

Death of the 'Mailbox Rule'? Rethink the Way You Send Your FMLA Notices



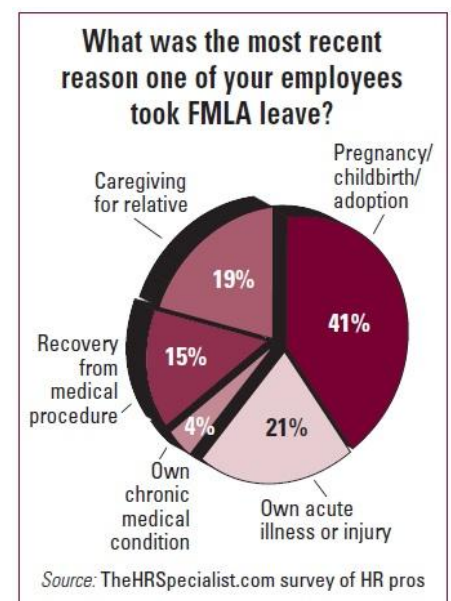
Typically, courts have recognized the “mailbox rule,” in which documents sent by regular postal mail are assumed to have reached the designated person. But a new federal appeals court ruling is making employers question whether sending FMLA notices via regular mail is still acceptable.

The case: A college employee was terminated after not returning after her 12 weeks of FMLA leave. The employee argued that she never received FMLA notices, which the college sent via USPS mail. She sued.

The issue came down to whether or not she received the notices. FMLA regulations don’t require the notices to be sent in any particular way.

The court said certified mail gives a “strong presumption” of receipt by the addressee. Regular mail gives a “weaker presumption.” Surprisingly, the court essentially said that a letter sent via regular mail is not considered delivered if the addressee says she didn’t receive it. (*Lupyan v. Corinthian Colleges, Inc.*, 3d Cir.)

Result: The employee’s denial that she received the FMLA notice gave her the green light to take her case to a jury. The court’s reasoning:



“It is certainly not expecting too much to require businesses that wish to avoid a material dispute about the receipt of a letter to use some form of mailing that includes verifiable receipt when mailing something as

important as a legally mandated notice. The negligible cost and inconvenience of doing so is dwarfed by the practical consequences.”

The impact: In states covered by this court (Delaware, New Jersey and Pennsylvania), employers would be wise to send FMLA notices by certified mail or some other delivery service with a tracking service (overnight or two-day delivery service). If possible, hand delivery with a signed acknowledgment of receipt is your best option.

Even if you aren't in these three states, a tracked-and-verified mailing method would still be a wise move. Reason: You can expect lawyers in other states to pounce on this ruling and encourage their employee clients to claim the I-never-received-the-notice excuse.

What about email? Workers can also claim they didn't see an email message or that it was filtered into their junk/trash folder. If you plan to use email as a means to send FMLA or other important documents, first get employees' written permission. Then electronically track whether the document was opened.

Final tip: This lawsuit could have been averted if the college had stayed in contact with the employee while she was out on leave. Also, the college failed to have an interactive discussion with the employee as her FMLA was ending. An ADA accommodation may have required that she be given additional time off—not a pink slip.