

Managing the Complex Web of Leave Laws

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Two recent federal court decisions and a new U.S. Department of Labor (DOL) "interpretation" are reminders that it is critical to not only analyze the right to family and medical leave separately under federal and state leave laws, but also to comply with both the letter and spirit of those laws.

In *Conteh v. Francis E. Parker Memorial Home Inc.*, Civil Action No. 10-5670 (D.N.J. April 15, 2011), Judge Peter Sheridan held that an employer may require an employee to provide a certification of a family member's serious health condition before commencing leave under the New Jersey Family Leave Act (NJFLA), but not under the federal Family and Medical Leave Act (FMLA).

Last year in *Schaar v. Lehigh Valley Health Services*, 598 F.3d 156 (2010), the 3rd Circuit held that a combination of expert *and* lay testimony can establish that an employee was medically incapacitated for more than three days, thereby triggering FMLA protection.

On June 22, the DOL issued an administrative interpretation (FMLA Opinion Letter 2010-3) clarifying the definition of *son or daughter* under the FMLA. The new interpretation grants leave rights to individuals who assume the responsibilities of a parent by providing day-to-day care or financial support for a child, regardless of whether there is a legal or biological relationship between the individual and the child.

Determining an employee's eligibility for family and medical leave can be challenging. The DOL interpretation and accompanying statement of Secretary of Labor Hilda Solis are a strong indicator that the DOL will interpret the FMLA to favor broad coverage. The court decisions in *Schaar* and *Conteh* indicate that employers may well face a jury trial if they deny FMLA leave for noncompliance with medical certification requirements that result in the termination of an employee. Prudent employers should carefully examine all of the facts and circumstances relating to a leave request and exercise caution when denying family or medical leave.

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