

# FMLA Case Studies Calhoun Intermediate School District April 18, 2007

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# Why-Pay-More

- Why-Pay-More is a grocery store with 150 employees at 3 locations
- Joe Smith is a part-time cashier who began working at the store when he was in high school



# Joe

- During the summer of 2004, he worked 3 months as a bagger. He worked 3 months in the summer and also during the holidays in 2005. He now has been working as a part-time cashier for 7 months.
- On Monday Joe told you that he will need 3 months off to remove bunions from both his feet
- Surgery is scheduled 2 weeks from today

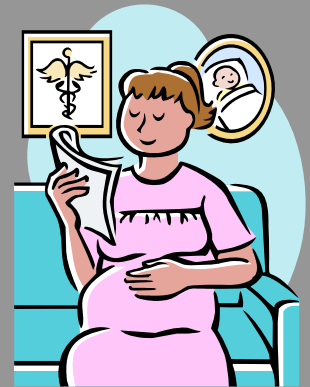
# Joe

- Is Joe eligible for FMLA leave?
- What if Joe has been employed full-time for the past 7 months?
- What if Joe has been employed full-time but has been taking intermittent leave due to pain from his bunions?



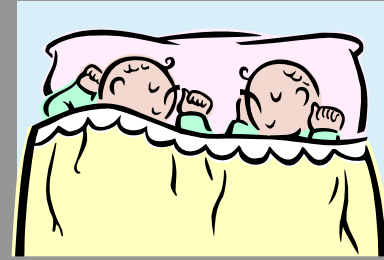
# Julie

- Julie has worked for you for 2 years. Julie is pregnant with twins and is due in April. Once a month, and on some occasions more often, Julie goes to her doctor for prenatal care and tests. Recently, she has been suffering from morning sickness and has been coming to work 1-2 hours late.
- Are any of these absences covered by FMLA?



# Julie

- On April 5, Julie gives birth to a boy and a girl
- You have been giving Julie notice throughout her pregnancy that the days she went to the doctor and came in late due to morning sickness were counted as FMLA days. Julie has used up a total of 3 weeks of FMLA leave before giving birth.



# Julie

- It is Julie's plan to remain home with the twins for 6 weeks after the birth
- How much FMLA does Julie have available?
- What if Julie needs money and decides to return after only 4 weeks? What if she doesn't return for 10 weeks?

# Julie

- Julie returned to work 8 weeks after the birth of her babies. Her attendance has not been very good since her return.
  - During week 1, Julie was absent 2 days because the babies had the sniffles.
  - During week 3, Julie missed 4 days because she had a cold. She did not go to a doctor.
  - During week 6, Julie missed 1 day to take her babies to the doctor, and 3 days to care for them. They were diagnosed with a viral infection.
  - During week 7, Julie missed 4 days because she caught the same viral infection.

# Julie

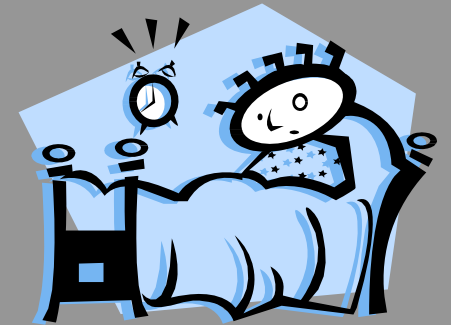
- Julie has just called to tell you her mother-in-law's in-home nursing care quit today and she has to take some time off to make new arrangements. Julie also missed work yesterday but did not give any reason.
- Which absences, if any, were covered by FMLA?
- Do you grant Julie's last request?

# Jim

- Jim has worked for your organization for 5 years and has a history of attendance problems
- Jim's supervisor just informed you that he has finally accumulated enough attendance points to result in discharge
- Upon reviewing the information, you notice that Jim had called in tardy 6 times, stating that he "had a bad night"

# Jim

- Do you want more information?
- Jim's supervisor informs you that the rumor is that Jim has sleep apnea, but Jim has never said that himself
- Has Jim provided adequate notice for FMLA leave?
- What if Jim had mentioned to his supervisor that he had sleep apnea?

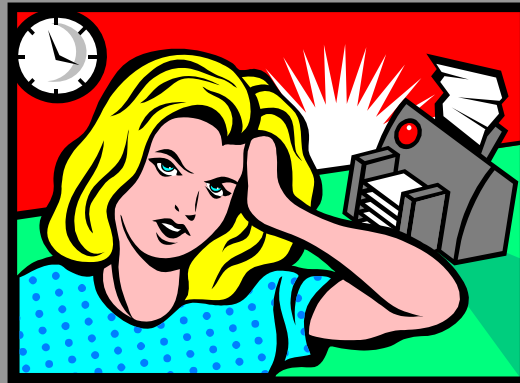


# Linda

- Linda is certified to take intermittent FMLA leave for stress and depression
- She requested to take PTO on the Friday before Labor Day, but her request was denied because other employees had already been approved for that same day
- On the morning of the Friday before Labor Day, Linda called her supervisor and told him that she was “taking an FMLA day.” She also states that she will be using PTO “as is her right under the FMLA.”

# Linda

- Linda's supervisor is furious.
- What do you tell her supervisor?
- Can you take any action against Linda?
- Do you have any larger concerns?



# Jason

- Jason requests FML for migraine headaches. He returns the medical certification form to you and you notice that the form appears to have been signed and completed by the nurse.
- Is that a problem?
- What do you do?
- What if you are told that the form was completed by the doctor but over the phone?



# Bob

- Bob works for ABC Company, which has a no fault attendance policy requiring termination at 10 points. ABC also has a call-in rule requiring 1 hour advance notice of absence/tardiness. Failure to call in results in a written warning and three warnings in 12 months = termination.

# Bob

- Bob has 7 attendance points and has called in late once. Bob calls in 30 minutes before his shift begins on Tuesday and says: “I’m sick and won’t be back until Monday. Send me the FMLA paperwork.”



- What should ABC do?
  - Eligibility
  - Sufficiency of notice
  - Send paperwork –  
require medical certification
  - Effect of late call-in



# Bob

- Bob is given a written warning for the late call-in and warned that a third will result in termination. Bob is also given an FMLA notice and medical certification form. Sixteen days later, Bob has not returned the medical certification form.

# Bob

- What should ABC do?
  - Right to delay FMLA leave
- When can Bob be terminated?



# Bob

You bring Bob in to tell him he is terminated for accumulating 10+ attendance points because he never turned in a medical certification form.

Bob is astonished. He thought his doctor was sending it in. He will call the doctor right now and is sure that the doctor will cover him.

# Bob

- Questions for Bob:
  - When did you give the certification to doctor?
  - Have you seen the doctor since?
  - Did you follow up?
- Terminate pending presentation of certification
- If doctor assumes responsibility, reinstate with no additional points

# Bob

- Bob is certified with chronic migraines
- Two weeks ago, he called in (on time) and said, “I won’t be in. FMLA.”
  - Last week, he told his supervisor two hours before the end of his shift, “I’m leaving. FMLA.”
  - Yesterday, all employees in Bob’s department were required to stay 2 additional hours. Bob told his supervisor, “Can’t stay. FMLA.”



# Bob

- What should ABC do?
  - Do not accept “FMLA” as sufficient explanation for why he needs to leave work
  - Supervisor can and should question Bob
  - Warn Bob about fraud / dishonesty
  - Consider recertification
  - Possible transfer to a different position
  - Enforce call in rules

# Jane

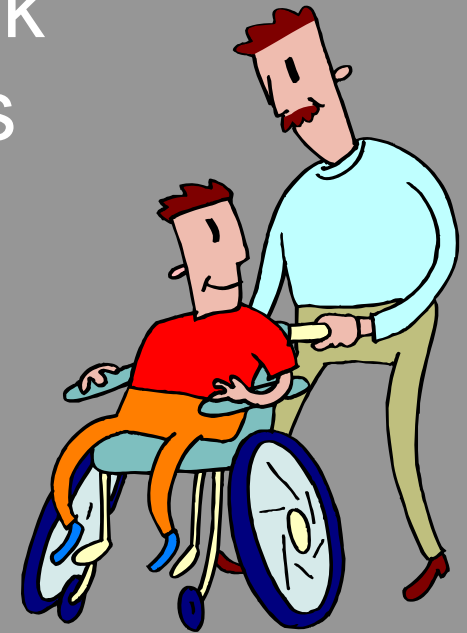
Jane is a full-time employee who normally works 40 hours per week. She has asked to reduce her schedule to 30 hours per week due to her MS.

- How much leave does she use each week?
- When will she exhaust her 12 weeks?
- What if she also began taking additional intermittent leave?



# Chip

Chip's schedule varies from week to week. Some weeks, he works quite a bit of overtime. Other weeks, he may only work 20 hours or so. He has now requested intermittent leave to care for his son with asthma.



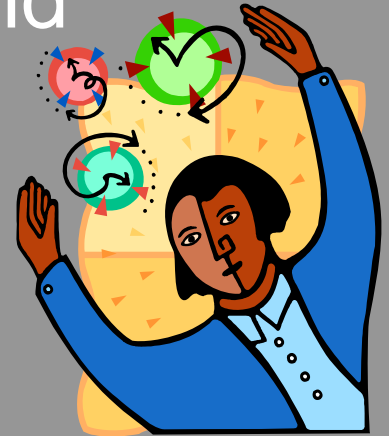
# Chip

- How much leave is Chip entitled to take?
- How will you calculate his intermittent usage?
- Can you count his missed overtime against his bank?



# Greg

- Greg's wife has cancer and Greg uses intermittent leave to care for her and drive her to appointments
- Greg also has his own health issues for which he is occasionally absent and even hospitalized
- Greg has also missed work because of his studies, which are his priority
- Greg has not requested FMLA for his own health issues



# Greg

- Which absences should be counted against Greg's FMLA leave?
- When Greg misses work because of his studies, can these absences be counted under the attendance policy and for disciplinary purposes?
- What if Greg's co-workers tell you that he has been bragging about using FML to take time off work to study?

# Frank

- In October, Frank began taking FMLA leave to care for his mother, who had suffered a stroke.
- During the time that he was off work, he periodically called his supervisor to check in.
- Frank told his supervisor that he would return to work if necessary, but his supervisor assured Frank that his family was more important and that he could take as much time as he needed.

# Frank

- In March, Frank's supervisor called you to ask when he could expect Frank to return to work.
- You look into the matter and realize that Frank had exhausted all of his FMLA leave back in January.
- What do you do?

# Frank

- Frank's supervisor informs you that he told Frank that Frank could take as much time off as he needed.
- Is that FMLA interference?
- Are there any other concerns?
- What if Frank's supervisor had been silent?
- How can we prevent this situation?



# Meet Adrena Linerush

- Adrena is an extreme sports fanatic. This past weekend she participated in the World Cup Invitational Motocross Championships.



While Adrena was favored to win the race unfortunately she did not finish. As the local newspaper reported, coming into the home stretch she was involved in a most “spectacular” crash that was the highlight of the tournament.

# Adrena Linerush Injured

- On Monday morning you learn that Adrena has broken her leg and will require surgery to repair it. She expects to be off of work entirely for six (6) weeks but then will return without restrictions.



# Adrena Linerush Has Surgery

- Adrena has the surgery. While originally scheduled to return after a six (6) weeks of leave she calls on the day before she is to return to tell you that her doctor wants her to stay off work for another two (2) weeks.



# Adrena's Work Restrictions

- Adrena finally returns to work after being on continuous leave for eight (8) weeks. Her doctor releases her with the following restrictions: no standing, walking, lifting, bending, or twisting. This restriction is to stay in force for another three (3) weeks. This substantially limits Adrena's ability to do her job as a floor supervisor in your factory.

# Adrena's Job Performance

- About two (2) years ago Adrena returned to work without restrictions
- Unfortunately, her work habits and in particular her attendance were never as good as they were before the accident
- She would take time off sporadically without notice and sometimes even failed to call in her absences
- She had been disciplined several times and you have set up a meeting with her to go over her attendance problem

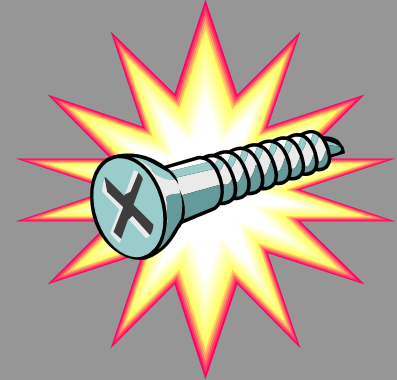
# Adrena's Job Performance

- Your intention is to inform her that if she has any more absences within the next six (6) months she will be terminated.
- Adrena comes to the meeting late, and before you get a word out of your mouth Adrena hands you a “doctor’s slip” restricting her to a forty (40) hour work week due to “stress and depression.”



# Adrena and Another Slip

- Adrena stops by your office and hands you another doctor's slip. It says that she has to have surgery next week because she has a "screw loose."
- Adrena explains to you that when she had her first surgery after the accident the doctor set her legs with screws. One of the screws has now come loose. She believes this has happened because of all of the walking she has to do on the job.



# Adrena's Inpatient Care

- Adrena has not shown up for work or called in for two (2) days
- Finally, her husband calls and says that she is in “rehab.” According to her husband she got “hooked” on the marijuana she had been smoking to alleviate the stress and depression.
- She will be off for at least two (2) weeks of inpatient care

# Adrena Supports Spouse

- After Adrena comes out of rehab she confides to you that her husband has been fighting a cocaine addiction since the early seventies. Since the rehab worked so well for her he thought he would give it a try.
- The therapist says that Adrena will need to take a substantial amount of time off from work during the next six weeks.



# Sally

When you hired Sally, you were aware that she had a chronic health condition which affected her muscle strength.

Several months following her date of hire, her health condition worsened, causing her to be tardy periodically.

# Sally

You maintained a flexible working relationship with her by changing her starting time and allowing her to work beyond the normal quitting time so as to complete her work.



Sally was an excellent performer and this employer / employee arrangement worked reasonably well for five years.

# Sally

- Sally's health condition worsened and she required more accommodation as time went by, thereby causing a staffing hardship in the department. Sally's manager contacted Human Resources about the situation and was advised to start counting Sally's tardiness toward FMLA.

# Sally

- Several weeks passed and Sally developed a new problem. She began experiencing wrist pain and frequently performed her work wearing wrist splints. She filed a workers' compensation claim for carpal tunnel, claiming the condition was brought on by her work and her chronic health condition. Sally continued to work despite this new complication.

# Sally

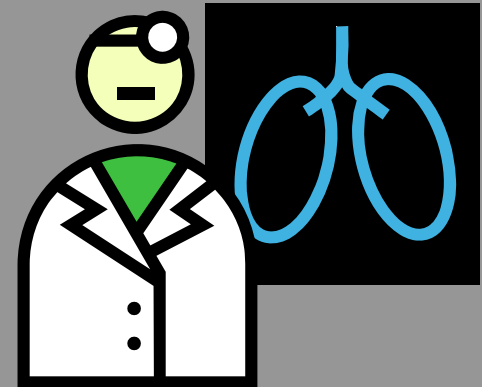
- Several weeks later she saw a specialist because she developed more new symptoms. The specialist's diagnosis was Epstein Barr Syndrome and Sally was placed on STD. She had eight (8) weeks of FMLA remaining at this point. When her STD benefits were exhausted she was placed on LTD and remained in this status for several weeks.

# Sally

- Sally's health subsequently improved and she signed a job posting for the same job classification she had previously held. Because of her qualifications, she was awarded the position and returned to work. A few weeks later Sally approached her manager stating that her carpal tunnel problem was getting much worse and she was no longer able to perform her job duties.

# Sally

- When should the first step have been taken and what should that first step have been?
  - Post offer / pre-hire complete physical – essential function analysis



# Sally

- What are the second and third items that raise legal concerns with regard to Sally's employment?
  - Family and Medical Leave Act
  - Americans With Disabilities Act

**ADA??**

**ADA??**

**FMLA??**

**FMLA??**

# Family and Medical Leave Act

- Sally is not eligible for FMLA because she has not worked 1,250 hours in the last 12 months



# Americans With Disabilities Act

- Accepting Sally's periodic tardies without taking any action, absent FMLA qualification, is evidence that tardiness may not cause you undue hardship
- Granting Sally the accommodation and allowing a change in start and end times creates a precedent
- Legally irrelevant that Sally was an excellent performer in determining what is a "reasonable" accommodation

- Set of legal issues caused by conditions worsening and the requirement for more accommodations:
  - FMLA issues
  - ADA issues
  - Workers' Compensation issues

# FMLA

- You are required to provide notice that it is counting time as FMLA – did that occur?
- You have the right to get medical certification of need for leave
- Failure to get medical certification and count as FMLA may negate your right to get medical certification at a later date
- Failure to count as FMLA provides Sally with argument that you cannot retro-actively count past tardiness against FMLA

# ADA

- No parameters set in original accommodation; therefore legally difficult to determine it was an undue hardship
- Law doesn't recognize increased complaints and concerns by department as an undue hardship
- Change in her condition may provide basis to discontinue / re-evaluation accommodation

# ADA

- Gradual increasing of flexibility without ever setting parameters gives Sally a good argument that accommodations are reasonable and that you can continue them indefinitely
- Even if Sally is disqualified because she can't perform, is re-assignment a reasonable accommodation?

# Workers' Compensation

- How should the workers' compensation claim for the carpal tunnel problem be handled now?

# Sally

What is the significance of Sally being placed on STD and how does that relate to ADA and FMLA?



# ADA

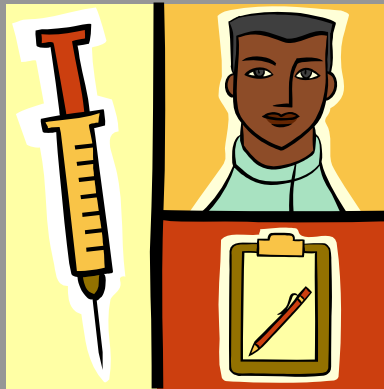
- It is the EEOC's position that exhaustion of STD does not necessarily equate to the point at which an employer can terminate employment
- Policy that is consistently applied will be of value

# FMLA

- Sally can be eligible for FMLA and not be entitled to STD benefits
- Broader access to medical records for STD benefits and more stringent medical controls
- FMLA can and should run concurrently with STD, workers' comp. and all other forms of leave
- You need well defined policies as to when employment rights will end and then in circumstances such as Sally's, case by case analysis before a termination decision is made
- 12-month rule

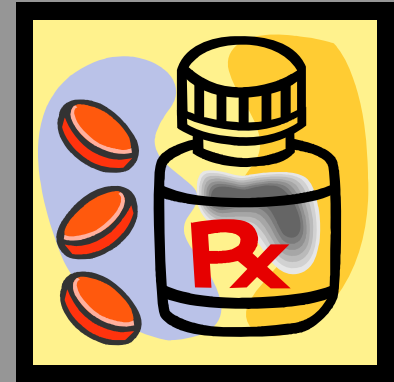
# Scott

- Scott is a nurse at First Hospital has presented you with a medical certification for intermittent leave due to migraine headaches



# Scott

- You seek a second opinion on the certification
- Although the second opinion confirms that Scott has migraine headaches, it also states that Scott is overmedicating himself with Vicodin
- The second opinion doctor believes that Scott's overmedication is making the migraine worse



# Scott

- In addition, the second opinion doctor states that Scott told him that he only has migraine headaches 1-2 times a month. Scott has been missing work for migraine headaches 1-2 a week.

# Scott

- Do you approve Scott's intermittent FMLA?
- Are there any parameters on Scott's intermittent leave?
- What other concerns do you have?

# Ida Wannawork

- Ida has worked for 3 years
- Over the last 6 months, your department has instituted mandatory overtime every other Saturday
- While nobody likes it, Ida has complained the most and has called in “sick” on a couple of the weekends she was scheduled to work

# Ida Wannawork

- On the Friday of an overtime weekend, Ida brought you a note from Dr. GP stating that she has “chronic stress and depression, cannot work more than 40 hours per week.” She asks for “the FMLA paperwork.”
- Ida was scheduled to work overtime the following morning and your department is short-staffed already because three other employees are also on medical or stress leave

# Ida Wannawork

- To accommodate her request for reduced schedule leave, you schedule Ida to work Tuesday to Saturday during the weeks you need her on Saturday. On the other weeks, she is scheduled Monday to Friday.
- Ida doesn't like this and has now finally turned in her medical certification form (30 days late). The form states: "chronic stress and depression, can only work 40 hours per week Monday through Friday." However, "Monday through Friday" appears to have been written in after the fact with a different pen.

# Ida Wannawork

- Dr. GP's nurse confirmed that the medical certification form is legitimate. While trying to find a physician willing to perform a second opinion, you schedule Ida to work Monday through Friday only.
- Last Friday, Ida did not show up for work and failed to call in. On Monday morning, Ida arrived to work 2 hours late.

# Ida Wannawork

- You call Ida into your office to tell her that she has exceeded the last step of the attendance policy and is going to be terminated.
- Ida tells you: “You can’t fire me. I’ve been stressed out and depressed because of the way that supervisor Tom treats me because of my medical problems. I could not come to work Friday and was barely able to get out of bed this morning. That’s FMLA.”

# Ida Wannawork

- You provided Ida with another certification form and you have put off terminating her employment pending return of the form
- You still have not located a physician willing to perform a second opinion for the first certification
- In the mean time, Ida has started calling in sick or showing up late once or twice a week (in addition to still refusing to work on Saturdays)
- Ida claims that these absences are due to her chronic stress and depression and covered by FMLA

# Ida Wannawork

- Supervisor Tom is screaming at you due to the department's inadequate staffing and enormous overtime costs. He has had it with Ida and "the other lazy, worthless FMLA freaks" and wants them fired now.
- Only twenty minutes ago, Ida handed you a medical certification form stating that she needs intermittent leave for her chronic stress and depression.
- What should you do?



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