

Guest Column: Outsourcing Absence Management in the Health Care Industry

By Martin Pepe, Account Executive for WHA's Premier Partner, M3 Insurance

Keeping track of your employees' leave is not only a logistical challenge for your human resources (HR) team, but potentially a risk management nightmare. Managing absences internally has been the norm for many health care organizations, but those that outsource this task may actually be positioning themselves to better execute strategic human resources responsibilities while transferring potential compliance risk.

What is absence or leave management?

Absence management? Leave management? Those words previously only referred to FMLA leave. Now, your HR team knows that these words may refer to a number of things: FMLA, ADAA, PFL (not in Wisconsin, YET), state leave, parental leave, company leaves, short-term disability and long-term disability.

Not only has the management of these various leaves grown complex for your team, but the differences between how, when, and who is eligible and how the numerous leaves integrate have added to the complexity. This leaves the door open to an HR team that is overworked and overwhelmed – and likely to miss a detail that results in either abuse of a leave policy or a lack of compliance.

Why absence management matters in health care

Recent studies have shown that health care organizations rank second in leaves, with at least 39% of health care employees in possession of an open leave at any given time.

Who manages this leave? Depending upon how large your organization is, it may be a team of 10 or a team of one. Whether you have that full team or it's a one-person show, absence management tracking techniques can range from utilizing a leave software program to the good old Excel spreadsheet method. If the absence claim starts with HR, the compliance issues can begin.

Questions to consider

1. How are they determining the return-to-work date?
2. Is the certification fulfilled enough to qualify for Family and Medical Leave Act (FMLA)?
3. Is the recertification done to extend if necessary?
4. Did you supply the designation letter?

Risks of poor absence management

As you can tell, leave management has become very complex and is constantly changing; therefore, the need for a compliant process is also changing. Keeping up with the latest in absence management can be very costly to an employee and employer.

Financial risks

In 2019, 51.64% of investigations were initiated independently by the Department of Labor, resulting in over \$334 million in back wages for more than 313,941 workers.

In 2019, an employee brought action against his former employer for violation of the FMLA, the Americans with Disabilities Act



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(ADA), and a state law discrimination statute arising from his termination for vacationing in Mexico while on leave. The court awarded the employee over \$1.3 million in liquidated damages and \$605,690 in attorney fees and costs (DaPrato v. Mass. Water Res. Auth., 482 Mass. 375, 377, 123 N.E.3d 754 (2019)).

Outsourcing absence management takes the pressure off your organization to manage the compliance and tracking process, meaning your team can breathe a sigh of relief knowing that they don't need to understand every detail of the various federal and state leaves available to employees.

Leave abuse risks

There is one other key element that has not been mentioned: the abuse of these leaves, especially intermittent leave, which is the #1 type of leave in the hospital system. Intermittent leave can easily be abused by employees as a reason for tardiness or "being late."

A chronically late employee was fired after many times of coming to work late and then refusing an offer of transfer to a different work shift. The employee blamed her inability to show up for work on time on a medical condition; however, she had never been absent or late for work due to medical treatment or any flare-up of her medical condition, which appeared to only hit her right before needing to be at work.

After being fired, she filed suit against her employer for failing to allow her tardies as FMLA intermittent leave. As you may imagine, the court ruled in favor of the employer stating that intermittent leave applies only to absences from work for medical treatment or due to incapacity from an acute attack of symptoms (Brown v. Eastern Maine Medical Center).

Overwhelmed or understaffed HR teams can easily be taken advantage of in the context of FMLA intermittent leave. Many employees seek to abuse the protections afforded by the FMLA, and employers will have little recourse without keeping adequate records.

Employers should remain in-the-know about what their employees are experiencing, including by asking employees about their treatments or how their family member is feeling. Employers can go a long way in preventing abuse of the FMLA leave by showing employees that the employer takes the administration of FMLA leave seriously.

Consider outsourcing absence management

With everything that your HR department has to be involved in today, outsourcing the absence management process for short-term disability, state leave, and FMLA allows your organization to take advantage of more strategic initiatives.

- Offloading some tasks can mean a reduced administrative burden on human resources
- A neutral party acts as an added buffer between employees and management regarding sensitive information about their leave requests
- FMLA outsourcing can mean an added layer of privacy for employees and their medical information when taking sick leave
- Having a specialized provider can ensure that all processes are compliant and up to date with the most recent guidelines

Key takeaways

Health care organizations' HR departments are tasked with an ever-growing list of responsibilities, and, at the same time, they work with an employee population who has one of the highest percentages of employees utilizing leave at any given time. The administrative burden of managing this leave internally is not only a stressor for your team, but a potential risk to your organization.

Health care providers may consider outsourcing absence management to alleviate workload and risk from your organization. Reach out to your M3 account executive to discuss whether outsourcing makes sense for your organization, what options you have at your disposal, and what risks you may avoid by outsourcing.