Dual role of caregiver and employee: Know your rights

By Alan Lescht

Your right to take time off to care for your own serious health condition or the serious health condition of your immediate family is undeniable. However, requesting time off under the Family and Medical Leave Act to care for a personal illness or to assist a relative in need may present a few challenges.

First, there are privacy issues. Some people may refrain from requesting leave because they do not want their manager or co-workers to know about their private health issues. While the Privacy Act requires that managers keep health information private, it does not always work out that way. For example, our law firm had a case in which an employee took leave for a very serious health condition. Her manager, when asked by members of the team why she was out, disclosed the reason, thinking that the co-workers would want to know and show their support. However, the employee was mortified that her co-workers found out about her personal business, and could not face going back to work in that department.

Second, people often fear that if they request leave their manager will perceive them as undependable. There are cases in which people on FMLA leave have been labeled absent without leave, or in evaluations have been characterized as having missed deadlines or been less productive than their co-workers who have not taken leave. On this point the law is clear: Managers are prohibited from using leave taken under the FMLA against an employee.

The types of leave available to you under the FMLA are flexible. You can take time off in a block of days, or you can take it intermittently, a day here, a day there, or even an hour here and an hour there. The time you take need not be solely related to convalescing. You are entitled to take time to visit your doctor, take your family member to the doctor, and care for family members who are unable to care for themselves.

Moreover, the time off available to you extends beyond days here and there. You are entitled to modify your work schedule or job if that is what is required to accommodate your needs. That is, if you need to take your mother to her doctor every morning and cannot make it to work until 10:00 a.m., you may request that your schedule be modified to accommodate the leave you need to take.

Now for the legalese:

- To be eligible for these protections and benefits, you must work for a covered employer—like the federal government—and have worked for that employer for at least 12 months, and for at least 1,250 hours.
- The FMLA provides up to 12 weeks of leave to care for a family member with a serious health condition as defined by the Act. The leave granted may consist of unpaid leave or appropriate paid leave if you have earned or accrued it. You do not have to take the leave all at once. Instead, you can take intermittent leave or work on a part-time basis. Examples of intermittent leave include leave taken on an occasional basis to take your family member to medical appointments, or leave taken for several days to care for a family member who is undergoing medical treatments. You can also work a reduced schedule.
- When you return from leave, your employer must return you to the same or equivalent position. An equivalent position means a job that is virtually identical to your former position. It must involve the same or substantially similar duties and responsibilities with equivalent pay, benefits and working conditions.
- The FMLA prohibits your employer from interfering with your rights under the Act. An employer interferes with your rights not only when it denies you leave, but also when it discourages you from using leave. The FMLA also prohibits your employer from retaliating against you for opposing any practice that is unlawful under the Act. Employers that violate the Act are liable for damages.

As in every case, if you believe your employer has violated the FMLA, you should contact an attorney experienced in employment law.

Alan Lescht has been successfully litigating employment discrimination, civil rights, and commercial litigation cases for more than 23 years. He is a founding partner of Alan Lescht & Associates, PC, where he oversees the firm's employment litigation and counseling practices. For more information on the firm, go to www.dcemploymentattorney.com.