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CLARITY ON WHAT CONSTITUTES AN "OVERNIGHT STAY" UNDER THE FAMILY AND MEDICAL LEAVE ACT

By *Emre M. Polat*

The Third Circuit recently interpreted a Department of Labor ("DOL") regulation under the Family and Medical Leave Act ("FMLA") that provides clarity to employers on whether the employee's hospital stay qualifies as an "overnight stay" under the FMLA. The clarification is important for employers to determine if their employee's inpatient care at a hospital is enough to be classified as a serious health condition under the FMLA. The Third Circuit held that the language "overnight stay" with respect to inpatient care under the FMLA means a stay in a hospital, hospice, or residential medical care facility for a substantial period of time from one calendar day to the next calendar day as measured by the individual's time of admission and time of discharge. *Bonkowski v. Oberg Industries, Inc.*, 2015 WL 2444503 (3d Cir. May 22, 2015).

BACKGROUND

The employer, Oberg Industries Inc. ("Oberg"), is a manufacturer of precision components and tooling. Plaintiff Jeffrey Bonkowski was employed by Oberg as a wirecut operator and machinist. On November 14, 2011, Bonkowski met with his supervisors to discuss his recent suspension for falling asleep on the job. During that meeting, Bonkowski began to experience a shortness of breath and dizziness. Bonkowski's supervisors gave him permission to leave work and return the next day to continue the meeting. Bonkowski went home, but upon his continued distress, his wife took him to a hospital that night, arriving at the hospital right before midnight. Bonkowski was not admitted to the hospital until shortly after midnight on November 15. Comprehensive testing at the hospital did not reveal any serious medical issues and Bonkowski was released from the hospital in the early evening hours on November 15, 2011.

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The next day, Oberg terminated Bonkowski's employment for walking off the job on November 14. Bonkowski sued Oberg claiming that he was wrongfully terminated for exercising his rights under the FMLA. Bonkowski claimed that he was terminated in violation of the FMLA after he was hospitalized. The district court granted summary judgment to Oberg, finding that Bonkowski did not have a "serious health condition" entitling him to protection under the FMLA. Bonkowski appealed to the United States Court of Appeals for the Third Circuit.

DISCUSSION

The FMLA provides that an eligible employee shall be entitled to a total of twelve workweeks of leave during any twelve-month period because of a serious health condition that makes the employee unable to perform the functions of the position of such employee. The FMLA defines a "serious health condition" as an "an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider." 29 U.S. Code § 2611(11).

What, therefore, is "inpatient care"? The DOL regulations defines "inpatient care" as "an overnight stay in a hospital, hospice, or residential medical care facility." However, the term "overnight" is not defined in the regulations.

In interpreting "overnight stay" under the FMLA, the trial court ruled that "Plaintiff [Bonkowski] can establish he had a qualifying serious medical condition only if he is able to establish he spent the entire 'night' as an inpatient at the hospital" and that "an 'overnight stay' at a hospital is a stay from sunset on one day to sunrise the next day." The trial court then looked into the sunset and sunrise times of the zip code of the hospital to which Bonkowski was admitted and ascertained that the sun set at 5:02 p.m. on November 14, 2011 and rose at 7:07 a.m. the next day, when he was discharged. Under these circumstances, the district court found that Bonkowski's admission and discharge time from the hospital failed to meet this test, and subsequently did not rise to the level of a serious health condition under the FMLA.

In a split decision, the Third Circuit disagreed with the trial court's interpretation but affirmed the grant of summary judgment to Oberg. In examining the trial court's decision, the Third Circuit noted that a sunset and sunrise interpretation would produce odd and absurd results because those times vary during certain times of the year and by region. The court set forth an example noting that in Alaska, the time from sunset to sunrise could vary from less than three hours to more than twenty hours, depending on the time of year.

Dissatisfied with the trial court's interpretation, the Third Circuit took it upon itself to interpret the FMLA in defining the statutory term "inpatient care" as an "overnight stay." The Third Circuit examined the developments of the FMLA regulations and found that the DOL did not expressly define what it exactly means by an "overnight stay." The decision sets out a bright line rule for interpreting "overnight stay," holding that an "overnight stay" means a stay in a hospital, hospice, or residential medical care facility for a substantial period of time from one calendar day to the next calendar day as measured by the individual's time of admission and his or her time of discharge. To avoid circumstances in which an employee is admitted at 11:59 p.m. on one day and discharged shortly thereafter

at 1:00 a.m. the next day, thereby seemingly meeting the "overnight stay" definition, the Third Circuit noted that a minimum of eight hours would seem appropriate to meet the "substantial period of time" requirement.

TAKEAWAY FOR EMPLOYERS

The decision by the Third Circuit provides much needed clarity to employers in determining whether their employee's inpatient stay at a hospital, hospice, or residential medical care facility is a serious health condition under the FMLA. Employers can now determine whether their employee's stay at a hospital meets the criteria as "inpatient care" by simply looking at the time the employee was admitted and the discharge time from the hospital, hospice, or residential medical care facility. The duration of time from the employee's admission to the employee's discharge must be from one calendar day to the next calendar day. If the duration between the admission time and discharge time of the employee is on the same calendar day, then the employee's stay does not qualify as overnight stay for "inpatient care" under the FMLA. However, employers should note the court's reluctance to define specifically the "substantial period of time" requirement when an employee's stay meets the next calendar day admission and discharge requirement, but found that a minimum stay of eight hours would suffice.

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