

## Medical documentation required for FMLA protection

The Tenth Circuit Court of Appeals recently ruled that an employer did not violate an employee's Family Medical Leave Act (FMLA) rights when it terminated him for absenteeism.

The FMLA requires employers with at least 50 employees to allow their employees up to twelve weeks of annual leave to care for the employee's or a family member's serious health condition. An employer may require medical documentation from a health care provider. The employee must provide documentation in a timely manner.

### The Case

Bobby Dry was hired by the Boeing Company in 1986. On March 9, 1998, Dry stayed home to care for his wife who was experiencing problems related to her bipolar disorder. He never returned to work. Throughout March, Dry called Boeing once a week to say that he was staying home to care for his wife. Eventually, Dry's supervisor asked Bernie Grant, a personnel representative, to find out when Dry would return. On April 2, Grant sent a letter to Dry stating that his leave was unauthorized and without medical documentation his absences constituted job abandonment. The letter requested medical documentation by April 10.

Ignoring the urgency of the letter, Dry requested medical documentation from his wife's doctor at her next appointment on April 15. The doctor wrote a note stating that Dry was needed at home to care for his wife from March 16–April 15, but was now able to return to work.

Dry did not return to work. Instead, he called Grant to say that he had received the medical documentation, but that the doctor had made an error and had not excused him for the week of March 9–13.

Dry got the doctor to write a new note excusing him from work from March 9 to April 21. The note said that Dry could now return to work. Grant told Dry that he needed to receive the documentation by May 15 or he would start termination proceedings against him. Boeing received the documentation on May 15 and credited Dry with his absences from March 9 to April 21. Grant then sent Dry a formal termination letter for unexcused absences from April 22 to May 15.

Dry filed a lawsuit alleging that Boeing had interfered with his FMLA rights by dismissing him and that he was fired in retaliation for taking FMLA leave. The district court ruled in favor of Boeing on both claims.

Dry appealed to the Tenth Circuit Court of Appeals, alleging that Boeing had interfered with his rights under the FMLA and that it failed to follow its progressive discipline policy. The Tenth Circuit ruled that Dry had failed to provide medical documentation in a timely manner and that his termination was due to missing three weeks of work after his approved FMLA leave ended on April 21. Boeing's policies state that an employee may be dismissed for four or more consecutive unexcused absences. Consequently, the court determined that Boeing did not violate its discipline policy.

### What This Case Means for Counties.

Employers that follow FMLA rules may terminate an employee for a documented cause, such as violating company policies or failing to file timely forms. Boeing was successful in this case because it followed its procedures and documented its actions with regard to the absent employee.

If you have any questions, please contact CTSI at 303-861-0507.

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