Does the FMLA cover leave after a relative dies?

The FMLA seems straightforward in theory, but in real life, it’s full of tricky and delicate nuances. For example, what happens upon the death of a relative for whom an employee on FMLA leave has been providing care? How does compassion square with the law’s requirements?

Consider this scenario, which an HR Specialist reader recently posed:

One of my employees has been out on FMLA leave for seven weeks taking care of his sick father in another state. The leave was approved for a full 12 weeks. I received a voice mail from him saying that his father died. He also said that he had to clear up a lot of things with his father's estate, but that he would be back by the end of his scheduled leave. Can he do that or can I tell him he needs to come back sooner?

It sounds as if the employee quite naturally feels like he is entitled to take the full 12 weeks of leave. However, the FMLA only requires employers to provide leave for time spent caring for a parent or child because of the person's serious health condition, not time spent in bereavement or wrapping up the affairs of someone who dies. The courts have been consistent in upholding that distinction. (See, for example, Brown v. J.C. Penney Corp., 924 F. Supp. 1158, S.D. Fla., 1996)

If you have a bereavement-leave policy, the additional time could be counted against that leave, but it's unlikely that would be an additional five weeks. So, you should inform the employee that the time following his father's death isn't covered by the FMLA and either require that he return earlier or agree to some other form of leave.

This is one of the many times in which employers have the difficult task of balancing their legal right to act (obviously sympathetic to the employee's circumstances) and the need to be consistent in how such situations are handled for all employees, not just this particular one.

Note: Be sensitive to the fact that an employee who has lost a parent or child may be entitled to FMLA leave to deal with their own serious health issues that might accompany the grieving process.

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