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Family Leave and Attendance Policies

Can They Coexist in Healthcare Facilities?

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Washington State healthcare facilities face special challenges regarding managing employees in compliance with family leave laws. Healthcare employers, with their 24/7 scheduling needs, count on their employees to attend work reliably. Healthcare employers often use no-fault attendance policies to provide a disincentive for employees to miss work.

Family leave laws can limit usefulness of attendance policies

Since the enactment of the federal Family and Medical Leave Act (“FMLA”) in 1993 and the subsequent passage of family leave laws in many states, the use of such leave by employees has grown.

Washington State has mandated leave for pregnancy disability, family and medical reasons, domestic violence, and spousal military leave. Washington is one of the more liberal states with regard to family leave entitlements.

State and federal family leave is usually protected from attendance policy enforcement. Employers may not retaliate for use of family leave, and thus may not utilize attendance discipline when an employee takes such leave.

An employee with one year of service, who works more than 60% of full-time hours for a larger employer, is generally entitled to 12 weeks of unpaid FMLA leave each

year for certified medical conditions or to care for family members with such conditions (as well as parental and military family leave). Employees with paid leave can use it during FMLA leave.

Washington State’s Family Care Act requires employers to allow an employee of any tenure to use accrued paid leave, for “family care” purposes, such as the care of sick children and seriously ill spouses, parents, parents-in-law, and grandparents. This law has a special impact on the heavily unionized healthcare industry, which provides more generous paid leave benefits than other industries.

For chronic conditions where intermittent leave is medically necessary, FMLA allows employees to utilize such leave on short notice and in as small as one-hour increments. Use of intermittent family leave (Washington family care leave, like FMLA leave, is often used intermittently) has left Washington healthcare employers that provide generous paid leave with difficult choices to make about how to best manage their workforces to obtain reliable attendance. Indeed, in some healthcare facilities in Washington, upwards of ten percent of the employees have a medical certification on file allowing use of FMLA intermit-

tent leave.

Washington healthcare employers find that their traditional no-fault attendance policies are rendered toothless where an employee uses intermittent FMLA or family care leave. While most employees use leave responsibly, a certain percentage of employees will abuse family leave. Family leave laws do provide exceptions to the bar on discipline where such leave is abused.

Tools to address leave management issues

Employers can use these strategies to improve employee attendance in compliance with family leave laws:

1. Modify paid leave and family leave policies and procedures to (a) comply with changes to FMLA, (b) provide a notice protocol for short-notice use,

and (c) allow for medical certification and verification of the need for short-notice use of leave.

2. Train managers taking short notice absence calls to use a script that seeks sufficient information to determine whether the absence may qualify for family leave. Consider using a phone line for reporting the need for leave.
3. Require medical certification of the need for leave.
4. Scrutinize the medical certification. New FMLA certification forms require the employee's healthcare provider ("HCP") to provide more detail regarding intermittent leave. Review intermittent leave requests and follow up by (a) making sure that such requests provide complete information, (b) clarifying requests with

the HCP where necessary, and (c) seeking a second opinion where required.

5. Each new leave year, seek a new certification for intermittent leave conditions.
6. Track leave used by type. Attendance discipline should be used for non-family leave.
7. Review leave usage for pattern absences and other signs of abuse. Where abuse is suspected, require recertification and provide the HCP with an attendance summary to determine if leave usage is consistent with the employee's condition.
8. When family leave entitlements are exhausted, consider whether a disability interactive process is required, and otherwise proceed with regular application of attendance policy.

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Careful management of the family leave notice and certification processes will allow healthcare employers to better manage their 24/7 workforces.

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