

## Handling Employee Leave Requests

An employer's failure to appropriately administer an employee's request for time off can create risk under federal, state, and local leave laws. Time off can include benefits such as unpaid job protection, wage replacement payments, and maintenance of group health insurance. This checklist helps human resource managers consider all of the factors that pertain to an employee's single absence. The checklist can aid in creating a leave of absence administration program.



### Employee's Leave Request

- ▲ Employee provides notice of need for leave. An employee doesn't need to specifically request FMLA, ADA, or other federal, state, or local leave by name. Front-line supervisors should be trained to recognize the need for leave and be able to direct the employee to human resources or the employer's third-party administrator who can administer the leave request.
- ▲ Once employees provide notice, employers should request that an employee complete a written request for leave. Employers should have a template form to give employees to complete their written leave request. Requiring a written leave request cannot hold up the employer's responsibility to provide the employee with an eligibility notice and their FMLA rights and responsibilities, but an employer can request that the written leave request be returned with the certification documentation.
- ▲ At this point, the employer's leave administrator should begin to create a chronology of events, such as dates the employer provided paperwork, reminder calls or letters, and dates the employee returned paperwork, notified of return to work, etc. A leave-tracking software system should have this capability, or an employer can create a tracking sheet to complete for each leave request.

### Eligibility Notification

- ▲ The FMLA requires an employer to notify the employee whether he or she is eligible within five business days of the employee's leave request. State laws may have similar deadlines so an employer must ensure it has a process in place to check an

employee's eligibility for FMLA, state and local leave laws, and any other benefits such as short-term disability or parenting leave policies and meet any eligibility notification deadlines.

- ▲ If an employee isn't eligible for FMLA or state leave and the leave reason relates to the employee's own health condition, an employer must consider leave as an accommodation under the ADA and engage in the interactive process.
- ▲ Provide the eligibility notice in writing and ask if the employee prefers email or mail notification and note this preference along with his or her home address and personal email address.
- ▲ Include with the eligibility notification a request for FMLA certification or verification of leave if the leave request isn't for an FMLA leave reason.
- ▲ An employer should always request documentation or certification to verify an employee's need for leave.
- ▲ An employer should know what information can be required under federal, state, and local laws for the type of leave reason.
- ▲ An employer should check to see if the benefit plan or leave law allows the employee to sign a release so that the leave administrator can contact the employee's provider directly for verification.
- ▲ An employer should check all applicable laws to ensure that the deadline it gives the employee to return the certification complies. For example, the FMLA requires the employer to give the employee at least 15 days to return the FMLA certification.

*Continued From page 12*

- ▲ The eligibility notification should include wage replacement information, such as how to contact the short-term disability carrier and any state-specific required information, such as brochures for state disability or paid family leave.
- ▲ The employer should have as part of its leave administration process a step to:
  - Inform the employee's manager of the employee's leave request and status.
  - Remind the employee via phone and/or email or mail of the impending paperwork deadline to avoid last-minute extension requests or late paperwork.

### **Employee Returns the Certification or Verification Documentation**

When the employee returns the certification or documentation, an employer should have established procedures regarding:

- ▲ Who reviews the documentation? The manager or supervisor shouldn't be involved or receive the verification paperwork.
- ▲ The process to gather more information if the documentation is incomplete or needs clarification.
- ▲ Recordkeeping, including maintaining medical documentation privately and separately from personnel files.
- ▲ Complaint policy for handling paperwork that is late. Check with the FMLA and other leave laws to determine proper designation of absences that occurred before the employee returned the certification or documentation.
- ▲ Administering other leave laws or policies based on information received from documentation pursuant to another policy or as a separate process. For example, how to coordinate workers' compensation or short-term disability with FMLA and state leave of absence for an employee's own condition.

### **Designating the Absence**

- ▲ Once the certification or verification documentation has been reviewed, the employer must decide whether to approve or deny the benefits and/or designate the leave of absence as job-protected under a federal or state leave law.
- ▲ The designation must be timely made. Under the FMLA, an employer has five business days from the date it receives the certification.

- ▲ The designation should be in writing and emailed or mailed to the employee and include information required by the FMLA or state law, if applicable. Check each covered law to ensure the designation has the required information.
- ▲ The designation also should include other relevant information, including but not limited to:
  - Information about whether or how the employee will receive any company-sponsored wage replacement benefits, such as short-term disability or paid parental leave, and any coordination of paid sick leave.
  - Leave reporting obligations and attendance policy, if leave will be taken intermittently.
  - Return-to-work or fitness-for-duty policy information and forms.
- ▲ Once the leave has been approved or denied, the employer should ensure that any absences are captured in the employer's timekeeping/HRIS system with appropriate coding.
- ▲ The employee's manager should be informed of the employee's leave designation and any next steps the manager should take.

### **During the Employee's Leave**

- ▲ Approximately 10-14 days prior to the employee's expected return to work date, the employer should correspond with the employee to:
  - Ensure the return to work date is correct.
  - Remind the employee of any fitness-for-duty or return-to-work forms that need to be completed prior to returning to work.
  - Provide information regarding other benefits, such as adding a newborn to the employee's health insurance benefits, or a transitional duty program.
- ▲ If the employee's return-to-work date is changing, and the employee needs to extend the leave of absence, the employer should follow the FMLA's recertification process, if applicable, and any extension of short-term disability benefits process. For example:
  - The employee will have at least 15 days to return the FMLA recertification form.
  - If the employee has exhausted FMLA and the employee's leave is for his or her own health condition, then the employer should begin the ADA interactive process.

*Continued on Next Page*

Continued From Page 13

- ▲ Information might already be available from short-term disability or FMLA request, so new ADA paperwork might not be needed.
- ▲ An employer can request updated information specific to limitations that prevent employees from performing essential job functions, but should include job descriptions, in order to assess an appropriate accommodation; leave is not always the right accommodation.
- ▲ If Short-Term Disability benefits will exhaust soon and the employee needs to remain absent, the employer should provide the employee with a Long-Term Disability benefits application, if such benefits are available to the employee.
- ▲ The employer should update the employee's manager about the return-to-work date or the requested extension.
- ▲ While an employee is on leave, if any wage replacement or unpaid leave of absence benefits will exhaust, the employer should notify employee that the STD, FMLA, and/or state leave is about to exhaust 10 days prior and how to request an extension, accommodations, or verify return to work.
- ▲ On or immediately after the employee's anticipated return-to-work date, the leave administrator should confirm with the employee or the employee's supervisor that the employee actually returned to work.

### Overall Leave Administration Considerations

- ▲ Employers should have in place a leave administration process that includes:
  - The ability to stay updated on federal, state, and local leave laws law;
  - A leave manual with a step-by-step guide, information about federal and state rules, such as eligibility criteria and required timelines, template letters and forms, and FAQs for the leave administrator to follow;
  - A clear process on how and who will update notifications and required attachments when there is a change to law or benefit providers;
  - A clear process of how to coordinate with disability and workers' compensation vendors to ensure unpaid leave and any Paid Time Off, sick leave, or vacation leave is running concurrently with the benefits the vendor provides;



- A checkpoint to update health insurance and collection of premiums from the absent employee;
  - A recordkeeping system;
  - Training for managers and leave administrators;
  - Reporting and data analytics.
- ▲ Employers should ensure that their payroll vendor or disability leave administrator is applying the correct payment method and calculation of disability benefits, whether through state, insurance carrier, or if self-insured and/or salary continuation. Employers should:
    - Ensure benefit calculations and offsets are agreed upon, reflected in the plan, and accurate.
    - Determine if an employee reimbursement agreement is required for overpayments and subrogation process.
    - Determine if employees are required to file for SSDI, or wait until LTD.
  - ▲ Employers shouldn't hesitate to:
    - Investigate accusations of leave abuse and have a clear process of who investigates.
    - Address performance issues that arise when the employee is at work (but without consideration of the employee's leave or leave reason).
    - Continue to evaluate the employee's performance based on uniform performance standards and objective measures.