

FMLA Update: Proximity Matters

By: Beth Lincow

<http://www.humanresourceattorney.com/>

An employee on leave under the [**Family and Medical Leave Act**](#) must remain in close proximity to the family member requiring care, according to a recent federal court decision.

The Fifth Circuit Court of Appeal held that a father who left his seriously injured daughter in the care of his wife while he prepared the family's home for their return was unable to maintain a claim for FMLA retaliation.

The Facts of the Case

During a family vacation in Honduras, Girard Baham's daughter suffered a serious head injury. She was airlifted to Miami, where she underwent emergency surgery. At that point, Baham called his supervisor and asked for FMLA leave related to his daughter's injury. The supervisor told Baham to "take all of the time he needed," and send him the appropriate FMLA forms for completion.

Girard Baham completed and returned the forms, but he subsequently was notified that his paperwork was incomplete because it did not include information indicating the expected duration of his daughter's treatment. Baham never provided the information to his employer.

After four weeks, Baham returned to the family's home in Texas, leaving his wife and daughter in Miami. Baham spent the time cleaning up the house, cutting the grass, and preparing for his daughter's return by padding sharp edges to protect her from further injury. He stated that he was in constant telephone contact with his wife and daughter at that time.

When Baham eventually returned to work, he was informed that his FMLA paperwork still was incomplete, and again was asked to provide the required information. Later that day, Baham left the work premises, leaving his keys and ID with a security guard. The company interpreted his sudden departure as a resignation, and sent a termination letter two days later. Baham subsequently filed a lawsuit, claiming that he was fired in retaliation for taking FMLA leave.

The Court's Decision

The Fifth Circuit found that because Baham was not "taking care" of his daughter after he returned to Texas, he was not entitled to FMLA leave for the duration of the six weeks and therefore could not maintain a retaliation claim.

The court specifically held that in order to be entitled to FMLA leave, an employee must show that he is needed “to care for” a family member with a serious health condition, noting that attending to the home did not qualify as care.

The court also pointed to various court decisions that have affirmed the use of FMLA leave only where the employee is in physical proximity for the cared-for person.

The Message for Employers

This case demonstrates that employers can ask about the employee’s proximity to the ill family member when evaluating an employee’s request for FMLA leave. This does not mean that the employee must be solely responsible for the family member’s care, but rather requires some level of participation in the ongoing care (this need not be medical) of the family member’s medical condition.



About Beth Lincow Cole

The [Law Office of Beth Lincow Cole](#) is committed to helping employers comply with federal and state employment law and avoid potential business-wrecking lawsuits. If your company needs employee or management training or assistance in drafting, reviewing, or revising its EEOC/discrimination policies, [contact](#) employment law attorney [Beth Lincow Cole](#).