

## A Parent's Attendance at IEP Meetings Found to be Eligible for Leave Under the Family Medical Leave Act

By Karen Adinolfi

As covered employers under the Family Medical Leave Act (FMLA) are well aware, an eligible employee is entitled to up to twelve weeks of FMLA to, among other things, "care for" a child with a "serious health condition." While the term "care for" is easily interpreted in many situations, such as accompanying a child to chemotherapy sessions or conferring with a physician about a child who has been hospitalized, situations exist where the application of the term is not so clear.

The Department of Labor recently issued an opinion letter with respect to a situation that does not fall into the "easily interpreted" category. Children receiving special education and related services are entitled under the Individuals with Disabilities Education Act (IDEA) to, among other things, an Individualized Education Program. Public schools are required to develop an IEP for students with input from the child, the child's parents, teachers, school administrators, and related services personnel. Schools will typically schedule meetings throughout a school year to review the educational and medical needs of the child, the child's well-being, and his or her progress under the IEP. Are parents, who are eligible employees under the FMLA, entitled to FMLA leave to attend these meetings?

The Department of Labor, in its recent opinion letter, has said that yes, a parent's attendance at IEP or similar meetings that address the educational and special medical needs of the parent's child are covered by the FMLA. As such, provided that all of the other requirements of the FMLA are met, such as a medical provider's certification, a parent is entitled to take intermittent leave under the FMLA to attend such meetings.

The Department of Labor reached this conclusion by examining the applicable regulations as well previous interpretations of the term "to care for." The regulations accompanying the FMLA interpret "to care for" to include time "to make arrangements for changes in care." 29 C.F.R. § 825.124(b). Courts, including the Sixth and Seventh Circuits Court of Appeals, have interpreted this provision to allow leave for covered family members to make decisions about medical care and for parents to find a daycare for a child with an autism spectrum disorder and visual impairment. As such, attendance at an IEP meeting is similar in that it is essential for the employee to provide appropriate physical and/or psychological care to one's child. The Department of Labor specifically noted that a parent's presence at these meetings helps the participants make medical decisions regarding various prescribed therapies and ensures that the child's school environment is suitable to their medical, social, and academic needs. Notably, the Department of Labor specifically stated that the child's treating medical provider need not be present at these meetings to qualify them for FMLA leave.

Avoid falling into the trap of making a knee-jerk decision denying FMLA leave to an eligible employee just because it does not look or sound like something that is medically related. Consulting with counsel

on these types of situations will help you avoid an FMLA interference claim as well as an upset employee.

If you have questions, please contact any of the Roetzel attorneys listed attorneys.

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