Murray  
[mmurray@collinslabor.com](mailto:mmurray@collinslabor.com)

Stephanie M. Merabet  
[smerabet@collinslabor.com](mailto:smerabet@collinslabor.com)

