

BRAIN TEASER



The correct answer is B.

Explanation:

While there are several federal laws that potentially protect the employee's absence (i.e. the Family Medical Leave Act and the Americans with Disabilities Act), at this point in time, the Company does not know if the employee's absence is protected. In order to make that determination, the Company needs to engage in the interactive process with the employee and find out why the employee was absent. Based on the information provided by the employee during the interactive process, the employer can determine whether the employee's absence is protected and then decide the course of action to take.

Practical application:

Many employers have a written No Call/No Show policy specifically stating "failing to call in or show up for work for ____ consecutive days is considered job abandonment and is a voluntary resignation from your position." While these policies are generally permissible, employers need to exercise caution when enforcing these policies. Not only must employers make sure they are consistently enforcing this policy, but employers need to be prepared to handle a situation where an extenuating circumstance rendered the employee unable to communicate with the employer about his/her absence.

In those cases, the employer should always engage in the interactive process with the employee and determine if the employee's absence is protected. Failing to engage in the interactive process can potentially expose the employer to a wrongful termination claim and/or a discrimination claim.

These decisions can be extremely complicated, it is recommended that employers consult with either an HR Professional or an attorney before deciding to refuse an employee's request for reinstatement when an extenuating circumstance may exist.