

## 3rd Cir.: FMLA Allows Employee to Correct Deficient Medical Certification

By Michael K. Ott 7/17/2015

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A terminated employee could pursue a Family and Medical Leave Act (FMLA) claim against her former employer for its failure to seek clarification of her medical certification and its failure to afford her the opportunity to cure defects in the certification, even though her medical condition had not been determined at the time she made the leave request, the 3rd U.S. Circuit Court of Appeals ruled.

Deborah Hansler was employed by Lehigh Valley Health Network in 2011. In early March 2013, she began experiencing shortness of breath and nausea. She sought medical treatment. At the time, her physician failed to provide a diagnosis because the cause of the symptoms was unknown. Her physician completed a medical certification for Hansler's leave, indicating that she would see him two times a week for approximately one month. However, because the nature of the illness was unknown, her physician failed to provide any information regarding her condition or its expected duration.



Hansler requested intermittent FMLA leave from her employer and provided the certification completed by her physician. Her request for leave was for a period of two days a week for approximately one month. Hansler failed to provide any additional information in the request related to the nature or duration of her condition. She later took five days off from work in March 2013, and her employment was terminated by Lehigh Valley for excessive absenteeism. Hansler was later diagnosed with diabetes.

The district court found that the request for FMLA leave was invalid because, at the time of the leave request, Hansler failed to provide any information that would indicate that it was an FMLA-covered leave. In addition, the lower court found that the request for treatment for a month on an intermittent basis was not “an extended period of time,” and, therefore, was not covered by the FMLA.

The 3rd Circuit reversed, finding that the FMLA does include a right to cure and imposes an obligation on the employer to provide the employee with notice of deficiencies in the medical certification. The court quoted U.S. Department of Labor regulations that state: “An employer shall advise an employee whenever the employer finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient.” The court found the need for a cure period to be paramount in this case, finding that “for an employee with an emerging condition the difference between a medical condition that supports leave and one that is deficient might be [determinable in] a matter of days.”

*Hansler v. Lehigh Valley Hosp. Network*, 3rd Cir., No. 14-1772 (June 22, 2015).

**Professional Pointer:** Employers should be cautious before terminating the employment of any employee who has requested FMLA leave and claims to be suffering from a yet-to-be-determined illness.

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