

Case Scenarios

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Breakout Session 12

**Navigating Route 66: Leaves Part
Two** The Intersection of Leave Laws

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NAVIGATING ROUTE 66: LEAVES PART TWO – THE INTERSECTION OF LEAVE LAWS CASE STUDIES

Case Study No. 1

Bella has worked for the County for six years as a receptionist in the Department of Information. Although her performance was satisfactory she frequently did not get along with her co-workers. Due to several recent incidents involving Bella and her co-workers, Bella's supervisor, Edward, issued a written reprimand for her failure to work as a team member. On February 28, Edward met with Bella and explained that she needed to improve her interpersonal skills or else she would be let go. Bella left the meeting crying and went home early. On March 1, Bella called out of work and told Edward that she was sick, depressed, stressed, and needed to go to the doctor. On March 2, Bella e-mailed Edward that her doctor provided her with a note stating that she needed to be off work until March 10, and Bella attached a copy of the doctor's note to the e-mail. Edward approved Bella's leave of absence.

- 1) What leave laws are implicated?
- 2) Is the medical note sufficient?
- 3) What is the County forgetting?

On March 10, Bella calls Edward and says that she has another doctor's note placing her off work until March 30. Bella sends an e-mail to Edward attaching the new doctor's note. The doctor's note only states that Bella is under the doctor's care and that she needs to be off work until March 30.

Edward informs Jacob, the County's Human Resources Manager, that Bella requested time off from work until March 30. On March 10, Jacob calls Bella and leaves a voicemail informing her that he is sending her the Notice of Eligibility, Rights and Responsibilities for FMLA/CFRA leave because her time off from work may qualify as FMLA and/or CFRA leave. Jacob requests that Bella have her healthcare provider complete the certification form, and return the certification form by March 25. Bella does not return Jacob's voicemail or return the certification form by March 25.

- 4) Can the County designate the leave as FMLA/CFRA?
- 5) Is the County obligated to provide Bella with additional time to complete the certification form?

On March 27, Jacob calls Bella notifying her that he has not received the certification form and requesting that she return the form by April 7. On March 30, Bella submits another doctor's note to Edward via e-mail placing her off work until April 15. Edward forwards the doctor's note to Jacob. On April 7, Jacob has not received any response from Bella and does not have her completed certification. On April 7, Jacob e-mails

Bella and explains his efforts to contact her and requests that Bella provide a completed certification form by April 15 in order to designate her leave of absence as FMLA and/or CFRA. On April 15, Bella has not returned the certification form and has not submitted a new doctor's note extending her time off from work. Jacob even asks Edward if he received any additional doctor's notes from Bella. Edward tells Jacob that he has not heard from Bella since March 30. On April 16, Jacob sends Bella a letter stating that the County assumes she voluntarily resigned from her employment since she has not submitted a new doctor's note and has not provided the requested certification form, so none of her time off from work was designated as FMLA and/or CFRA leave.

- 6) Can the County terminate Bella for failing to return the certification form?
- 7) Did the County have any obligations to contact Bella before terminating her employment?

On April 20, Bella receives the letter from the County and she immediately calls Jacob to explain that she sent an e-mail to Edward on April 14 attaching a doctor's note extending her time off from work and the requested certification form. Jacob explains that Edward never received her e-mail and regardless the County terminated her employment because she did not provide the information by the deadline.

- 8) Should the County rescind the termination since Bella claims that she provided the requested information before April 15?

Case Study No. 2

Snow White has been employed by Magically Delicious Apple Bakery (“Magically Delicious”) as a baker for the last ten years. Snow White’s duties include the lifting heavy bags of apples, decorating apples, operating commercial mixing machines, ovens, and other large-scale baking equipment.

Last week, Snow White injured her lower back at work. She filed a workers’ compensation claim that was accepted. Her workers’ compensation doctor provided the following note:

Snow White is unable to stand or sit for long periods of time, walk short distances, and she experiences weakness in her arms and legs.

Snow White should not return to work for at least four weeks. When Snow White returns to work she is restricted from lifting more than five pounds, and can only stand a maximum of four hours each day.

Magically Delicious tells its workers’ compensation insurance adjuster that it can provide Snow White with the four week leave of absence, but Magically Delicious has no shifts in which Snow White stands less than four hours in a day, and cannot accommodate Snow White’s lifting restrictions. Magically Delicious offers to provide Snow White with an additional leave of absence until she can return to work without restrictions. The insurance adjuster informs Snow White that Magically Delicious cannot accommodate her work restrictions and will provide her with additional leave of absence until she can return to work without restrictions.

- 1) What leave laws are implicated?
- 2) What has Magically Delicious Apple Bakery forgotten?
- 3) Can Magically Delicious Apple Bakery require Snow White take a leave of absence?

Snow White exhausts her leave entitlement under FMLA/CFRA and Magically Delicious provides Snow White with additional leave pursuant to the doctors’ notes. After six months, an Agreed Medical Examiner in Snow White’s workers’ compensation case determines that Snow White has reached maximum medical improvement, renders Snow White permanent and stationary, and issues the following permanent work restrictions:

Snow White is precluded from lifting or carrying more than 15 pounds and cannot stand for more than five hours in a day.

Magically Delicious Apple Bakery determines that the permanent restrictions preclude Snow White from performing the essential functions of the position.

- 4) What should the Magically Delicious Apple Bakery do?

During the interactive process meeting with Snow White, Snow White states that she disagrees with the Agreed Medical Examiner's opinion and presents a note from her workers' compensation doctor that states:

Snow White may return to work, but is precluded from carrying more than 50 pounds and can stand for 8 hours in a day so long as she has ten minute rest breaks once every two hours.

Snow White tells Magically Delicious Apple Bakery that she has been treating with her workers' compensation doctor for over one year and the Agreed Medical Examiner saw Snow White only one time for 20 minutes. Snow White asks Magically Delicious Apple Bakery to honor her workers' compensation doctor's note and return her to work. Snow White states that most bags of apples she lifts weigh less than 50 pounds and she already receives ten minute rest breaks once every two hours.

- 5) What should the Magically Delicious Apple Bakery do?

Case Study No. 3

Aurora has been employed by Happy Corporation for a year and a half. Six months ago, Aurora was diagnosed with a heart condition. Aurora has not informed anyone at work about her heart condition and she takes medication to treat the heart condition. The medication sometimes causes Aurora to be dizzy and have extreme nausea, which prevents Aurora from driving and being able to work. As a result, Aurora is unexpectedly late to work, may have to leave early, or is absent for the day. Aurora often does not call in before the start of her shift to let Happy Corporation know that she will be late or absent and she provides no advance notice that she needs to leave early from her shift.

- 1) What leave laws are implicated?
- 2) Can Happy Corporation discipline Aurora for her tardiness and attendance?

Aurora's supervisor, Flora, issues a disciplinary warning to Aurora each time she is late, absent, or leaves early from work without advance notice. When Flora issued the most recent disciplinary warning, Aurora informed Flora that she has heart condition and that her tardiness and attendance problems are due to the medication she takes to treat her heart condition. During this meeting Aurora, requested that Happy Corporation provide as a reasonable accommodation an unspecified number of unexpected absences.

- 3) What should Happy Corporation do?

Happy Corporation explains to Aurora that it cannot accommodate her unexpected absences, tardiness, or leaving early from work because it places a significant strain on Happy Corporation's operations. Accordingly, Happy Corporation request more information from Aurora's doctor. Aurora's doctor states Aurora can work four hour shifts and she should be scheduled in the afternoon as an accommodation for her serious health condition. Aurora's doctor expects these restrictions to last for the next six months.

- 4) Does Happy Corporation have to provide Aurora with a part time schedule she requested?

As an accommodation, Happy Corporation reduces Aurora's shifts from 8 to 4 hours and only schedules her in the afternoons. However, Aurora is still late and absent from work without notifying Happy Corporation in advance.

- 5) What should Happy Corporation do?

Aurora's co-workers, Fauna and Merryweather, are frequently late without contacting Happy Corporation in advance. Flora does not discipline Fauna or Merryweather for arriving late without contacting Happy Corporation. However, Flora issues a final disciplinary warning to Aurora for arriving late to her shift without calling in advance.

- 6) Can Happy Corporation discipline Aurora when it does not discipline Fauna and Merryweather for the same types of policy violations?

Case Study No. 4

Dorothy works as a level I cable installer for Oz Cabling. Dorothy works with a crew of five other cable installers with various levels of experience. Dorothy has worked as a level I cable installer for three years without any performance issues or reasonable accommodation. Due to Dorothy's increased experience, she spends the majority of her day measuring and cutting cables and connecting those cables. This past month Dorothy contracted a bronchial infection, which aggravated her asthma. As a result of Dorothy's bronchial infection Dorothy needed three weeks off from work. Glinda, the Human Resources Manager for Oz Cabling, approves Dorothy's three weeks off from work.

1) What leave laws are implicated?

At the conclusion of the three weeks, Dorothy's doctor releases her to return to work with the work restrictions to stay away from dust and not engage in heavy exercise. In order to determine whether Oz Cabling may offer Dorothy a reasonable accommodation, Glinda reviews the job description for level I cable installer. The essential functions of the level I cable installer are as follows:

- Erect and align iron equipment frames
- Demolition of previous iron equipment frames
- Heavy exertion, including repeated trips up and down ladders and scaffolding
- Frequent lifting and carrying of equipment weighing more than 25 pounds
- Use of power tools above shoulder level
- Measure and cut cable
- Run cable between various equipment frames
- Wire cables together, which requires manual dexterity
- Testing cables after installation to ensure cables are connected and working properly

Glinda has never been to the worksite and has never seen Dorothy perform any of her duties. Glinda did not speak to Dorothy's supervisor about Dorothy's work restrictions. Based on the job description, Glinda thinks it is an essential job function for Dorothy to engage in heavy exercise and some essential functions will expose Dorothy to dust. Glinda determines that there is no reasonable accommodation that Oz Cabling may offer Dorothy to assist her in performing the essential functions of the position. Glinda

informs Dorothy of her determination. Dorothy explains to Glinda that only a small part of her job duties consist of heavy exercise and exposure to dust. Dorothy requests as a reasonable accommodation a paper mask and a minor reassignment of job duties so she would not be required to lift more than 25 pounds.

- 2) Why is it important to determine the essential functions of the position?
- 3) What should Glinda do?

Case Study No. 5

Brutus has worked for Caesar Corporation as a clerical employee for the past ten years. Recently, Brutus' son, Marc Anthony, was diagnosed as autistic. Marc Anthony's autism causes him to be aggressive and makes it difficult for Brutus to find a day care center to care for Marc Anthony. Brutus' mother-in-law cares for Marc Anthony four days a week and for the remainder of the week Brutus has to be home to take care of Marc Anthony. Brutus requests to telecommute one day a week to care for Marc Anthony.

- 1) What leave laws are implicated?
- 2) Does Caesar Corporation need more information?
- 3) Do any of the leave laws require Caesar Corporation to permit Brutus to telecommute?

Brutus submitted a Family and Medical Leave Certification Form from Marc Anthony's health care provider stating that Brutus is needed to care for Marc Anthony's serious health condition. Caesar Corporation agreed to let Brutus telecommute one day a week, and if Brutus is unable to work due to him taking care of Marc Anthony, Caesar Corporation will count the time off against Brutus' FMLA/CFRA leave entitlement.

For the next year and a half, Caesar Corporation permits Brutus to telecommute one day a week. There was no issue with Brutus' performance and telecommuting. However, Caesar Corporation started experiencing financial troubles and decided to eliminate telecommuting for all employees and require employees to work forty hours a week, eight hours each day in the office. Caesar Corporation's Human Resources Manager notified Brutus that he will no longer be able to telecommute starting the following workweek. Brutus frantically explains that he cannot find alternative arrangements for Marc Anthony.

- 4) Can Caesar Corporation require Brutus to work forty hours each week, eight hours each day?

The following week Brutus is unable to find a day care center for Marc Anthony. Caesar Corporation's Human Resources Manager told Brutus that if he was absent he would be considered a "voluntary quit." Brutus was absent on Wednesday of that week to care for Marc Anthony. Caesar Corporation's Human Resources Manager terminated Brutus and processed his paperwork as a "voluntary quit."

- 5) Can Brutus use FMLA/CFRA leave to watch his son when daycare is unavailable to him?

Case Study No. 6

Alice works as a paralegal in a small law office. Alice has worked in the law office for 5 months. In February and March, Alice called in sick three times, and each time was on a Friday. David, a partner at the firm, thinks that Alice might not be sick on the Fridays she called out. In April, Alice calls out sick two times, both on a Monday. For the two absences in April, Alice provided David with a doctor's note. Although Alice provides a doctor's note, David is frustrated with Alice always calling out sick on Fridays and Mondays because he thinks she is taking long weekends. In May, Alice calls out sick on a Wednesday. David meets with Alice and gives her a written disciplinary warning that she has too many absences and her absences frequently occur either Friday or Monday.

- 1) What leave laws are implicated?
- 2) Is there anything that David can do to verify Alice's absences?
- 3) What are the risks associated with disciplining Alice for calling out sick on Fridays and Mondays?

In June, Alice calls out sick on a Friday. When Alice returns to work on Monday, David issues Alice a final written warning. The final written warning states, that Alice must have regular and consistent attendance or else the law office will terminate her employment. In September, Alice is absent again. When Alice returns to work, David tells Alice that he is terminating her employment because of her absences.

- 4) What are the risks associated with David terminating Alice for her absences?