

Electronic Alert

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Oregon Legislature Passes Equity “Fix” Bill

By Josh Goldberg

On August 8, 2019, just in time for the start of the school year, a new United States Department of Labor (DOL) opinion letter extends FMLA protection to allow parents to take leave for meetings with schools about a child’s Individualized Education Program (IEP). The opinion letter explains that a parent who attends a required meeting for a child whose medical condition mandates an IEP is providing “care” as it is broadly defined by FMLA.

The parents who sought the opinion had two children with serious health conditions and a physician’s certification supported the need for leave to take the children to medical appointments. The therapy the school was providing had actually been pediatrician-prescribed. The purpose of the IEP meetings was, at least in part, to discuss the children’s progress and areas of concern with teachers, school administrators, and medical practitioners. The medical practitioners would include a speech pathologist, a school psychologist, occupational therapist and/or a physical therapist. Together, they evaluated doctors’ recommendations, reviewed any new test results, and made recommendations for additional therapy.

FMLA permits an eligible employee to take job-protected, unpaid leave “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.” Based on these background facts, the DOL concluded that the employee should have received leave, reasoning that FMLA provides leave to make “arrangements for changes in care” for the employee’s family. The DOL explained that FMLA protects leave because the employee “attends these meetings to help participants make medical decisions concerning [her] children’s medically prescribed speech, physical, and occupational therapy” and “ensure that [her] children’s school environment is suitable to their medical, social, and academic needs.”

The opinion letter does not extend FMLA leave to other academic or disciplinary school meetings because these meetings do not usually require the parent to make a choice about how to care for the child’s serious health condition; therefore, the new opinion is not likely to result in a flood of new leave requests. However, the letter makes clear that there need not be a doctor present at the IEP meeting for it to qualify for FMLA leave, so with this kind of employee request, it could be easy for employers to overlook that it is a type of medical leave.

In considering employee requests for leave to attend such meetings, it is fair to focus on the purpose of the meeting, whether it relates to medical conditions or decisions, and to ask the employee to provide a certification by a health care provider supporting this as a request for medically supported leave. Employers should also be mindful of whether the state equivalent of FMLA covers this leave and, if so, whether it may provide for paid leave.

For questions on leave requests or this new guidance, contact Josh Goldberg at jgoldberg@barran.com or 503-276-2107. Barran Liebman's Annual Employment, Labor, Benefits, and Higher Education Law Seminar on October 10th will also cover a variety of employment hot topics, including leave laws. Please [click here](#) for registration details.