

Labor Dept. Opinion Letter Says Certain School Meetings Qualify For FMLA Coverage

by Dennis J. Merley - Thursday, August 15, 2019



The DOL just issued an **Opinion Letter** stating that parents attending school meetings for individualized education programs for children with serious health conditions are protected by the Family and Medical Leave Act (FMLA).

The Opinion Letter responded to an employee whose children have qualifying medical conditions under FMLA. The employer had already approved her request for FMLA leave to care for the children and to take them to medical appointments.

School Meetings Include Health Practitioners

The children's health care provider prescribed occupational, speech, and physical therapy, all of which their school district provides. This brought the children under the ambit of the federal **Individuals with Disabilities Education Act** (IDEA) which requires public schools to develop an **Individual Education Plan (IEP)** for a student who receives special education and related services.

The children's IEP's called for periodic meetings to review their educational needs and progress. These meetings are attended by the school psychologist, occupational and/or physical therapists, school administrators and the children's teachers, all of whom work collaboratively to review progress under the IEP and make recommendations for additional care.

The Opinion Letter concluded that the employee's attendance at these periodic meetings regarding the children's special education and medical needs qualified for protection as

intermittent FMLA leave. Since the children clearly have a serious medical condition under the FMLA definition, the parent's attendance at the meetings constituted "care for a family member with a serious health condition." The Opinion Letter cited for support other instances where FMLA leave was approved under similar circumstances, including time to arrange changes in care, time to seek out appropriate care facilities and conferences designed to augment the employee's ability to care for a family member.

In this instance, the employee needed to attend these conferences to help the practitioners make medical determinations, to offer input on the children's progress and to make sure that the school environment was appropriate for her children's needs. The Opinion Letter specifically noted that the children's doctor did not have to be present to still consider these meetings as within the framework of care for a serious health condition.

Bottom Line

While DOL Opinion Letters do not have the force of law, they do demonstrate the Department's likely interpretation of similar fact patterns, and courts rely on the DOL's opinions when interpreting the Fair Labor Standards Act. Thus, employers should now strongly consider including IEP meetings as legitimate reasons for granting FMLA leave.

In addition, the Opinion Letter cautioned that it applied to any school meetings held pursuant to the IDEA, and any applicable state or local laws. It therefore seems fair to conclude that employers should consider granting intermittent FMLA leave for any school meeting involving establishing, reviewing and altering care plans relating to special education services offered to a child with a serious health condition.

Of course, in order for the employer to evaluate the FMLA status of these meetings, they should be clearly referenced within the health care provider's certification of the need for FMLA leave.