

FMLA CASES

Happy February!!! This month I've decided to write about two interesting FMLA cases. The first is *Breneisen v. Motorola, Inc.* (Court of Appeals Case No. 05-2032) In this case, an employee was given increased responsibilities and was on the road to promotion to a salaried position at the time that he had to take an approved FMLA leave. During this employee's FMLA leave, the employer assigned his duties to other employees, with one individual being given the bulk. When he returned from his leave, this employer informed him that his prior position was eliminated through a dissolution. The employer theorized that his duties were dissolved amongst his co-workers and that he was no longer needed. Motorola claimed this Process Analyst position was difficult to hold open because the company is so company oriented that it required the company to distribute the tasks permanently. The Court concluded that these explanations by Motorola lacked justification. Pursuant to 29 C.F.R. sec. 825.214(a), an employee is entitled to... reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. Word to the wise, don't do what Motorola did in this case.

On another FMLA note, while in-patient rehabilitation is covered by the FMLA, days spent on an alcohol binge precipitating the rehabilitation are not. *See Darst v. Interstate Brands Corp.* (Court of Appeals Case No. 04-2460) Evidence was entered in this case by the treating physician that treatment begins when the patient takes the first step towards seeking professional help. According to this physician, this first step would include the first phone call to the physician seeking evaluation, treatment or referral. However, the court did not accept this definition. The court opined that the FMLA defines "treatment" and does not include calling to make an appointment. The court defined "treatment" as examination to determine if a serious health condition exists and evaluation of the condition. This employee claimed no memory of the days prior to what the medical records reflected and the court gave no leeway to his inability to remember due to his level of intoxication. I thought this case was of interesting note.