
How to Manage & Minimize Absenteeism

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Introduction

Let's face it, getting employees to show up for work is an ongoing battle. Employee absenteeism is a problem for almost all employers. And it is a costly problem. According to a recent survey of government statistics, sick days cost companies nearly \$800 per employee per year. With this much at stake, your company has probably already taken steps to address the problem. This report is intended to help you recognize the factors that lead to excessive absenteeism and learn how to minimize the effects on your workplace.

Sorting through employee absences can be worse than doing 8th grade algebra. Let's say that Ted, one of your busiest managers, comes into your office with his hands in the air. Of the 20 employees who report to him, only 10 are at work today. Arnie stayed out too late last night and called in saying he was too drunk to come to work. Bucky's daughter is too sick to go to school so he is staying home with her. Carly had previously scheduled a sick day to go to the dentist for a root canal. Dion said he heard there is a slight chance of freezing rain, so he's not coming in. Earl got into a car accident on the way to work and can't come in. Frank's wife called, he's in jail and won't be in until tomorrow. Gino is out with the flu for the third day in a row. Hadassah is taking a personal day for a religious observance. Ina hasn't called in or showed up yet, and Jamal came in sick and was sent home. Not only is Ted's department having a hard time functioning today, but Ted is at a loss over who should be given FMLA time, who deserves discipline for not showing up, and whose absence should be approved.

Absenteeism is one of the most serious problems facing employers in today's workplace. Legitimate illnesses still account for the majority of absences, but more employees are using sick days for nonhealth-related reasons. A recent study by a human resources firm estimated that fewer than one-third of absences from the workplace are related to poor health. Nonhealth-related absences were attributed to a variety of reasons, including family problems, stress, running errands, and so-called "mental health days."

Most employers recognize that in order to keep their employees happy, and therefore productive, they cannot expect them to work tirelessly without a break. That is why the vast majority of employers give their employees time off to take care of personal business, stay home from work when they are sick, or enjoy periods of rest and relaxation. However, no matter how much

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approved time off is available under your policy, there will always be employees who will need more.

This report will take a close look at the common causes of absenteeism: illness, family illness, military leave, and death in the family, to name a few. We will also give you some insightful tips and techniques for managing this costly problem area.

How to Comply with Employee Leave Laws

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Wouldn't it be great if there were one, ironclad, carved-in-stone law that applied to employee leave? It would be written in clear black and white without any legalese. It would be contained in a big black book, aptly titled *The Big Giant Book of Everything About Absences*. You could just flip to the appropriate section and it would tell you whether your employee qualifies for leave. Imagine for a moment that Jay walks in your office and says, "A garage door in the warehouse just fell on my head." You open *The Big Giant Book of Everything About Absences* to the page clearly marked "Assault by Garage Door." Under that section it says when an employer's garage door falls on an employee, send him to the doctor, approve his absence, and instruct him to file a workers' compensation claim. No sooner does Jay leave your office than Cindy comes in and says she is late because her dog was sleeping under the car and she ran over him. Again, you open *The Big Giant Book of Everything About Absences* to the section marked "Dog Sleeping Under the Car" and it says, bogus excuse, dog is likely alive, do not approve absence. Easy, isn't it?

Unfortunately, we live in the real world, where several leave laws intersect and overlap. This section of the report will help you coordinate compliance with the various laws that govern employee absences.

THE LAWS OF THE LAND

Before you can have a full understanding of how to manage absenteeism in your workplace, you must understand the federal, state, and local laws that you must obey. In fact, there are several federal laws and countless state laws that deal with certain types of employee leave. The rights and obligations of the various laws can vary and overlap significantly, leaving you wondering which one to apply. The rules are often inconsistent and confusing.

The three main federal laws that you need to be concerned with regarding employee absences are: the Family and Medical Leave Act¹ (FMLA), the Americans with Disabilities Act² (ADA), and Title VII of the Civil Rights Act of 1964³ (Title VII). The FMLA requires that you grant qualified employees leave under certain circumstances, such as their own serious health condition or that of a loved one or the birth or adoption of a child. The ADA requires that you do not discriminate against any qualified individual with a disability if that person can perform the

main functions of the job with a reasonable accommodation. Title VII also proscribes discrimination against individuals based on their membership in certain “protected” classes.

Your state most likely has a workers’ compensation statute that covers on-the-job illnesses and injuries. Most state workers’ compensation laws protect workers who must take time off from work due to their injuries. In addition to this state law, your state may have its own laws regarding family and medical leave.

YOU’VE GOT TO COORDINATE

The U.S. Department of Labor (DOL) has issued regulations regarding how to implement and interpret the FMLA.⁴ These regulations cover the interplay of the FMLA and state and local laws to a degree, but seem to leave as many questions unresolved as answered. For example, they don’t provide much guidance on how to coordinate leave policies and the overlap of different legal requirements.

Some ways that federal, state, and local laws may differ are listed below:

Reasons for Leave. The FMLA regulations make clear that an employee eligible for leave under only one law (FMLA or state) is entitled to benefits in accordance with that particular statute. Different rules may apply if a state or local statute permits leave for reasons permitted but not covered by the FMLA. For example, if a state law provides leave to care for a seriously ill grandparent or same-sex partner, neither of which are covered by the FMLA, an employee who takes leave for this purpose remains entitled to all leave permitted by the FMLA. However, if leave covered by the FMLA is used first for a purpose for which state law also provides, and state leave has been exhausted, the employer isn’t required by the FMLA to provide additional leave to care for the grandparent or same-sex partner.

Duration of Leave. The FMLA entitles employees to as many as 12 weeks of leave during any 12-month period. Leave may be taken intermittently or on a reduced-leave schedule depending on the circumstances. Leave to care for a newborn or newly adopted child may be taken intermittently if the employer and employee agree to the arrangement. Employees may take medical leave intermittently or on a reduced-leave schedule when medically necessary without permission from the employer. If an employee qualifies for leave under the FMLA, as well as leave under state law, the leave used counts against the employee’s entitlement under both laws. For example:

- If a state statute provides 16 weeks of leave entitlement during a two-year period, an employee would be entitled to take 16 weeks one year under state law and 12 weeks the next year under the FMLA. However, health benefits maintenance under the FMLA is applicable only to the first 12 weeks of entitlement each year. If the employee took 12 weeks the first year, the employee would be entitled to a maximum of 12 weeks the second year, but not 16 weeks.

- If a state law provides six weeks of half-pay for maternity leave, the employee on leave would be entitled to an additional six weeks of unpaid FMLA leave for a total of 12 weeks.

Notice of Leave. The FMLA and state statutes require employees to give their employers varying periods of notice. Under the FMLA regulations, a “shorter notice period under State law must be allowed by the employer unless an employer has already provided, or the employee is requesting, more leave than required under State law.”

Medical Certification. Under the FMLA, an employer may require that an employee provide certification of his or her serious health condition, or that of a family member, in a “timely manner.”

Medical certification may include:

- The date on which the serious health condition began and its probable duration;
- Appropriate medical facts;
- A statement that the employee is needed to care for the spouse, parent, or child or that the employee is unable to perform his or her job functions; and
- The dates and duration of treatment to be given in the case of intermittent leave.

The FMLA’s regulations state that, “[i]f state law provides for only one medical certification, no additional certification may be required by the employer unless the employer has already provided, or the employee is requesting, more leave than required under State law.”

Benefit and Salary Continuation. The FMLA entitles employees on leave to receive the same health-benefit coverage as when working. In addition, leave may not result in the loss of any previously accrued seniority or employment benefits. Employers aren’t required to continue the accrual of benefits during the leave. FMLA rights may not be reduced by an employment-benefit program, plan, or collective-bargaining agreement (CBA). For example, the FMLA supersedes provisions of a CBA that provide for reinstatement to a position that isn’t equivalent. Family leave is unpaid under the FMLA, however, the employee may elect, or an employer may require, the employee to substitute any of the employee’s paid vacation leave, personal leave, or paid family leave for any part of the 12-week period of leave.

Job-Restoration Rights. Under the FMLA, an employee who completes a leave must be returned either to the same position as before, or to a position equivalent in pay, benefits, and other terms and conditions of employment. The act provides a limited exemption from the restoration requirement for certain highly paid employees.

TAKE DISCRIMINATION LAWS INTO ACCOUNT

Employer obligations neither begin nor end with family leave legislation compliance. Adding to the complexity are additional federal, state, and local laws regarding discrimination — among them the ADA and the Pregnancy Discrimination Act (PDA).

The PDA requires that employers provide leave to employees who are temporarily and medically disabled because of pregnancy, childbirth, or related conditions, in a like manner to that provided to employees who are disabled for other nonwork-related conditions or injuries.

The ADA prohibits both public-sector and private-sector employers from discriminating against persons with disabilities. It also requires that employers reasonably accommodate employees and applicants with disabilities, so long as such accommodation doesn't result in undue hardship to the employer. Accommodation includes job restructuring and permitting part-time or modified work schedules. The requirements of the ADA are discussed in depth in section 3 of this report.

REVIEW YOUR PROCEDURES

In order to make sure that you are in compliance with all applicable leave laws, your procedures should include the following:

- **An understanding of applicable federal and state leave laws.** All those involved in applying your leave policies — your HR department, benefits department, and managers and supervisors — should receive adequate training on how these laws work and how they interplay with your company's leave policies.
- **Implement attendance policies and procedures.** Draft a comprehensive absenteeism policy that clearly states your company's rules and procedures regarding absences and discipline.
- **Inform employees of your policies.** Be sure that your absenteeism policy is distributed to all employees. It's a good idea to give employees copies of your policy at the time they are hired and then continue to remind employees of the policy. You should include your policy in your employee handbook and also post it prominently in your workplace.
- **Assign responsibility for policy enforcement.** Figure out what department — or specific job position — will have the responsibility for administering the leave program at your company, including how specific issues will be resolved. Don't forget to establish a time-keeping system that takes into account which absences, such as those covered by the FMLA, will be protected from discipline.
- **Train all managers and supervisors.** Your front line of defense against a lawsuit regarding violation of leave laws is your supervisors and managers. Give them enough training to implement your basic absenteeism policies and also train them to spot issues, such as FMLA situations, that may need to be referred to HR. Don't forget to give training to your timekeepers, as well. Continue to follow up with training so that these employees are aware of changes in your policy or the law.
- **Beware of the "treacherous triangle."** It is important to understand the interplay between the three major laws affecting attendance: FMLA, ADA, and your state workers' compensation statute. For more information about the treacherous triangle, please see

Your front line of defense against a lawsuit regarding violation of leave laws is your supervisors and managers.

the HR Executive Special Report *FMLA, ADA & Workers' Comp: Navigating the Treacherous Triangle*.

- **Cover your benefit bases.** Get your benefits department involved to develop a policy to ensure that benefits, such as health insurance premiums, are properly dealt with while employees are on leaves of absence. Remember, you must maintain an employee's benefits while they are on FMLA leave. You may need to set up a different system for other types of employee leave, depending on your policies.
- **Post proper notices.** Many federal laws require you to post notices in employee areas alerting employees of their rights under the law. Make sure that you comply with these notice requirements.
- **Use standardized forms.** Whenever possible, streamline your processes by using standardized forms to document absences and related matters, such as medical certifications or discipline.
- **Stay abreast of the law.** It is important that you stay abreast of changes to federal and state law that may impact your absenteeism policies. For example, the FMLA regulations that were first issued in 1993 are slated to be revised in the near future. Once this happens, you may need to revise your policies to comply.
- **Reinforce your disciplinary policy.** It is a good idea to give employees a copy of your absence policy when they are disciplined for a violation of the policy. This reinforces their awareness of the policy.

About the Author

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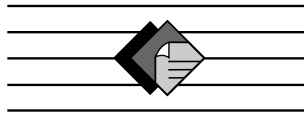
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