**ALRP HYPO**

(1)

Fiona Robertson comes to your office as a potential new client and tells you the following story:

Fiona is employed at Wal-Mart as a full-time cashier. She has been employed by Wal-Mart for 25 years. Fiona discloses to you that she is a person with HIV who recently started a new course of medications which makes her sleepy and unable to maintain her regular schedule, 8:30 a.m. – 4:30 p.m. She has already gotten two verbal warnings for being late and afraid that she will be terminated if she is late again.

She comes to your office and says that she wants to ask her supervisor for a reasonable accommodation but does not know where to start.

**WHAT INFORMATION DO YOU NEED FROM FIONA?**

(2)

Jim Jameson, Fiona’s supervisor notices that Fiona has been late to work and is groggy during her shift. He approaches her and asks her if anything is wrong. Fiona says the following: “In fact, Jim, I have been a mess lately. My doctor put me on new medications about three weeks ago and I’m having all kinds of weird side effects. He’s been warning me about this possibility and has been trying to convince me to take a leave of absence from work. Maybe it’s time I listen to him.”

The next day, submits a note from her treating doctor saying the following:

To Whom it May Concern:

Fiona Robertson has been a patient of mine and remains under my care. It is my medical opinion that she needs to be completely off work for the next 60 days.

Sincerely,

Sam Samuelson

After receiving the note, supervisor Jim calls Fiona at home and leaves the following voicemail message: “Fiona, I got your note. I hope you’re feeling better. I’ve talked to HR, and they say we can’t approve the leave yet because we need more information. I’m sending you a document for you to sign and return so we can talk to your doctor. I’m sure everything will be ok, we just need to get some more detail. Stay well.”

Fiona listens to the voicemail, then checks her email and sees that supervisor Jim has sent her a packet of information including a HIPAA release allowing Wal-Mart to talk directly with Dr. Samuelson and allowing Wal-Mart to get a copy of Dr. Samuelson’s records. It also includes a 5-page form entitled “Reasonable Accommodation Request Form” which has 20-plus questions for Dr. Samuelson to fill out.

**HOW DO YOU ADVISE FIONA?**

(3)

Assume that instead of reacting as before, Wal-Mart simply grants Fiona’s request for a medical leave of absence and sends her all required FMLA/CFRA notices, accepts Dr. Samuelson’s FMLA/CFRA Certification form and notifies Fiona that her leave qualifies as FMLA/CFRA covered leave, listing the accurate start date and the accurate end date (60 days later).

On day 55, supervisor Jim receives a fax from Fiona. There is no cover letter, only a fax cover sheet directing the fax to him and noting that it is being sent from Fiona via a FedEx Kinko’s fax machine. Behind the fax cover sheet is a single page document on Dr. Samuelson’s letterhead and reads as follows:

To Whom it May Concern:

Fiona Robertson has been a patient of mine for many years and remains under my care. She has been completely disabled and unable to work for the past 60 days. She remains completely disabled and unable to work. It is my medical opinion that she needs to be completely off work for the next 60 days.

Sincerely,

Sam Samuelson, MD

Wal-Mart sends Fiona a letter stating that her FMLA/CFRA leave has been extended for an additional 30 days. Fiona does not follow up or make any further inquiries. Thirty-five days later, Fiona receives a certified letter from Fiona that reads as follows:

Dear Ms. Robertson:

You have exhausted your 12 workweeks of approved FMLA/CFRA leave. You have not returned to work. Accordingly, your employment with Wal-Mart has been terminated for job abandonment. Enclosed please find your COBRA notices and all paperwork related to your continuation of benefits.

We wish you good health and the best of luck in your future endeavors.

Sincerely,

Henry Lee, Director of Human Resources

**HOW DO YOU ADVISE FIONA?**

(4)

Assume that instead of sending the termination letter, Wal-Mart sends a letter approving the extension of the leave of absence. Then, the scenario repeats itself two more times (*i.e.,* shortly before the end of the extension, Fiona faxes a doctor’s note extending the leave another 60 days). In response to each of these extensions, Wal-Mart sends a short letter to Fiona approving the leave. Finally, Fiona sends in yet another doctor’s note stating she needs another 60 day extension. Up to this point, Fiona has been on leave for 240 days, and this new extension would take her up to 300 days. In response to this latest doctor’s note, Wal-Mart sends Fiona a letter stating the following:

Dear Ms. Robertson:

You have been on approved medical leave of absence for the past eight months. We just received your note asking for another two months of leave. We have been holding your position open for you, covering your position, with temporary workers, this entire time. Unfortunately, we can no longer meet our business’ needs in this manner and must fill the position with a full-time cashier. Accordingly, we cannot grant your request for additional medical leave.

When you are released by your doctor to resume working, please let us know and we will see if there are any openings at that time.

Sincerely,

Henry Lee, Director of Human Resources

**HOW DO YOU ADVISE FIONA?**