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Client Bulletin

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Recent Employment Decisions concerning Depression, the ADA and FMLA

Problem: Many employers are confused as to how the Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA) apply when it comes to an employee's absence or requests for leave due to depression.

Solution: The following two recent decisions give some guidance on how to handle these matters.

Allen v. Bell South Telecommunications, Inc., 483 Fed. Appx. 197, 26 AD Cases 792 (6th Cir. 2012). A retired employee alleged that her former employer violated the ADA when it refused to give her paid time off while she recovered from a debilitating bout of depression. The Court of Appeals affirmed summary judgment for the employer, reasoning that: (1) the employee's depression was not a qualifying disability because her condition improved with treatment; and (2) an open-ended, indefinite request for leave is not a reasonable accommodation.

Bosley v. Cargill Meat Solutions Corp., 705 F.3d 777 (8th Cir. 2013). Although FMLA regulations permit an employee to use a spokesperson to provide the necessary notice, an employee does so at his or her peril. The employee informed a coworker with whom she carools that she was unable to come to work due to depression. This coworker had previously informed the employer when the employee had taken previous medical leaves. On this occasion, however, the coworker claimed that she merely told the employer that employee was "sick." Calling in sick, however, does not place the employer on notice of an employee's need for FMLA leave. After the employee failed to call or come to work for another three weeks, she was terminated. The court noted that the employee offered no explanation for why she could not have properly notified the employer of the need for FMLA during this period. The employee's excuse that she thought the coworker had correctly communicated her condition was not persuasive.

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