MANAGING FMLA AND OTHER LEAVES

Improving Your Experience with an Outsourced Absence Program
INTRODUCTION

All organizations need to track family and medical leaves, as well as other absences, in a way that is compliant with federal and state regulations and consistent with company policies. As a result, employers are experiencing an administrative overload that is prompting them to take a closer look at the direct and indirect costs associated with managing leaves and absences. This guide will discuss the need for effectively managing employee absences and how outsourcing the process can save employers money and resources.
THE NEED FOR EFFECTIVE ABSENCE MANAGEMENT

It may surprise you to learn that 8–9%1 of an employer’s payroll goes toward the cost of unplanned employee absences. Many factors contribute to the total cost of employee absences, including wages and benefits paid to disabled employees; short- and long-term disability premiums; wages paid to replacement workers; reduced productivity; training costs; increased stress on managers and co-workers; and administrative costs. Employers need resources to track when and why employees are out, and the expertise to ensure compliance with federal and state regulations governing absence.

Handling federal and state leave consistently and effectively can help reduce the overall expenses of leave, improve morale, foster a more productive environment, reduce the risk of litigation or penalties — and minimize administrative time and effort. Recent research has shown an increased focus on issues related to managing absences not only to increase productivity, but also as a cost-savings strategy.

The risk of non-compliance with federal and state absence regulations is real. According to statistics published by the U.S. Department of Labor (see chart below), 1,634 employee FMLA complaints were concluded in 2013, and almost half (46%) resulted in violations. Employers found in violation were fined $1,642,793 in back wages. This total does not include administrative and legal expenses incurred by employers during the investigations.

Research owned by the Prudential Insurance Company of America (Prudential) further underscores the need for effective absence management. Survey results from the Eighth Annual Study of Employee Benefits: Today & Beyond (2014) showed that “increasing employee productivity” and “reducing the cost of benefits administration” are areas of focus by plan sponsors with 61% and 58%, respectively, citing these benefit objectives as very important.

Between 2012 and 2013 the percent of companies outsourcing the tracking of various absences or considering outsourcing them has grown with the majority of those currently outsourcing seeing value and achieving benefits. Approximately 88% of plan sponsors say they are tracking absences to some extent in an effort to manage workforce productivity and 60% report that the tracking system has been very effective. As more companies link absence management tracking to workforce productivity, the more likely they are to outsource the tracking.

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1. Refusal to Grant FMLA Leave 21%
2. Refusal to Restore to Equivalent Position 12%
3. Termination 40%
4. Failure to Maintain Health Benefits 3%
5. Discrimination 24%

The concluded case numbers represent all investigations and conciliations for which the DOL completed work during fiscal year 2013. Cases are generally concluded when back wages are collected and distributed, civil money penalties are paid, no violations are disclosed, or no further action is appropriate.

COMPLEX FML RULES COMPLICATE LEAVE EXPERIENCE

For many employers, the most difficult aspect of managing an absence program comes from dealing with the rules and regulations associated with the Family and Medical Leave Act (FMLA) and state leave laws. The federal FMLA entitles eligible employees to 12 weeks of unpaid leave for the birth or adoption of a child; the employee’s own illness; or care for an immediate family member. Employees are permitted up to 26 weeks of unpaid leave when caring for a covered service member. But these guidelines provide a floor, not a ceiling.

To be eligible for federal Family Medical Leave (FML), employees must have worked 12 months for an employer, with at least 1,250 hours in the last year, and at a location where the company employs 50 or more employees. It is up to the employer to keep track of an employee’s time to determine if he or she has already used up his or her FML allotment. The employer must also designate a 12-month year and a 12-week period that is either fixed, calendar, rolling back, or rolling forward.

Federal and State Laws Cause Confusion

While the FMLA defines who is eligible and what types of leaves are covered, it leaves some decisions up to the employer, which can complicate administration. For example:

► Bonding leave: The employer can opt to allow employees to take this type of leave intermittently or require that they take it in blocks of time.

► Shared leave: Employers may require married employees to share FML time for bonding or to care for a parent. If an employer requires sharing, a married couple would get 12 weeks total for these types of leave.

Many states have their own leave laws that are similar but distinctive from the federal statute. State leave laws may be more generous than the federal threshold, run concurrent with FML, and may provide expanded job protection for additional types of leave. For example, states may offer expanded eligibility to domestic partners or provide longer leave durations. Employers face difficulty with managing state leaves if they are unaware of them or unsure about how they integrate with federal requirements.

The company itself can add another level of complexity beyond federal and state requirements. Company culture and informal policies can be more generous than FML (i.e., extend eligibility based upon tenure with company or regardless of work location) and can offer additional types of leave (i.e., military leave, jury duty, bereavement). With all these considerations and challenges, it is easy to see how employers, overwhelmed by the myriad of rules, regulations, and policies, may end up granting unqualified or unnecessarily long leaves to avoid facing penalties and litigation.
EXPERIENCE THE BENEFITS OF OUTSOURCING ABSENCE MANAGEMENT

Employee absences, planned and unplanned, are inevitable, and companies need a consistent, fair, and cost-efficient way to manage them. By outsourcing an absence program, companies help ensure legal compliance, improve employee engagement, and reduce administrative burden, all of which allows them to focus on doing business efficiently and effectively. When an outsourcing partner handles a company's absence program, it takes the burden off the employer in a number of ways by:

- Ensuring compliance with applicable regulations
- Tracking absences in a centralized manner
- Providing consistent treatment of leave requests
- Fulfilling communications requirements that result from an absence
- Integrating benefit administration where appropriate (e.g., FML and STD or FML and workers' compensation)

Moving leave management to an outsourcing partner only requires that an employer provide personnel data via an electronic file and determine whether to have the partner take over existing leaves or all historical leaves. In many cases, the consistency of the internally administered program will drive these decisions along with any absence-related policies. Implementing an absence program with an outsourcing partner has associated costs, but it is often a short-term expenditure for long-term gain.

Untangling State and Federal Leaves

To better understand the complexity employers are up against, consider this real-life example, which is illustrated above. Beth,* a female employee, takes over 26 weeks of absence, which is covered by three different job protection laws — California Pregnancy Disability Leave (PDL), the federal Family and Medical Leave Act (FMLA), and the California Family Rights Act (CFRA). Beth experiences pregnancy complications during her second trimester and as a result, is unable to do her job starting June 19, 2013. Because she has not been with her employer for one full year, her absence is not initially covered under FMLA but is covered under CA PDL.

After her one-year anniversary with her employer on August 4, she becomes eligible for federal Family Medical Leave and her leave is now covered under both FMLA and the concurrent CA PDL leave until she is medically cleared to return to work on September 15. On September 27, her doctor determines she needs bed rest. Her new leave is again covered under FMLA and CA PDL. After the baby is born, Beth has six weeks of leave approved under FMLA and CA PDL. She then requests additional leave to bond with her new baby. Because she is no longer disabled, her CA PDL leave ends on November 24 and a six-week bonding leave under CFRA begins. The first two weeks of bonding time is covered under FMLA until she exhausts her annual 12-week allotment on December 8.

*Names/situations identified are for example/hypothetical/illustrative purposes only.
WHY SHOULD MY COMPANY OUTSOURCE ITS ABSENCE ADMINISTRATION?

If you answer “yes” to seven or more of these questions, your company is a good candidate for outsourcing absence administration.

1. Does your company have employees in more than one state?
   Yes ☐  No ☐

2. Would your organization benefit from compliance resources to stay current with federal and state leave law changes?
   Yes ☐  No ☐

3. Do you offer company leaves above and beyond federal and state FMLA regulations?
   Yes ☐  No ☐

4. Does your organization struggle with determining which leave programs an employee is eligible for?
   Yes ☐  No ☐

5. Does your team struggle with how the various leave laws integrate with one another?
   Yes ☐  No ☐

6. Do your managers and HR staff need assistance in tracking intermittent absences and reduced schedules under FMLA or similar state leave programs?
   Yes ☐  No ☐

7. Does your organization need access to clinical resources to help evaluate medical certifications of a “serious health condition”?
   Yes ☐  No ☐

8. Would your organization benefit from the ability to track the following absence trends?
   | Employee utilization (incidence per 100 employees) |
   | Program utilization (i.e., federal, state, or company leave) |
   | Type of leave (e.g., own serious health condition, bonding, care of family member) |
   | Absence schedule (i.e., continuous vs. intermittent) |
   | Average leave duration |
   Yes ☐  No ☐

9. Could access to real-time absence data help your organization manage staffing and improve productivity?
   Yes ☐  No ☐

10. Would you like to provide your managers with additional training on their responsibilities under the various state and federal leave programs?
    Yes ☐  No ☐

11. Would having an outside resource evaluate requests improve the consistency in leave administration throughout your organization?
    Yes ☐  No ☐

12. Does your organization track absences centrally and can this information be provided to a TPA via electronic feed?
    Yes ☐  No ☐

13. Do you have detailed leave policies documented that would allow a TPA to administer your programs consistent with your company culture and core values?
    Yes ☐  No ☐

14. Is your organization willing and able to devote resources (i.e., personnel, systems, etc.) for approximately four months to successfully implement an absence management program with a third party?
    Yes ☐  No ☐