Employment Compliance Tips – Focus on FMLA

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Human Resources presents Employment Compliance Tips

- Pro-active resources for managers
- Provide managers with tools to deal with problematic issues
- Manage employee relations issues
FMLA Employer Implications and Employee Obligations

- Employee must follow policies
- Should to be specific about need for time off
- Excessive leave without proper notice or extraordinary reason may be cause for discipline
- Consider if the employee gave notice of an FMLA eligible event
- After notice – employer has obligation to follow-up for specifics
- Inquire, but do not harass

Family Medical Leave Act: Curbing Abuse

- One of the most difficult employment issue for managers to deal with
- Creates potential liabilities
  - Staffing
  - Deadlines
  - Discrimination
  - Retaliation

Specific problem areas:
- Intermittent leave
- Extended leave
- Employees who abuse the privilege and claim more time than their medical certification allows
Employee Protections

- FMLA laws protect the worker from retaliation;
- Job is protected until a final determination has been made;
- Managers cannot try to persuade employees to exercise FMLA rights;
- Cannot be disciplined or terminated because of the FMLA related absences; but...
- Does not mean that the employee cannot be disciplined or terminated for reasonable causes not related to their FMLA leave.

Overlapping Issues

- FMLA applies to employees with “serious health conditions” and to conditions of their family members.
- More retaliation cases are being filed.
- FMLA is restricted to employees who have worked >1 year.
  - Be careful – if the employee has worked less than one year, they may be entitled to medical leave under ADA
- ADA applies to all employees with “disabilities.” Duration of employment unrelated.
- Recent ADA amendments make it easier for employees to be successful as plaintiffs
Notice Requirements

**FMLA leave** should be automatic if and employee is qualified.

- Be diligent in referring employees to HR if you become aware of a medical condition they have that might qualify for FMLA
  - >3 days continuous
  - Repeat medical treatments
  - Family member issues

- They do not have to specifically request FMLA, it is the employers responsibility to notify them of their rights once they have notice of a qualifying condition.

Curbing Abuse

After notice of a qualifying event:

- Require employees to use all paid leave prior to taking unpaid leave time
- If hourly, it can be taken in increments as small as 15 minutes
- Employees still have to adhere to notice and attendance requirements – if they are aware of an upcoming medical appointment, they should provide you with notice.
- They must be able to perform the essential functions of the job – if the absences prevent them from doing their job, call Human Resources for assistance in determining next steps.
Excessive Absences

- For employees with intermittent FMLA, if you suspect they are abusing their leave:
  - Contact Human Resources to discuss the issue with the employee’s provider;
  - Make sure they identify their leave as FMLA or sick;
  - Looking at trends can be helpful; and
  - Weigh alternatives to intermittent leave.

Contact HR

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