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Recertification of Intermittent Leave Violates FMLA, New Jersey Appellate Division Holds

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Burlington County jail employees reasonably suspected of abusing sick leave were required, pursuant to the collective bargaining agreement, to submit doctors' notes regarding each exercise of intermittent family leave within seven days. *Police Benevolent Assoc. Local No. 249 v. County of Burlington*, 2013 WL 173793 (App. Div., Jan. 17, 2013). One employee on the "sick leave abuse list" took intermittent leave under the Family and Medical Leave Act (FMLA) to care for his son, and was disciplined after he failed to provide a doctor's note. According to the Appellate Division, requiring recertification by a doctor for each exercise of intermittent leave interferes with the exercise of FMLA rights, particularly absent prior abuse of intermittent leave for the condition at issue (son-related). The Appellate Division differentiated the doctor's note requirement in this matter from a lawful "call-in" requirement, indicating that "such a requirement is patently less onerous than requiring a doctor's recertification for each use of [intermittent leave] that has already been approved on the basis of a doctor's certification."

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