



Ten best practices for managing your FMLA administration

With benefits teams under increasing demands, from reducing health care costs to implementing more comprehensive wellness programs, effectively managing your company's employee absences is more important than ever. In particular, the Family and Medical Leave Act (FMLA) is a key component in any high performing absence management program as it is rife with legal implications that companies must completely understand and closely consider.

Employer requirements for the Family and Medical Leave Act (FMLA) may seem straightforward, but managing them, including keeping up with current government regulations and handling all the administration can be challenging at best and overwhelming and litigious at worst. Federal and state laws often overlap, making compliance difficult and confusing. The paperwork alone can overwhelm already busy human resources and benefits departments. And, if a company doesn't strictly follow FMLA laws, the litigation can be costly. This includes fines, paying for an employee's lost wages and benefits, as well as legal costs. According to the U.S. Equal Employment Opportunity Commission (EEOC), employees who win a wrongful termination lawsuit based on their FMLA absence receive an average of \$87,500 to \$450,000 in damages while the average cost to the employer to defend such a lawsuit is \$78,000, according to the Wage and Hour Division of the U.S. Department of Labor. And it's not just the employer that may have to deal with a lawsuit. There have been cases in which the direct supervisor was also sued by an employee for not complying with FMLA laws.

There are many other ways in which managing FMLA can be costly. Some industries have up to one-third of their staff on FMLA leave at any given time, resulting in countless administrative hours, lost productivity from absent employees, additional fees to hire and train temporary workers, and increased liability. Also, the fear some companies have with violating FMLA laws or the inability to fully manage all aspects of it themselves, can spur them to grant leave unnecessarily and / or not apply the exact same rules to all leave requests, setting the organization up for further issues. According to the Society for Human Resource Management, more than 60 percent of employers believe they've granted Family and Medical Leave Act time off that was unfounded.

In a 2011 survey of human resources professionals by the Employers Resource Association, FMLA ranked as their number one issue, with intermittent leave being a significant concern. Intermittent leave, in particular, can be an administrative nightmare, with tracking of time in as little as 15-minute increments required under the law.

Since FMLA can be so complex, it's important to have the knowledge and resources to monitor and understand the applicable laws, and ensure your company remains



compliant. Here are ten best practices to help you effectively manage your FMLA administration:

- 1. Stay updated on the laws.** Employers need to adhere to FMLA federal laws as well as state laws and other medical leave requirements, which may overlap. If a company operates in more than one state, state law compliance is especially crucial. It's also important to know the rules for different situations, such as when an employee takes continuous leave time versus small increments of leave versus a reduced schedule for a period of time.
- 2. Create FMLA administration procedures – and apply them consistently.** All company practices around FMLA management – from understanding the laws to the documentation required for record-keeping to employee communication – should be clear to the team that's handling leave requests. One of the biggest mistakes companies make is different people within the company handling and / or interpreting FMLA differently. Ongoing training and having specific procedures in place for how your company will manage FMLA can help alleviate these issues.
- 3. Require medical certification from the health care provider to validate that the leave is necessary.** One of the best ways to avoid employee abuse of FMLA is to require the medical certification form be filled out clearly. Under FMLA laws, employers have the right to require this, and also gain more information if what they've received is insufficient or unclear, even requesting second or third medical opinions (at the employer's expense). Reports on the employee's status and their intended return to work date are also allowed. Employers must allow employees at least 15 days to obtain the proper medical certification and share it with the employer. Many employers let those 15 days pass and go ahead and designate FMLA leave without medical documentation. This is a clear opportunity to reduce FMLA abuse, as without completed certification documentation, FMLA requested leave can be denied and the company's other policies around absenteeism applied.
- 4. Document everything.** Every interaction, including every phone call with the employee while out on leave, should be documented, whether it is voice recorded or entered into a secure centralized database. Ideally, policy information and questions and answers around those policies should be available to both employer and employee via email, so that it is in writing and there is no confusion on what the policies include or what information has been shared with the employee.
- 5. Educate management.** Supervisors should understand their role when one of their employees requests leave. In some cases, the leave could be very sudden, such as with an accident, so the manager should be able to explain to the employee their rights under FMLA. Companies should also consider 'just in time knowledge', that is,



when an employee requests FMLA, benefits managers immediately send relevant, need to know information about FMLA to the employee's supervisor.

6. Consider allowing supervisors to directly communicate with employees while they are on leave. While some companies prefer that human resources handle all communications with employees, a supervisor reaching out to an employee can have huge benefits. It shows that the manager cares about the employee and their situation, setting up the employee to feel good about returning to work and doing so sooner rather than later.

7. Gather the stakeholders. Even though the company as a whole is responsible for following FMLA laws, the responsibility usually sits primarily with the human resources and legal teams. However, payroll, finance and benefits also have an important role to play, so these teams should meet periodically to assess how the program is going and review processes, data and any important updates.

8. Review your company's leave policies regularly. Do this at least once per year, making sure that the policies include specific information on which paperwork needs to be completed to file a leave notice.

9. Maintain confidentiality. While an employee's leave will likely be apparent to their colleagues, it is illegal for employers to share any information about the employee's medical condition.

10. Consider outsourcing - even if it's just the technology. For some organizations it's not feasible for their human resources teams to handle the cost and burden of administering FMLA and other absence management programs, so outsourcing is something to consider. An outside firm can help you determine employee eligibility, review all the medical documents involved, manage and track all the paperwork, communicate with employees to explain their leave and answer questions, monitor changing laws and guarantee that they are incorporated immediately, track employees' leave time, and ensure that FMLA rules are applied in the same way with everyone. If you've determined outsourcing isn't right for your organization, you can leverage technology to ease some of the administrative aspects. For example, some companies use IVR (interactive voice response) to capture employee absences, or have a web-enabled time tracking tool. There are a number of providers who license technology systems for human resources professionals to use directly, allowing for a secure system for tracking and managing leave information.

Administering FMLA is about managing risk to your organization, making sure that you know and understand the latest laws and applying them consistently at all times, as well as maintaining workplace productivity and employee morale. Following the above steps can not only help you reduce any possible FMLA abuse, but also help the employees who legitimately take leave feel good about returning to work.



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