

FMLA: Caring for an Adult Child

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Practices: Employment, Labor & Benefits

Recently, the United States Court of Appeals for the Seventh Circuit reminded us that the Family and Medical Leave Act ("FMLA") provides eligible employees with time off in order to care for adult children who are incapable of self-care. *Gienapp v. Harbor Crest and Myra Chattic*, No. 14-1053, June 24, 2014.

Suzan Gienapp worked for a residential nursing facility. In January 2011, she informed her employer that she needed to take FMLA leave in order to care for her daughter, who was undergoing cancer treatment. The FMLA provides eligible employees of covered employers with up to 12 weeks of unpaid leave annually to care for children with a serious health condition. Her daughter was an adult, married and had children of her own. Among other arguments, her employer argued that she did not qualify for FMLA leave because her "daughter" was not a "daughter" as that phrase is defined in the regulations.

According to the FMLA regulations, "Son or Daughter" means, *"a biological, adopted, or foster child, a stepchild, a legal ward, or a child of person standing in loco parentis, who is (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability."*

Her employer argued that the daughter did not qualify as a "daughter" under the regulations because she was married and because Gienapp was no longer "standing in loco parentis." The Court rejected this argument and found that the definition of "daughter" in the regulations was met because she was over 18 years of age and incapable of self-care because of a physical disability. In addressing the employer's argument that the employee was not entitled to FMLA leave because her daughter failed to meet the definition, the Court stated that the employer "does not want us to apply the full statutory definition," and went on to note that the word "or" is used in the regulation, which means that Gienapp does not need to meet "all of the possibilities" in the regulation. Instead, the Court held that "[a]ny biological child is treated as a son or daughter" if either the age condition or the disability condition is satisfied.