

# Employment Practices Liability

August 19, 2019

## **DOL Issues Opinion Letter – Parents Can Use Intermittent FMLA Leave To Attend IEP Meetings For Child With Serious Health Condition**

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On August 8, 2019, the United States Department of Labor issued an opinion letter (FMLA 2019-2-A) concluding that where a child has a serious health condition as defined by the Family and Medical Leave Act (FMLA), which also qualifies the child to an Individualized Education Plan (IEP) pursuant to the Individuals with Disabilities Education Act (IDEA), parents may use intermittent FMLA leave to attend meetings with the school district to discuss the education and medical needs of the child.

The Individuals with Disabilities Education Act (IDEA) requires public schools to develop an IEP for a child who is identified for and who receives special education and related services with input from the child and the child's parents, teachers, school administrators, and related services personnel. Under the IDEA, "related services" include such services as audiology services, counseling services, medical services, physical therapy, psychological services, speech-language pathology services, rehabilitation counseling services, among others.

The FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider and provides, in relevant part, that an eligible employee of a covered employer may take up to twelve weeks of job-protected, unpaid FMLA leave per year "to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition." Care for a family member includes both physical and psychological care and making arrangements for changes in care. An employee may use FMLA leave intermittently or on a reduced leave schedule when medically necessary because of a family member's serious health condition.

Because the child's condition met the definition of "serious health condition", the DOL concluded that the parents' need to attend the IEP meeting to address the educational and special needs of that child is a qualifying reason to take intermittent FMLA leave.

**Practical Considerations:** This Opinion Letter serves as a reminder that "care" for a family member does not solely refer to medical treatment in the classical sense. Employers should be mindful of this Opinion Letter before denying leave to attend meetings at school to discuss any health related condition (i.e. an IEP or a Health Plan required under Section 504 of the Rehabilitation Act of 1973). In this Opinion Letter, the DOL was interpreting the federal FMLA, but the same rationale would apply to the state law (which relies heavily on federal interpretation). Effective January 1, 2022, the Connecticut FMLA will cover employers with at least one employee and will require FMLA to be paid.

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Robin Kallor is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including the selection process, discrimination and harassment related issues and frequently conducts neutral workplace investigations. If you have questions about this legal update, please contact us at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Jacqueline Smith, CIRMA Communications Associate at [jsmith@ccm-ct.org](mailto:jsmith@ccm-ct.org).

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