

A close-up photograph of a hand with bright pink nail polish holding a silver smartphone. The hand is positioned over a laptop keyboard, which is visible in the lower half of the frame. The background is blurred, showing a wooden desk and a laptop. The lighting is warm and soft.

What Did She Say?

Dispute Over Content of Voicemails Requires Jury Trial on FMLA Claims

Prepared by:
Tasos C. Paindiris
Jackson Lewis

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ✓ Unlimited Live Webinars - 120 live webinars added every month
- ✓ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ✓ Videos - More than 1300 available
- ✓ Slide Decks - More than 2300 available
- ✓ White Papers
- ✓ Reports
- ✓ Articles
- ✓ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

What Did She Say?

Dispute Over Content of Voicemails Requires Jury Trial on FMLA Claims

Written by [Tasos C. Paindiris](#) – 2/13/19

An employee seeking the protection of FMLA leave must give adequate and timely notice of the need for leave. In situations where the leave is due to a qualifying reason for which the employer previously provided the employee FMLA leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

In [Holladay v. Rockwell Collins, Inc.](#), (S.D. Iowa, Jan. 24, 2019) the company approved Ms. Holladay for intermittent FMLA leave for migraines. When Ms. Holladay was absent from work four consecutive days she left a voicemail for her supervisor to report her absence each day. However, the parties disagreed as to the details she provided in those voicemails. Ms. Holladay testified that she said “I had a migraine and I would not be in that day.” According to the company, Ms. Holladay never specified migraines and only stated she would be absent due to either an “illness” or “doctor’s visits.” Ms. Holladay’s supervisor testified that she “write[s] down in a steno book when somebody calls in

and what they leave.” In connection with Ms. Holladay’s absences the supervisor wrote “ill/out,” “ill out,” “DR,” and “DR,” respectively. She did not recall if Ms. Holladay mentioned migraines.

Additionally, for absences of more than three consecutive working days company policy required employees to submit a doctor’s note prior to the start of the employee’s shift on the fourth day of absence. Ms. Holladay did not submit the note before the start of her shift and she was terminated for violation of the attendance policy.

Ms. Holladay claimed the company interfered with her FMLA rights by not designating her absences as FMLA. The Court concluded that if Ms. Holladay cited migraines as the reason for her absences in the voicemails then the company should have designated her absences as FMLA. If Ms. Holladay only said that she was ill her notice was deficient and her FMLA claim fails. Because there was competing evidence on both sides the Court held that a jury must decide in a trial.

The company also argued that Ms. Holladay failed to comply with the company’s policy requiring a timely doctor’s note and therefore the FMLA leave could be denied for her failure to follow its usual notice and procedural requirements. The Court agreed with Ms. Holladay that the policy imposed a burden that is more onerous than the medical certification requirements under the FMLA, therefore the policy could not be used to deny FMLA.

This case demonstrates how an employee can avoid summary judgment dismissal of her lawsuit by testifying that she specifically referenced the FMLA when calling in her absences. It is a good reminder for employers to revisit their process for documenting what employees are reporting as the reason for the absence and whether the employee is required to contemporaneously confirm what was reported. Additionally, employers must be careful not to discipline employees using FMLA for failure to follow the employer's process for submitting a doctor's note if no medical documentation is otherwise required by the FMLA.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.