

The Potential Regulatory Minefields of Managing Employee Leave

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Due to current and emerging local, state and federal laws, managing employee leave is fraught with

issues. Here's a solution for employers to consider.

Family and medical leave policies are in flux as new state and local laws are enacted and employers are starting to offer both paid and unpaid options to their employees. Managing employee leave that complies with federal, state and local laws is becoming untenable for HR professionals. And HR managers are left with few resources to support regulations.

As of this writing, 12 states have expanded the Family and Medical Leave Act (FMLA) to add more time off or more classes of people covered.¹ Washington, D.C., California, Massachusetts, New Jersey, New York, Rhode Island, and Washington have laws covering paid family leave.² The city of San Francisco enacted an ordinance forcing employers to provide supplemental compensation in addition to what is mandated under California law so that the employees receive up to 100% of their normal weekly wages during six weeks of parental leave.^{3,4}

Five states currently require paid sick leave. A small number of states provide a limited number of hours annually for parents to attend school-related events and activities for their children.

As you can see, there are many overlapping laws for employers to track, understand and attempt to manage.⁵ HR managers may rely on the Society for Human Resource Management (SHRM) or their insurance broker for updates, but these methods are not foolproof.

Complicating matters more is that often, managers without HR experience are tasked with handling leave questions and issues, which could prove difficult.

Managing employee leave is easy to mess up and the consequences can be costly.

In one lawsuit from 2015, an employee sued her employer for violating both the Americans with Disabilities Act (ADA) and FMLA. In total, the employer paid \$956,538 in back pay, legal fees and fines. Individual managers and supervisors can also be sued for their part in mismanaging leave.⁶

There's also an intangible price to pay: Employers who become embroiled in an employee leave lawsuit likely face a dip in employee morale that could hinder hiring and permanently mar company culture.

Anyone who manages employee leave—whether they work in HR or not—should be trained on FMLA and ADA laws, which other state and local laws apply, and what protocol to follow if an employee requests a leave or accommodations.

Outsourcing leave management to a third-party administrator (TPA) can help relieve busy HR staff from tracking laws and managing leave policies across a company. Typically TPAs assume the risk involved in managing leave; they're experts and take full responsibility should a misstep occur.

Beyond that, a TPA managing leave can keep updated records on employee leave, stop costly abuse and misuse of leave, walk employees through the process and determine eligibility. The TPA is responsible for providing relevant forms to employees, determining eligibility and handling communication throughout leave. They can provide training to managers to educate them on what constitutes family or medical leave and how employees can start the process.

Family leave laws will continue to evolve across the country, and new laws are enacted and others continue to change, which will make managing employee leave more and more difficult for HR. The financial and cultural risk for employees is high and

the best way to successfully manage risk is to outsource it to experts in the field. ■

¹ [National Conference of State Legislatures](#), "State Family and Medical Leave Laws"

² [Bloomberg Law](#), "Paid Family, Medical Leave Teed Up in States Across U.S."

^{3,4} [San Francisco Government](#), "Frequently Asked Questions for San Francisco Paid Parental Leave Ordinance (PPLO)"

⁵ [National Conference of State Legislatures](#), "State Family and Medical Leave Laws"

⁶ [Guardian](#), "The Cost of FMLA Mismanagement."

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