

THE SECRET TO CURBING FMLA ABUSE

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The creation of the Family and Medical Leave Act (FMLA) has bettered the American workplace by supporting working parents, employees dealing with serious illness, and those caring for ill family members. While it was created “to balance the demands of the workplace with the needs of families,” many employers struggle to establish ways to battle misuse and abuse.

Meet with Employees

Discover who is taking leave and have conversations with those employees, including suspected abusers of leave. Many times, we only react to leave requests or when we believe a leave is no longer reasonable. Instead, be proactive. Lead with candid discussions that ensure employees know their employer is monitoring their leave usage. If the leave is needed, use the conversations to show employees how to take leaves they need. If there are concerns with legitimacy or you see a pattern in leave requests, have a direct conversation with the employee. Ask questions without being accusatory. Your aim is not to discourage needed leave but to help employees make better choices if they are taking unnecessary leave.

Have conversations with anyone taking intermittent leave under the FMLA. Most employers wait for this type of engagement until after a leave is taken. But

Ask for Recertification

Don't be afraid to use FMLA tools when there is a concern about misuse or fraudulent use. If you have employees using leave outside their current certification, require recertification. Recertification can typically be requested every 30 days and earlier if the employee requests an extension of leave,

Get Another Opinion

Recertification ensures you have an accurate certification guiding what leave is permitted under the FMLA. If you believe an employee is fraudulently using FMLA, obtain second and third opinions¹ as authorized under the regulations. In these cases, be prepared to communicate specific concerns verbally and in writing. During these conversations, be specific about why you are challenging a certification with a

Very little about managing leave is easy, and most employers report it is only getting harder. So what can human resources (HR) professionals do to curtail unnecessary FMLA leave while supporting employees who take the leave they truly need?



talking with employees at the onset of an intermittent leave request is critical. This interactive discussion should ensure there is clarity about the leave that is authorized by a medical certification; the call-out procedures for taking leave; and the level of advanced notice, if any, that is expected.

Consider asking employees not to schedule leave on Mondays and Fridays because those days are harder to staff. While you can't force an employee to take leave on a preferred day, you can encourage employees to make leave choices that have less of an impact on the organization.

Document the discussion by taking and sharing notes and using the document as a road map. Don't assume employees know the rules, and don't underestimate the power of employees knowing you are tracking their intermittent FMLA leaves.

circumstances of the certification change significantly, or the employer receives information that casts doubt on the reason for leave. (Note: California employers do not have this option. They have to wait until the conclusion of the FMLA certification period.)

second opinion. While it might not be comfortable to have these direct conversations, they are your best bet to stop inappropriate leave.

Remember that FMLA intermittent leave meetings, recertification requests, and second or third opinions are tools to manage leave and reduce unnecessary leave by helping employees make better choices.

REFERENCES

1. 29 CFR § 825.307