

The Cost of Noncompliance When Managing Employee Absence

ESIS®

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Employers often focus on the day-to-day costs of absence. Not recognizing – and guarding against – the costs of noncompliance with the wide array of leave regulations can have a significant impact on the bottom line.

Employers know that their employees can be out of work for any number of reasons:

- Disability stemming from workers compensation claims
- Short-term disability due to non-occupational injuries or illnesses
- Leave granted under the Family Medical Leave Act (FMLA), or
- Leave entitlement under the Americans with Disabilities Act

As they manage employee absence, employers should not overlook the costs of failing to comply with the multitude of laws and regulations governing employee leave.

The Direct and Indirect Costs of Absence

Many employers focus on managing the costs associated with absence. After all, they can be significant and include everything from hiring temporary or replacement workers to a loss of productivity. Managers need to spend extra time managing both new/replacement employees and the whole team to ensure that things continue to run as smoothly as possible. That diverts managers from their normal tasks and carries a hidden, hard-to-measure, cost in both effectiveness and the ability to juggle all their duties. But these are not the only drivers of the cost of absence.

How the costs of absence add up ¹	
Employers that use overtime to cover employee absence	82%
Amount of employee absences covered with overtime	47%
Perceived employee productivity loss due to employee absence	29.5%
Perceived supervisor productivity loss due to employee absence	15.7%
Percent increase in voluntary turnover due to stress	50%
Direct cost of paid time off	15.4%

Factoring in the Cost of Noncompliance

As they manage employee absence, employers should not overlook the costs of failing to comply with the multitude of laws and regulations governing employee leave. These costs can be significant. For example, managers may inappropriately deny FMLA leave, which can cause an employee to file a complaint with the Wage & Hour division of the DOL. The average cost to defend an FMLA lawsuit is \$80,000.² The average awards to employees who successfully sued their employer for wrongful termination based runs between \$87,500 and \$450,000.³ If leave programs are not administered consistently across locations, it can give rise to EEOC lawsuits and fines.

Failure to comply with Americans with Disabilities Act (ADA) and Americans with Disabilities Amendments Act (ADAAA) regulations when making accommodations is another significant compliance exposure. Requirements under ADA interact with disability, workers compensation, and other leaves, and can overlap and differ from the various regulations (e.g., FMLA), Uniformed Services Employment and Reemployment Rights Act (USERRA). It’s also worth noting that failing to offer a return-to-work option for employees who are absent due to non-occupational injuries is a considered form of discrimination by the EEOC. The ADA doesn’t only apply when employees are returning to work. Medical leave itself can be deemed a “reasonable accommodation” in some situations. If employee requests for medical leave are not evaluated using ADA definitions and requirements, and the employee files a complaint, the company may be fined for discrimination. A single mismanaged case involving ADA noncompliance costs an average of \$500,000.⁴

The Cost of Noncompliance

Advocate Health Hospitals v. Schultz



In the case of Advocate Health Hospitals v. Schultz,⁵ a long-time employee alleged his former employer terminated him in retaliation for using intermittent FMLA to care for his two ill parents. While the employee was taking his approved leave, his employer established performance standards he was unable to meet due to the time he was out on leave. The problem escalated until the employee was terminated.

A federal jury awarded \$11.65 million to the employee. The award consisted of \$750,000 for compensatory damages and an additional \$10 million in punitive damages levied against the employer, and \$450,000 levied against each of the two supervisors involved.⁶

A Better Way to Manage Leave and Compliance

ESIS' Integrated Absence Management (IAM) services provide single-source claim reporting and claims management for state, federal, and company leaves in all jurisdictions. Our sophisticated, compliance-related technology helps ensure adherence to government and state regulations.

Some other highlights of our integrated absence management solution include:

- Customization that streamlines the process across all absence types
- Integrated FMLA runs concurrently with Short-Term Disability (STD), workers compensation, Americans with Disabilities Act/ADA Amendments Act (ADA/ADAAA), and other leaves of absence
- Single-point intuitive intake process via telephonic, web, or mobile applications, including access portals for USAA's human resources supervisors and employees
- Integrated claims management that assists in removing redundancies and overlaps in your process

Footnotes

- 1 Sources: *Society for Human Resource Management*, in collaboration with and commissioned by Kronos, *Total Financial Impact of Employee Absences in the U.S. (2014)* and *Total Financial Impact of Employee Absences Across the United States, China, Australia, Europe, India, and Mexico (2014)*.
- 2 Society for Human Resource Management (SHRM)
- 3 EEOC
- 4 Figure based on range of settlements from \$87,500 to \$450,000 for wrongful termination related to FMLA absence (EEOC), plus \$78,000 average FMLA litigation defense costs regardless of outcome (Department of Labor). Those figures are several years old, and may be larger now.
- 5 *Schultz v. Advocate Health and Hospitals Corp.*, U.S. District Court, N.D. Ill., Eastern Division, No. 01 C 702, 6/4/02
- 6 Society for Human Resource Management



Connect With Us

If you would like to meet with one of ESIS' team of leave management experts to discuss how we can partner with you to build an effective, integrated leave management solution for your organization, please contact:

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