Published on *The National Law Review* https://natlawreview.com

What Should I Tell Employees on Leave About Their FMLA Usage? Everything!

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When it comes to FMLA leave administration, “don’t sweat the details” is rarely a wise axiom. Details matter. A lot.

A recent decision by an *Illinois* federal court reinforces that lesson. In March 2015, Amanda Dusik contacted her employer, Lutheran Child and Family Services (LCFS), to request time off for knee surgery. She explained that, according to her doctor, she would need three to six months of leave to recover. LCFS notified her that it would designate her absence as FMLA leave beginning March 31, 2015.

On July 15, 2015—three weeks after she exhausted her 12 weeks of FMLA—LCFS terminated Dusik. She sued, alleging the termination came without notice, LCFS never told her how much leave she had remaining, and had she known her time was about to expire, she would have returned to work. By not informing her how much leave would be counted against her FMLA entitlement, LCFS unlawfully interfered with her FMLA rights, Dusik claimed. She also alleged LCFS failed to accommodate her disability because it never discussed with her whether she could resume her duties with an accommodation. She maintained a knee brace would have been sufficient.

The FMLA regulations require employers to notify employees, at the time an absence is designated as FMLA leave, of how many hours, days or weeks will be counted against the employee’s FMLA leave entitlement, *if* the amount of leave needed is known. If it is not possible to do so—for example, if the employee took unforeseen intermittent leave—then the employer must tell the employee how much time off it counted against the employee’s FMLA leave entitlement upon the employee’s request.

LCFS asked the court to dismiss Dusik’s FMLA claim. LCFS argued that it was not required to provide notice regarding FMLA usage because the amount of leave Dusik would need was unknown and she never asked how much time she had used up. But in the court’s view, these considerations were not enough to warrant dismissal. In deciding a motion to dismiss, the court can consider only the allegations in the plaintiff’s complaint and must assume that they are true. Dusik alleged that, when she requested time off, she provided an estimate of the duration of her leave and asked that a manager update her about how much leave she had left. Construing these allegations liberally, the court held that at this early stage, they were sufficient to make a claim of FMLA interference

plausible. The court also declined to dismiss Dusik's separate failure-to-accommodate claim since Dusik alleged LCFS had afforded her no opportunity to bring up the knee brace accommodation.

Courts tend to be cautious about dismissing cases before fact discovery, and the court's lenient ruling here is no indication that Dusik will win on the merits. But regardless of what Dusik may prove, decisions such as this remind us that omitting information from required FMLA notices is a risky proposition. To minimize the risk, consider using the form notices provided by the Department of Labor, and err on the side of over-communication. Keep employees regularly apprised of the status of their leave, and keep in mind that the end of FMLA leave does not end the duty to accommodate.

National Law Review, Volume VII, Number 123