

LEGAL MAILBAG – JANUARY 30, 2025



By Attorney Dori P. Antonetti, Counsel, Shipman & Goodwin – GUEST COLUMNIST

The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

One of our high school English teachers just went out on FMLA leave for twelve weeks (twelve weeks!) to take care of her mother, who is ill and receives home care, but apparently she also needs her daughter’s support. I used to work with her father, so I know that her parents now live in Florida, and I also know that her mom has someone else at home (her husband) who could care for her if she needs it.

I know enough not to ask any particulars about her mom’s health (or marriage), and I also know enough not to make any comments like, “Hope you’re enjoying the sunshine and catching some waves.” But here’s the issue: we are a small school district, and this timing is terrible. We can’t find a long-term substitute with experience in this area, so we are covering the class with whomever can fill the role. Right now, the substitute is doing the best she can, but she doesn’t know how to create a lesson plan – let alone a series of lesson plans – that will ensure the curriculum is being followed. What’s more, the teacher made significant assignments due the day after she was scheduled to go out on leave. Needless to say, those papers are awaiting grades as I write.

Given that the teacher is out on FMLA to take care of her mom (not herself) and our commitment to ensure excellent education in our district, can we just ask the teacher to send in a set of lesson plans each week, or at least grade the papers that she made due right after she went out on leave?

Signed,
Feeling Beached

Dear Beached:

Legal Mailbag hears your frustration: it can be difficult to meet the needs of your employees and your students in situations such as the one you describe. However, the federal Family and Medical Leave Act (FMLA) protects the rights of eligible employees to enjoy twelve workweeks of job-protected leave in a one-year period when they have worked the required number of hours in the preceding year and they have a qualifying need for such leave that is supported by medical documentation, as appropriate.

As a threshold matter, Legal Mailbag applauds you for understanding that this teacher is entitled to FMLA leave to care for her parent, even though she lives in a faraway (and much warmer) state, and even though she has another family member who, presumably, could provide her parent with care. Neither of those facts are disqualifying, however, as long as they are supported by medical documentation.

Indeed, the FMLA regulations support a broad range of types of care that an employee may need to provide for a covered family member. 29 C.F.R. § 825.124(a) states:

The medical certification provision that an employee is needed to care for a family member ... encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

In addition, the FMLA regulations also make clear that an employee may be “needed to substitute” for someone else who normally cares for the family member. Indeed, the employee “need not be the only individual or family member available to care for the family member.” *Id.* § 825.124(b). In other words, the fact that the employee’s dad might be available to help out doesn’t prevent the employee from being “needed to care” for her mom.

So, you have an employee, taking care of her mom in sunny Florida, while she receives home care and is also supported by her dad. Sounds like she might have some free time on her hands, right? Maybe. But it doesn’t matter.

The FMLA makes it unlawful for an employer to “interfere with, restrain, or deny the exercise of” the rights provided under the statute. 29 U.S.C. § 2615. Employers that violate this provision are subject to legal challenge, which may involve damages and equitable relief. Courts have held that requiring an employee to perform work while on FMLA leave (for whatever reason) constitutes interference with those rights. Employers and employees could quibble about whether an employer required, or simply asked, an employee to perform work. However, we are all familiar with employees being “voluntold” to do something, and if an “ask” comes from a supervisor, it will likely be viewed as a directive. Moreover, even though employers may need to contact an employee briefly and on occasion during a period of FMLA leave (*e.g.*, to ask where materials necessary for teaching the next unit are housed), that is a far cry from asking an employee to grade papers for her classes and/or create lesson plans for a quarter of the school year.

In light of above, Legal Mailbag suggests that you dig deep, get creative, and find a way to ensure these students are having a meaningful twelve weeks of English class – without requiring the teacher to do any of the tasks you outlined. Otherwise, you might find yourself in deep water.