

Minimize the Legal Risks of Leaves of Absence

BY ANDREW GOULD, ESQ.

WHAT TECHNIQUES can you follow to better prepare and protect your company when presented with employee leave requests and attendance issues?

At some point in a company's existence, an employee is going to be perceived, rightly or wrongly, of taking advantage of whatever leave rights the company provides. The following are considerations for your business.

and the law. It is not enough to simply maintain a written policy. Managers should be trained about and reminded to consult a company's written policies regularly. Similarly, discussing, even generally, the particular employment laws that apply to your company, and providing real life scenarios, should help supervisors understand their role in the organization and the importance of compliance with the law.

For example, employees need not

issues raised by employees and to become good issue spotters. The best supervisors are not the ones who believe they know all facets of state or federal law. They are the ones who know enough to bring issues to the attention of the human resources (HR) manager (or to upper management) rather than deciding something is insignificant and ignoring it.

Understand the interplay between various laws involving leaves of absence. Skilled HR generalists and labor attorneys occasionally grapple with the intricacies of, and interplay between, the FMLA, the ADA, the Pregnancy Discrimination Act, and state-specific statutes and regulations including issues surrounding workers' compensation. Just because a company maintains a non-discriminatory absence-control policy that states that any employee out for six months will be terminated from employment does not necessarily mean doing so won't violate some state or federal law. It is best to compartmentalize the various laws and issues, particularly before

taking any action adverse to an employee out on protected or possibly protected leave.

Consider a checklist before taking adverse action against someone out on leave. While not foolproof, a checklist that identifies various statutes and considerations can help avoid some of the pitfalls that may await an unsuspecting company. In addition to the various statutes identified here, a checklist should identify other possible types of protected leave (such as military, jury duty, religious observance, etc.), and it should lay out additional considerations regarding pay, benefits, and more depending on the nature of the leave. ◻

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Maintain a written leave policy. Employee handbooks are essential for all businesses, for effectively identifying, addressing, and responding to leave issues. A policy concerning the federal Family Medical Leave Act of 1993 is particularly important if the company employs 50 or more individuals.

Train management regarding policies

mention the "FMLA" or a "serious health condition" to be entitled to FMLA-protected leave. By the same token, employees need not mention the Americans With Disabilities Act or contend that they have a "qualifying disability" to trigger a company's obligations under the ADA. Train managers and supervisors to listen to

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