

FMLA LEAVE CAN BE INVOLUNTARY

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The Family and Medical Leave Act (FMLA) allows eligible employees 12 weeks of unpaid leave each year for serious health conditions making the employee unable to perform his or her essential job functions. Regulations interpreting and supporting the FMLA indicate that it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying. It is also the employer's responsibility to inform the employee of that designation.

Recently the Fifth United States Circuit of Appeals pointed out that it is not contrary to the FMLA's purpose for an employee to be placed on FMLA leave even without the employee specifically requesting such leave. Willis v. Coca Cola Enterprises, Inc.,-- F.3d. --, 2006 WL 827359, C.A.5 (La.), 2006. Although an employer can designate the time off as FMLA leave, both employers and employees should understand that not every complaint of sickness will be sufficient as notice of need for FMLA leave. The employee must provide his or her employer of at least some indication of a serious health condition. The Court stated in Willis that an employer can count an absence for sickness or injury as an FMLA absence, even without a request from the employee to count it as such. As long as the employer is a "covered" employer and the employee is eligible for FMLA leave, and the reason for the absence meets one of the conditions set forth in the FMLA as a "serious health condition," the employer may designate the leave against the employee's 12 week entitlement.

As long as the employee is eligible for FMLA leave, the court found that it is immaterial whether it is the employee or the employer who initially triggers the designation of the leave as FMLA. The requirement that the employee provide information of a "serious health condition" remains unchanged.

The FMLA claim in Willis was dismissed by the lower court and upheld by the appellate court because the employee specifically testified that she had not told her supervisor that her illness was caused by pregnancy complications. Based on that testimony, the court determined that insufficient information was provided to the employer to allow the employer to determine that Willis's condition was "serious." Therefore, the leave was not a qualifying leave under FMLA.