Firing an Employee Based on FMLA Technicalities Can Result in Attorney's Fees
By Lisa B. Golan

An employee claims she has injured her knee – again – and has been referred to an orthopedist. She requests medical leave and asks for Family and Medical Act leave forms. Then she asks for a couple of extra days to return the forms, claiming that her orthopedist is on leave.

In the meantime, she faxes in past doctors' notes that released her to return to work more than ten days earlier. Her doctor eventually faxes in her FMLA forms – four days late. The forms request a total of 13 weeks leave, despite the FMLA allowing for only 12 weeks.

The employer – shocked that the employee is requesting leave when her doctor has already authorized her return – fires the woman before her FMLA forms are reviewed. Is this okay?

No way.

In *White v. Beltram Edge Tool Supply, Inc.,* the 11th Circuit held that when an employee makes a request for unforeseeable FMLA leave, she need only provide as much notice "as is practicable" and need only "provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request." Whether an employee in fact has a serious health condition qualifying her for leave depends upon all the facts, not just those known to the employer at the time of termination. In addition, requesting more than 12 weeks leave at the outset will not disqualify an employee from getting any FMLA leave at all.