

## EMPLOYERS LEARN A LITTLE MORE ABOUT FMLA



Every employer has had questions about the FMLA (Family and Medical Leave Act) and how to enforce policies concerning employees' reasons for leave. Bradd N. Siegel, from the Porter Wright firm in Columbus, OH, and an editor at *Ohio Employment Law Letter*, recently spoke at the Advanced Employment Issues Symposium in Nashville, TN. He specifically discussed difficulties in comprehending employers' guidelines for FMLA leave. In an interview conducted after the symposium, Siegel stated that his "objective was to help the audience understand what they don't understand about the regulations." Siegel provided some details of his presentation, in which he answered questions that employers may have. For instance, employers should allow a minimum of 15 days for an employee to turn in a medical certification for leave. If there is a notice of deficiency -- meaning that perhaps the medical certification is in any way insufficient -- employers should allow a minimum of seven days for a response. Siegel further stated, in relation to the time limits, "there's a practicability... qualifier." The allowance of time may vary from each individual employee depending on the circumstance. This also applies to the issue of charging employee "attendance points" when said person is late at getting certification to employer. Another issue discussed in the interview was intermittent leave, as Siegel cited "an interesting dichotomy between return to work certifications for non-intermittent versus intermittent leave." Intermittent FMLA leave, or "reduced leave schedule," is typically used when an employee has a condition, such as migraine headaches or asthma, which may require the person to take off work for short periods of time dependent upon the condition, as opposed to scheduling leave within a definite timeframe. Intermittent leave may truncate an employee's workday or workweek and may include the person moving from full time work to part time. "Under intermittent leave," Siegel said, "the employer can require return to work certifications only if there's been no return to work certifications within the last 30 days, and most importantly, if there are reasonable safety concerns." Return to work certifications are forms that need to be completed by the employee and a health care provider. The health care provider will use the form to state that the employee can perform all functions of his/her job or to list any necessary restrictions. Siegel continued: "That raises some questions about what do you do if you have received a certification within the last 30 days, the employee has come back to work, and a new and more serious concern has presented itself. Under the regulations, because you already had one within the 30 days, you're required to restore him without conditioning a return on the adequate certification." Siegel will speak again about FMLA concerns at the Advanced Employment Issues Symposium to be held in Las Vegas, NV, on Nov. 17-18. The symposium is being presented by HRHero and BLR.