Updated July 17, 2020 FFCRA/ LEAVE POLICY

When it comes to absence management and dealing with employee illness, injury, or protected leave, choosing not to outsource can seem like the affordable option. However, absence management is often described as a “minefield” for employers and can be one of the most difficult and time-consuming responsibilities a company has.

Companies without a sophisticated absence management program can suffer significant productivity losses and may even end up on the wrong side of a lawsuit if they lack the capacity to determine if an employee’s absence qualifies for Federal Medical Leave (FMLA). To make things more difficult, a growing number of states and municipalities are enacting their own requirements when it comes to protected leave, adding to the already complicated tracking and management of the FMLA. To steer clear of noncompliance and discrimination, employers need to understand the constantly changing landscape of local, state, and federal leave laws.

Outsourcing FMLA is growing in popularity as regulations become more complicated and employees more knowledgeable. According to a 2018 survey by the Disability Management Employer Coalition, outsourcing federal FMLA increased 7% each year following 2014. That finding echoes what other reports have found. In fact, Littler Mendelson’s annual employer survey the previous year reported that employers find managing intermittent FMLA more difficult than managing any other federally mandated accommodation. The fact is, administering absence management programs and ensuring compliance with the FMLA, state, and local leave laws demands a substantial amount of time that modern human resources departments just don’t have.

Many states are introducing their own State Family Medical Leave Laws. In some cases, they expand either the amount of leave available or the classes of persons for whom leave may be taken. In addition, some states have added specific leave protections for things like bone marrow and organ donation, crime victims, domestic and sexual violence victims, pregnancy and child bonding, and many other events. For example, California instituted a law in 2018 that extended FMLA new child bonding leave protections to employees working for smaller companies (20 to 49 employees).

All these coexisting regulations can quickly overwhelm a human resources department and expose an employer to preventable risk in the form of fines and lawsuits.

Employers who want to ensure compliance with the FMLA and state leave policies can save valuable time and reduce their risks by outsourcing to a trusted Administrator. Many employers look to cut costs by handling employee leave internally and inevitably find themselves overwhelmed and facing fines or discrimination lawsuits. BASIC alleviates those concerns as an industry leading third-party administrator. Our compliance team constantly analyzes changes in state regulations to ensure we are administering correctly. Don't make the mistake of thinking "it can't happen us" when the consequences are thousands of dollars in fines and lawsuits. Request a proposal for with or without full Absence Management so your organization can focus on what it does best.

Next:

The Families First Coronavirus Response Act (FFCRA) offers expanded medical leave for employees of covered employers. The FFCRA states that certain public employers and private employers with fewer than 500 employees must provide up to 80 hours of paid sick leave due to inability to work from COVID-19 related quarantine or medical care. Many employers are struggling to understand the nuances and administrative requirements of the FFCRA and complaints and lawsuits alleging improper administration are beginning to emerge.

For example, a federal lawsuit filed by an employee of Irvington Township in New Jersey, a covered public employer, alleges that Irvington denied expanded leave for COVID-19 exposure while working in the municipal office. The complaint also alleges that Irvington made improper deductions to the employee's paychecks after he continued to request paid leave. While still in the early stages of litigation, this employer could potentially face fines, penalties and other monetary judgements if the court rules that Irvington violated the requirement to provide Emergency Paid Sick Leave, as outlined in the FFCRA. States are also developing their own medical leave legislation to supplement the new federal leave laws.

The Colorado state legislature recently passed SB20-205, also known as the Healthy Families and Workplaces Act (HFWA) and is now awaiting signature by the governor. The new legislation requires all employers with employees in Colorado to offer three types of leave, including COVID-19 emergency paid sick leave (CO-EPSL), paid sick and safe time (PSST), and public health emergency paid sick leave (PHEL). While great news for employees, employers must be diligent in their compliance efforts to avoid running afoul of applicable federal and state leave requirements, which may be costly. For example, the HFWA outlines penalties of $100 for posting violations and $100 per willful notice violation. Employers may also be forced to pay damages in the form of back pay, legal fees, and equitable relief. While this is not a full accounting of potential employer risks, it's enough to illustrate an employer's need for compliance.

All these new leave obligations make it more important than ever for employers to work with a trusted compliance partner like BASIC. Our industry leading FMLA Administration offers plenty of flexibility and service levels for companies of all sizes, including those with expanded leave programs. Human Resources departments often fall behind on their tracking of the most difficult type of leave –