



# **BUCKET LIST: PRACTICAL GUIDANCE FOR LEAVES**

**2015 Employment Law Conference - Session 5  
Case Studies**

**SESSION 5 —  
BUCKET LIST: PRACTICAL GUIDANCE FOR LEAVES**

**CASE STUDIES**

**Case Study No. 1**

Ms. Red Hood is employed by Forest Company as a receptionist. During her first three years, she has been a “satisfactory” employee.

In 2012, Ms. Hood’s husband passed away. Since then, her attendance has been “below standard,” and she often calls in to report her absences at the last minute. Ms. Hood has used all of her accrued sick and vacation leaves in the last three years and has had to use “unpaid” leave of approximately 40 hours in each of the last few years.

Ms. Hood has received verbal counselings and written reprimands, and the Company has decided to terminate Ms. Hood’s employment. When the HR Manager, Ms. Wolfe, meets with Ms. Hood to discuss her absences and termination, Ms. Hood tells Ms. Wolfe that she suffers from depression due to her husband’s death, and many of her absences are due to her depression. She also explains that some of her absences are due to her son, who has irritable bowel syndrome and cannot make it to school, so she stays home with him. Ms. Hood states that she has informed her supervisor that her absences are due to her depression and need to care for her son, but she continues to receive discipline for the absences which she does not believe is fair. Ms. Hood also states that the verbal counselings and written reprimands for attendance have and continue to “stress” her out, and she needs to leave work because she is not feeling well.

- 1) Can Forrester Company move forward with the termination?
- 2) What leave laws are implicated?

Later that afternoon, Ms. Hood sent an email to Ms. Wolf attaching a doctor’s note that says the following:

*Ms. Hood has been under my care for the last two years for psychiatric treatment. Based on my treatment, it is my assessment that she cannot interact with others. I request you accommodate these restrictions.*

- 1) Is the medical note sufficient? If not, what additional information does the HR Manager need, and how does she get it?
- 2) What should Forest Company do with Ms. Hood while it tries to obtain additional information from the doctor?

Ms. Hood is placed on a leave while the Company assesses her doctor's request. Despite a request for more information, her doctor states only that she has a serious health condition and that he expects her to get better in three months. The doctor advises that if the company cannot provide the accommodations in his previous note, Ms. Hood should be provided with a leave of absence.

- 1) What should Forrest Company do?

Ms. Wolfe contacts Ms. Hood to advise her that Forrest Company will provide her with a leave of absence and the leave will be administered under the FMLA/CFRA. Ms. Hood objects to the leave under FMLA/CFRA, claiming the company can accommodate her by having her do filing like the Company did for Blue Bonnet, another receptionist, when Blue Bonnet had a nose job and did not want to interact with others until she was fully healed. Ms. Wolfe advises Ms. Hood that she will look into the issue and get back to her.

- 1) Can Forrest Company require Ms. Hood to take leave?
- 2) Can Forrest Company require that Ms. Hood's leave be designated as FMLA/CFRA?

Forrest Company ultimately determines that it cannot accommodate Ms. Hood's work restriction and places her on a leave of absence. Ms. Wolfe sent Ms. Hood an email stating that Forrest Company could not accommodate Ms. Hood's restrictions of not interacting with others, and the Company was placing Ms. Hood on a leave of absence for three months as a reasonable accommodation of her condition.

- 1) What, if anything, is the email missing?

After three months, Ms. Hood is released to return to work by her doctor, and Ms. Hood returns to work. However, after working two weeks, Ms. Hood notifies Ms. Wolfe that she needs leave to care for her son and provides a doctor's note.

- 1) What leave laws are implicated?
- 2) Is Ms. Hood entitled to the leave?

## Case Study No. 2

Clark Kent has been employed by the Daily News Company as a maintenance worker for the last ten years. Clark's duties include the lifting of heavy trash bags, operating motorized equipment, and general maintenance tasks.

Last week, Clark injured his right shoulder at work. He filed a workers' compensation claim that was accepted. His workers' compensation doctor provided the following note:

*Range of motion, elevates to about 155, externally rotates to about 60 degrees, internally rotates to about the mid lumbar spine. Clark has a little bit of weakness in external rotation.*

*At this point, I would be hesitant to return him to work and I would like to preclude him from any heavy lifting and from operating the motorized floor waxer. I think it would be unwise to return him to work for at least 90 days.*

Daily News believes it has a light duty position to which it can temporarily assign to Clark until he is able to return to work in his regular position as a maintenance worker.

- 1) What leave laws are implicated?
- 2) Can Daily News require Clark to return to work in a light duty position?

Daily News provides Clark with a leave of absence under FMLA/CFRA. Clark exhausts his leave entitlement under FMLA/CFRA, and Daily News provides Clark with additional leave pursuant to the notes Clark provides to the Company from his workers' compensation doctor. After one year, an Agreed Medical Examiner in Clark's workers' compensation case determines that Clark has reached maximum medical improvement, renders Clark permanent and stationary, and issues the following permanent work restrictions:

*Clark is precluded from lifting or carrying more than 15 pounds and cannot use the motorized floor waxer.*

Daily News determines that the permanent restrictions preclude Clark from performing the essential functions of the position.

- 1) What should the Daily News do?

During the interactive process meeting with Clark, Clark states that he disagrees with the Agreed Medical Examiner's opinion and presents a note from his workers' compensation doctor that states:

*Clark may return to work, but is precluded from carrying more than 50 pounds and may operate the motorized floor waxer but not more than 4 hours a day.*

Clark tells Daily News that he has been treating with his workers' compensation doctor for over one year and the Agreed Medical Examiner saw Clark only one time for 20 minutes. Clark asks Daily News to honor his workers' compensation doctor's note and return him to work. Clark states that most trash bags that he lifts weigh less than 50 pounds and he has never used the motorized floor waxer longer than three hours in a single day.

- 1) What should the Daily News do?

### **Case Study No. 3**

The Director of Administrative Services for Happy Corporation has suffered a heart attack. He has been off work for one month, per his doctor's orders.

The HR Director has received a letter from his doctor today that states the following:

*Director's condition has stabilized and he can return to work in two weeks. He cannot work more than six hours in a day and must be provided breaks of ten minutes every hour. He also needs every Monday and Friday off for medical treatment. I will re-evaluate Director in three months.*

- 1) What leave laws are implicated?
- 2) Is assigning the Director of Administrative Services to an alternative position an option?
- 3) Are hourly deductions allowed for the Director of Administrative Services for the time taken off?