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QUIRKY FMLA COUNTING RULES: LIGHT DUTY

Oct 08, 2014

Recently, we began a discussion of "quirky" counting rules under the Family and Medical Leave Act ("FMLA"), starting with issues relating to overtime hours. Today, we continue the discussion by addressing the "quirky" counting aspects involved in the intersection of the FMLA and "light duty" work.

The FMLA regulations are clear that, if an eligible employee submits the required paperwork certifying the employee's need for leave due to a serious health condition, the employer cannot force or otherwise "coerce" the employee to instead accept a light duty position.

Of course, the FMLA doesn't preclude an employer from **offering** a light duty position, and if the employee's provider approves, there can certainly be benefits to both the employer and the employee of the employee returning to work as soon as possible.

Not surprisingly, when an employer offers, and an employee voluntarily accepts, a light duty assignment, the time spent working in the light duty assignment is not counted against the employee's 12-week FMLA entitlement. After all, the employee is working, not on leave.

Nonetheless – and here's the catch – during the period that the employee is working in the light duty position, the employee **remains protected by the reemployment rights under FMLA**. That is, the employee has an FMLA-protected right to be restored to his or her same position (or to an equivalent one), assuming the employee is able to perform the essential functions of the position. The regulations provide that this right to restoration while in a light duty assignment exists through the end of the 12-month period leave year used by the employer to calculate FMLA leave. How return to light duty work will impact benefits eligibility will need to be separately considered by reviewing the benefit plan documents.

Coming soon…. Quirky FMLA Counting Rules: Leave Prior to Eligibility

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