Lathrop GPM

BLOGS

Archives;Discrimination;Leave

Employers May Have Responsibilities in Connection with Employees Medical Conditions, But They Shouldnt Play Doctor

A helpful rule of thumb for employers trying to navigate compliance with the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and other laws affected by employees health or medical conditions, is to leave the diagnosing to doctors. Employers are obligated to provide leave where appropriate, or accommodations when needed, but an employer who tries to determine on their own whether an employee (or an employees family member) has a real medical issue, what the cause of that issue is, or what it will take to accommodate that issue, puts itself at higher risk of legal exposure.

What an employer should do in response to an employees request for medical leave or disability accommodations can be difficult to pin down. On one hand, having a consistent process and applying it consistently is a best practice. But on the other hand, if the process is flawed, or if rigid adherence to the process gets in the way of the employers responsibility to engage in an individualized determination where required, the process begins to work against the employer. To minimize risk and ensure that the employers process works for it rather than against it, it is helpful to keep the following in mind:

1) Leave the diagnosing to doctors

As already stated, an employer should not take on the responsibility of determining whether or how long an employee should go on a leave for medical reasons, or whether an employee has a disability. Instead, the employer should carefully review and consider what the employees health care provider has determined the employee needs.

2) For the most part, let the employee choose the health care provider who will provide supporting information and documentation

While there are some circumstances in which an independent medical examiner may be needed, it is generally helpful to let the employee choose his or her health care provider, and to allow that health care provider to furnish whatever information or documentation is needed to support the need for an employees medical leave and/or disability accommodation. If it turns out that the employees work restrictions preclude his or her ability to perform the essential functions of the position, the employee may not be qualified to continue in that position. In such circumstances, it is helpful for an employers action for example, to terminate employment to be based on the opinions of the employees self-selected provider, rather than a provider the employee perceives as biased in the employers favor. An employee may attack a purportedly biased medical opinion as pretext, something made up or trumped up to give the employer an excuse to take an otherwise unlawful action.

3) Be specific about what information the employer actually needs and what information it does not want from the employees health care provider

Time and time again, employers may ask for or a health care provider may give more information than an employer actually needs. This puts the employer in a difficult position. For one, some information (like an employees genetic information and health history) is off-limits under applicable law. Or an employer may get information about a separate medical issue that the employee has not disclosed, which could create a risk for a regarded as disabled claim. A helpful course of action is for the employer to provide to the *employee* correspondence intended for the employees health care provider, which specifies:

- The employees position and essential job duties;
- The specific circumstances giving rise to concerns about the employees safety, or the safety of other employees; or alternatively, the employees request for accommodations because of a health issue;
- The medical providers opinion on whether the employee has a medical condition that, with or without accommodations, could impact the employees ability to perform his or her job;
- The specific work restrictions applicable to the employee because of that medical condition, if any;
- The likely duration of any applicable restrictions; and
- Any accommodations that the medical provider would propose to enable the employee to perform the essential functions of his or her job.

What is missing from this list is an explanation of the employees diagnosis, or a recitation of the employees health history. That is the kind of information employers should be careful to avoid.

Well-meaning employers who are focused on doing the right thing and treating employees well may invite unnecessary legal risk if they try to do too much. It is the employers job to comply with leave laws and provide reasonable accommodation(s) that enable an employee with a disability to perform the essential functions of his or her job. The employer is responsible for engaging in an individualized, interactive process with a disabled employee to determine what accommodations could work. But it is not the employers responsibility to figure out whether an employee (or an employees family member) has a real medical issue, what the cause of that issue is, and what it will take to resolve the issue.