



FMLA Family Medical Leave Act

Nov 3, 2011

Dear Member

It has come to my attention that the city has been requiring our members to participate in the FMLA Family Medical Leave Act. There has been many questions posed to the leadership and many are very concerned about this issue. I have asked our attorneys on several occasions their opinion on the FMLA. Below is an e mail from our Attorney Alan McDonald on this matter. There is also the pertinent part of the FMLA law as well. I hope this will help answer any concerns and questions and concerns you may have. If you have further questions please forward them to me or the webmaster and we will do our best to answer them.

Thank you

In Unity There is Strength

Ed Halloran SMEA President

Ed,

The ability of an employer to transfer an employee to another position after return from an FMLA leave or beyond is as I have indicated, not unlimited. Rather, that return is still subject to rights that employees may have under contract or state law to return to the position they bid on and previously held. Historically, our members have had the right to return to their former position regardless of the length of absence on a medical leave (at least as long as they had sick leave to cover their absence) and passage of the FMLA has not changed that. Below, I have pasted the relevant language from the statute that makes clear that an employer is limited in its rights under the FMLA regarding placement in any alternate position by protections in a contract or state law (which would include the protections against unilateral change in practice under Chapter 150E). In fact, that is why the City retreated from its threat to charge one of our members on FMLA the full cost of health insurance when their leave exceeded 12 weeks, a right

it had under the FMLA but not under our contract or 150E rights. As you will recall, when I challenged the City it backed down and continued to pay its contractual share.

Here is the text of the FMLA in relevant part:

Under 29 CFR § 825.204 (**Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave**) is the following language at section **(b) Compliance**:

(b) *Compliance*. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

If you have any further questions, please let me know.

Alan