

## Gienapp v. Harbor Crest: Two Important Lessons About the FMLA That Employers Need to Know

On June 24, 2014, the U.S. Court of Appeals for the Seventh Circuit handed down its decision in *Gienapp v. Harbor Crest*, a case involving the Family and Medical Leave Act (FMLA). The court's decision provides two vital lessons for employers regarding FMLA leave. First, an employee is not automatically disqualified from receiving FMLA protections for failing to provide a return-to-work date. Second, providing "care" under the FMLA may include activities that are not directly related to the employee's spouse, child, or parents.

Gienapp brought suit against her employer, Harbor Crest, after it had filled her position while she was on FMLA leave. In response, Harbor Crest argued that Gienapp had forfeited her right to leave because she did not provide a return-to-work date. FMLA regulations direct employees to inform their employers how much leave they need; a directive Gienapp seemingly violated. But the court held Gienapp's situation was governed by a second regulation that applied when the need for leave is "unforeseeable," and that regulation only states that employees should follow their employer's policies. Harbor Crest had only asked that Gienapp call to update them on a monthly basis, which she had done.

Harbor Crest also argued that Gienapp was not qualified for FMLA leave at all because she provided care for her daughter's children during her leave rather than for her daughter directly. Under the FMLA, an employee may take leave to care for a "spouse, son, daughter, or parent" who has a "serious health condition." Grandchildren are not, in other words, covered family members.

The Seventh Circuit nevertheless rejected Harbor Crest's argument, noting that even if Gienapp had provided care only to her grandchildren she could still qualify for leave if caring for grandchildren provides "psychological" or "physical assistance" to a family member who is covered by the FMLA. Although some forms of assistance to a non-covered family member would be too "tangential" to qualify for leave, Harbor Crest never argued that was the case with the care Gienapp provided for her grandchildren.

The Gienapp case is an important reminder to employers that FMLA eligibility often turns on thin distinctions in the law. Employers must carefully assess every request for leave to ensure that denying a request does not violate the FMLA or its implementing regulations.

### POSTED:

Sep 1, 2014

### RELATED PRACTICES:

[Labor and Employment](#)

<https://www.reinhartlaw.com/practices/labor-and-employment>

### RELATED PEOPLE:

[Robert S. Driscoll](#)

<https://www.reinhartlaw.com/people/robert-driscoll>



If you have any questions about the Gienapp decision or the FMLA, please contact your Reinhart attorney or any member of Reinhart's Labor & Employment group.

*These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.*