

Hunting For A Caregiver

My sporting goods company has 60 employees in Oregon. Sarah, my trade show organizer, has worked for my company for more than three years. She is very efficient and has never let her family responsibilities hinder her full-time job which includes plenty of overnight trips. Sarah is an avid hunter. For the last three years, Sarah and her friends, Thelma and Louise, went elk hunting in the Blue Mountains every season. This year, on September 30, Sarah came to the Human Resources Department saying that she had to leave work immediately because her husband, Todd, was injured badly in a barracuda fishing trip in Florida and requested two weeks of family leave to care for her spouse. Taking care of a spouse who has a serious health condition is a qualifying event under the family leave laws. After Sarah left work, a buddy of mine telephoned me from Pendleton saying that he saw Sarah and her hunting party enjoying their juicy steaks at one of fine-dining restaurants and playing poker at the nearby casino before heading into the forest. When Sarah returned to work after her two weeks of family leave I asked her where she went. Sarah said that she spent two weeks in Eastern Oregon with her girlfriends but she used her satellite phone to check on Todd's condition. My question is: Was Sarah's time-off protected by the Family Medical Leave Act (FMLA)?

The FMLA regulations state that "caring 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, etc. 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. The Ninth Circuit Court of Appeals has further clarified that the caregiver who is on protected family leave must be providing some care in close and continuing proximity to the injured family member. Sarah did not have to be administering intravenous medication or standing next to Todd 24/7 but neither her hunting trip in Eastern Oregon, while Todd was in Florida, nor her satellite phone calls were "to care for" her spouse. Her absentee caregiving did not fall within the meaning of Family Medical Leave Act. Sarah's absence from work during her spouse's recovery, in this case, was not protected by the FMLA because she did not care for him.

If you would like to learn more about the Oregon Family Leave Act (OFLA) and the amended Family Medical Leave Act (FMLA), Technical Assistance for Employers will be conducting seminars on Leave Laws in various cities: October 23 in Portland, October 16 in Salem; October 21 in Medford. Please visit www.oregon.gov/BOLI for registration information.