

PUBLICATION

Vegas and the FMLA: 7th Circuit Creates Split on FMLA Leave Issue

February 13, 2014

On January 30, 2014 the Seventh Circuit Court of Appeals held that an employee's trip to Las Vegas with her terminally ill mother qualified as FMLA leave, affirming the decision of the district court in *Ballard v. Chicago Park District*. By so holding, the Seventh Circuit split with the First and Ninth Circuits, upholding a more liberal interpretation of qualified FMLA leave than its sister circuits.

In *Ballard*, plaintiff Beverly Ballard was the primary caregiver for her mother, who had been diagnosed with terminal, end-stage renal heart failure. Ballard lived with her mother and provided her with care, including administering insulin and other medication, as well as bathing and dressing her. One of her mother's last wishes was to take a family trip to Las Vegas. A social worker helped secure funding and the trip was arranged. Ballard asked her employer, Chicago Park District, for unpaid leave to accompany her mother on the trip. The Park District denied her request. After Ballard went on the trip anyway, she was terminated several months later for her unauthorized absences accumulated during the trip.

Under the FMLA, eligible employees are entitled to 12 weeks of leave "in order to care for" a family member with a "serious health condition." 29 U.S.C. § 2612(a)(1)(C). In the district court, the Park District sought summary judgment, arguing in part that Ballard did not "care for" her mother in Las Vegas because she was already providing her with care at home and because the trip was not related to a continuing course of medical treatment. The district court disagreed, and the Seventh Circuit affirmed, finding that Ballard was "caring for" her mother during the trip as defined by the statute.

In so holding, the Seventh Circuit held that because the text of the FMLA used the term "care" rather than "treatment" it was inappropriate to read into the statute any requirement that care provided on a trip be related to a continuing course of treatment. Further, the Court reasoned that the FMLA's text "does not restrict care to a particular place or geographic region." Accordingly, the FMLA's coverage was not limited to care at home as opposed to away on trips. As to whether Ballard actually "cared for" her mother in Las Vegas, the Court pointed out that she had provided the same level of care she had provided at home. In addition, she took her mother to the hospital to pick up additional medication when a fire at their hotel prevented them from accessing the medicine they had brought with them. The Court found that was sufficient to constitute "care" as defined by the FMLA.

By its ruling, the Seventh Circuit split with the First and Ninth Circuits, which have held that travel unrelated to medical treatment is not covered by the FMLA. In responding to the Park District's argument that its decision could lead to employees' abuse of FMLA leave, the Court pointed out that employers always had the right to require medical certification, and emphasized the fact that its ruling was made in the context of a family member with a terminal illness.

In light of the Seventh Circuit's decision, employers should be aware that FMLA coverage may be expanding in this area.