

CLIENT NEWS BRIEF

Employer May Request a Medical Reevaluation After an Employee Returns from FMLA Leave

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After a physician approves an employee's return from leave under the Family Medical Leave Act (FMLA) (29 U.S.C. § 2601 et seq.) and the employee returns to work, may the employer request a medical reevaluation? In *White v. Los Angeles County* (April 15, 2014, __ Cal.App.4th __ 2014 WL 1478701), a state court of appeal held that an employer may request a medical reevaluation after the employee has been reinstated to work.

In *White*, Susan White was employed as an investigator for the Los Angeles County District Attorney's Office (DA). Ms. White became severely depressed and needed medication for her condition. Around the same time, Ms. White began having sporadic outbursts and exhibited unstable behavior. Ms. White was asked to testify in a case regarding an investigation she had participated in. While on the stand, Ms. White was asked why her testimony differed from other witnesses. In response she angrily yelled, "They are liars!" The defense attorneys called Ms. White to testify a second time and were able to prove that her testimony contained significant factual errors. They subsequently filed a personnel complaint alleging perjury and the filing of false reports. Due to her severe depression, Ms. White requested leave under the FMLA, which the DA approved.

An employee is entitled to reinstatement from FMLA leave upon certification by a medical professional. After an employee returns from FMLA leave, any medical examination must be job-related and for a business necessity. Upon her return to work, the DA placed Ms. White on paid administrative leave in order to conduct an administrative investigation of her allegedly perjured testimony that occurred prior to her FMLA leave. More than four months after her return to work, the DA ordered a medical reevaluation due to Ms. White's erratic behavior prior to her leave of absence.

The court in *White* found that Ms. White's placement on paid administrative leave constituted a return to work. Furthermore, the DA's post-return medical reevaluation was permissible because "a bright line exists at the employee's return to work." The court reasoned that "the FMLA should be interpreted to render the employee's health care provider's opinion conclusive on the issue of whether the employee should be immediately *returned to work*, but to permit the employer to thereafter require a FFDE (fitness for duty examination), if it has a basis to question the employee's health care provider's opinion."

The holding in *White* is consistent with other employee leave laws. For example, a certificated employee is entitled to reinstatement in the same position held after a leave of absence pursuant to Education Code section 44973. Also, under Education Code sections 49978.1 and 45192, an employee placed on a reemployment list is entitled to return to employment, with certain limitations, if they become medically able within the applicable 24 or 39 month period. Unlike the FMLA, neither of these statutes directly address whether an employer may require a medical evaluation prior to an employee's return to work. When considering whether to require an evaluation prior to a return to work, courts may deem this decision to be persuasive authority on the issue. It should be



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noted that collective bargaining agreements may also govern an employee's rights upon returning to work.

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