U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

FMLA2019-2-A

August 8, 2019

Dear **Name***:

This letter responds to your request for an opinion on whether an employee may take leave under the Family and Medical Leave Act (FMLA) to attend a Committee on Special Education (CSE) meeting to discuss the Individualized Education Program (IEP) of the employee's son or daughter.[1] This opinion is based exclusively on the facts you have presented. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for use in any litigation that commenced prior to your request.

BACKGROUND

You represent that your two children have qualifying serious health conditions under the FMLA.[2] You state that your wife has received a certification from your children's doctors supporting your wife's need to take intermittent leave to care for your children and that her employer has approved her taking FMLA leave intermittently to bring the children to medical appointments. You state that your wife's employer has not, however, approved her request to take FMLA leave intermittently to attend CSE/IEP meetings.

You explain that your children receive pediatrician-prescribed occupational, speech, and physical therapy provided by their school district, and that four times a year their school holds CSE/IEP meetings to review their educational and medical needs, well-being, and progress.[3] You explain that these meetings include participation by "a speech pathologist, school psychologist, occupational therapist and/or physical therapist employed or contracted by the school district to provide services to the ... child under the child's IEP," as well as teachers and school administrators. These participants provide updates regarding your children's progress and areas of concern; review recommendations made by your children's doctors; review any new test

[1] The Individuals with Disabilities Education Act (IDEA) requires public schools to develop an IEP for a son or daughter who receives special education and related services with input from the child and the child's parents, teachers, school administrators, and related services personnel. Under the IDEA, "related services" include such services as audiology services, counseling services, medical services, physical therapy, psychological services, speech-language pathology services, rehabilitation counseling services, among others. *See* A Guide to the Individualized Education Program, U.S. Department of Education (July 2000), *available at* https://www2.ed.gov/parents/needs/speced/iepguide/index.html; *see also* 34 C.F.R. § 300.320 (defining an IEP).

[2] *See* 29 U.S.C. § 2611(11) (defining serious health condition).

[3] Your letter refers to these meetings as "Committee on Special Education (CSE)" meetings, but the analysis and conclusion in this opinion letter apply to any meetings held pursuant to the IDEA, and any applicable state or local law, regardless of the term used for such meetings.

results; and may make recommendations for additional therapy. You ask if your wife may use intermittent FMLA leave for the care of a child to attend these meetings.

GENERAL LEGAL PRINCIPLES

The FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider and provides, in relevant part, that an eligible employee of a covered employer may take up to twelve weeks of job-protected, unpaid FMLA leave per year "to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition." 29 U.S.C. § 2612(a)(1)(C); *see also* 29 U.S.C. § 2611(11) (defining serious health condition); 29 C.F.R. § 825.112–.115. Care for a family member includes "both physical and psychological care" and "mak[ing] arrangements for changes in care ...." 29 C.F.R. § 825.124(a)–(b).

An employee may use FMLA leave intermittently or on a reduced leave schedule when medically necessary because of a family member's serious health condition. *See* 29 U.S.C. § 2612(b)(1); 29 C.F.R. § 825.202. However, an employer may require an employee to timely provide a copy of a certification—issued by a health care provider and meeting certain criteria—supporting his or her request to take such leave. *See* 29 U.S.C. § 2613(a)–(b); 29 C.F.R. § 825.305–.306.

OPINION

Based on the facts you provided, your wife's need to attend CSE/IEP meetings addressing the educational and special medical needs of your children—who have serious health conditions as certified by a health care provider—is a qualifying reason for taking intermittent FMLA leave.

Your wife's attendance at these CSE/IEP meetings is "care for a family member ... with a serious health condition." 29 C.F.R. § 825.100(a); *see also* 29 U.S.C. § 2612(a)(1)(C); 29 C.F.R. § 825.112(a)(3). As noted above, "to care for" a family member with a serious health condition includes "to make arrangements for changes in care." 29 C.F.R. § 825.124(b). This includes taking leave to help make medical decisions on behalf of a hospitalized parent or to make arrangements to find suitable childcare for a child with a disability. *See Romans v. Michigan Dep't of Human Servs.*, 668 F.3d 826, 840–41 (6th Cir. 2012) (holding that an employee was entitled to take FMLA leave to join his sister at a hospital to make decision regarding whether to keep their mother on life support); *Wegelin v. Reading Hosp. & Med. Ctr.*, 909 F. Supp. 2d 421, 429–30 (E.D. Pa. 2012) (holding that an employee was entitled to take FMLA leave to find a daycare to care for her daughter with an autism spectrum disorder and a visual impairment); *see also Ballard v. Chicago Park Dist.,* 741 F.3d 838, 840 (7th Cir. 2014) (noting that the FMLA "speaks in terms of 'care,' not 'treatment'"). Additionally, an employee may "make arrangements for changes in care," even if that care does not involve a facility that provides medical treatment. *Wegelin*, 909 F. Supp. 2d at 430 (quoting 29 C.F.R. § 825.124).

This conclusion is consistent with existing WHD policy. In a previous opinion letter, WHD stated that an employee was entitled to take FMLA leave to attend "[c]are [c]onferences related to her mother's health condition," because her attendance at these conferences was "clearly

essential to the employee's ability to provide appropriate physical or psychological care" to her mother. WHD Opinion Letter FMLA-94, 1998 WL 1147751, at *1 (Feb. 27, 1998). Similarly here, it appears that your wife's attendance at IEP meetings is "essential to [her] ability to provide appropriate physical or psychological care" to your children. *Id.* Your wife attends these meetings to help participants make medical decisions concerning your children's medically-prescribed speech, physical, and occupational therapy; to discuss your children's well-being and progress with the providers of such services; and to ensure that your children's school environment is suitable to their medical, social, and academic needs. Your child's doctor need not be present at CSE/IEP meetings in order for your spouse's leave to qualify for intermittent FMLA leave.

We trust that this letter is responsive to your inquiry.

Sincerely,

Cheryl M Stanton

Cheryl M. Stanton
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).**