

EMPLOYMENT LAW UPDATE

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***Perry v. Jaguar of Troy* (6th Cir., December 30, 2003)
2003 Fed App. 0459P**

An Employee Does Not Prevail On A Claim Under The FMLA Where He Cannot Prove A "Chronic Serious Health Condition."

By Jason A. Geller

Plaintiff Jeffrey Perry sued his employer Jaguar of Troy for violation of the Family Medical Leave Act ("FMLA") when the employer refused to reinstate him to his position following a leave of absence during which Perry was caring for his son. When Perry went on leave, the employer notified him of its conclusion that the leave was not protected by the FMLA.

The primary issue in this case was whether Perry's son had a "chronic serious health condition" within the meaning of the FMLA. To qualify as a "serious health condition," Perry needed to show that the son was "incapacitated" at the time that Perry received the leave. The Sixth Circuit Court of Appeal ruled in favor of the employer on this issue, holding that Perry failed to present evidence that his son was *unable* to perform his regular daily activities, such as attending school, riding his bicycle and playing video games, and thus the son was not "incapacitated."

Moreover, as to other issues, the Court of Appeal rejected the employer's argument that Perry failed to provide sufficient notice of his request for FMLA leave. Perry's evidence that he orally mentioned FMLA when he requested the leave was adequate notice. The Court also rejected the employer's argument that Perry's failure to submit a proper medical certification before the leave precluded him from receiving FMLA leave. The Court held that the employer *failed* to provide evidence that it had requested a certification from Perry at the time of his leave request, and that it had notified Perry of the consequences for failing to provide a certification, which was required by the FMLA. Nevertheless, because the condition of Perry's son did not qualify as a "chronic serious health condition," summary judgment was granted in favor of the employer.

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