



WEBINAR OVERVIEW

Understanding Leave Laws and Effectively Managing Employee Leaves

June 7, 2023

INTRO/SETTING THE STAGE

- What Are Common Issues Related to Leave Laws?
- Current Trends in Leave Laws
- Trends that Are on the Rise

FEDERAL LEAVE LAWS – THE INTERPLAY OF THE ADA, FMLA AND WORKERS COMPENSATION

- ADA
- Family Medical Leave Act
- Workers Compensation

RECENT UPDATES TO NEW YORK STATE LEAVE LAWS

- New York State Paid Family Leave
- New York Absence Law

OTHER KEY NEW YORK STATE LEAVE LAWS

- New York State Paid Sick Leave Law
- New York State COVID Leave
- NYC Earned Safe and Sick Leave Law

BEST PRACTICES IN LEAVE MANAGEMENT

- Benefits of Proper Leave Management
- Challenges of Leave Management
- Leave Management - Best Practices

WEBINAR OUTLINE

I. INTRO/SETTING THE STAGE

Current Trends in Leave Laws

A. Leave Is Among Top-Rated Benefits for Employees

- Employees will always take more money if you offer it. But pay alone isn't necessarily all it takes to attract and keep good employees.
- In a survey of employed workers and employers, Forbes Advisor found that 40% of employers say workers leave their job to find a role that offers better employee benefits.
- Paid time off is among the top-rated benefits for employees.

B. Trends that Are on the Rise

1. Leave early on Fridays

Note: The concept of allowing employees to leave early on Friday isn't new. In fact, this benefit is often extended in the summer (known as "summer Fridays"), with more than half of North American organizations offering it. These perks allow organizations to gain a competitive edge when attracting and retaining top talent.

2. Four-day work week

- A [2022 Qualtrics survey](#) found that 92% of respondents favor working a four-day work week.
- In addition, 72% said they'd prefer a four-day week even if it meant working longer hours on the days they did work.
- Even more interesting is that the largest multinational four-day workweek experiment is almost complete in the UK.

Notes: [According to Claire Daniels](#), CEO at Trio Media, one of the 70 companies participating in the pilot, "The four-day week trial so far has been extremely successful for us," she said.

"Productivity has remained high, with an increase in wellness for the team, along with our business performing 44% better financially.

3. Paid self-care days or time off for mental health

- The pandemic pushed mental health and burnout into the spotlight.
- As a result, nearly 23% of workers say their employer has introduced new mental health services, according to a recent Harris Poll survey.
- And over one-third of employees say their companies have always offered some kind of mental health support.

4. Accelerated State Paid Leave Laws

- More states are adopting paid leave laws that go well beyond the Family and Medical Leave Act (FMLA) in terms of supplementing income and who is covered, creating more leave complexities – especially for employers with workers in multiple states.

5. Seasonal Workers

Notes: Paid Sick Leave Laws: Multiple states enacted paid sick and safe leave laws that could apply to seasonal workers. For example, California requires accrued and unused sick leave to be restored if a covered employer re-hires the same worker within 12 months from the previous separation. As for New York, the state's sick and safe leave law applies to all private sector workers working for a covered employer, regardless of industry, occupation, part-time status, overtime exempt status, and seasonal status.

6. Outsourcing Absence Management

- There has been a 200% Increase in Employers Outsourcing Short Term Disability and Family and Medical Leave Administration since 2012

Notes: Outsourcing absence management helps employers address common challenges, such as coordinating leave types, ensuring leave law compliance, and alleviating the administrative burden on HR staffs.

Source: <https://www.guardianlife.com/absence-management/employee-leave-trends>

II. FEDERAL LEAVE LAWS – THE INTERPLAY BETWEEN THE ADA, FMLA AND WORKERS COMPENSATION

A. The Americans with Disabilities Act (“ADA”)

- **Employer Coverage:** Applies to employers with 15 or more employees

- **Employee Eligibility:** Applicants or employees who are qualified individuals with a disability who can perform the job’s essential functions with or without reasonable accommodation; No length of service requirement
- **Leave Rules:** Requirement that employers make reasonable accommodations for qualified employees with disabilities, which can include modification to work schedules, such as leave

B. The Family Medical Leave Act (“FMLA”)

- **Employer Coverage:** Applies to employers with 50 or more employees
- **Employee Eligibility:** Employees who work at a worksite with 50 or more employees within a 75-mile radius, have worked there for at least 12 months, and have worked at least 1,250 hours in the 12 months immediately preceding the leave
- **Leave Rules:** Provides up to 12 weeks of unpaid leave per 12-month period for employee (or family member) with a “serious health condition”

C. Workers Compensation Act

- **Employer Coverage:** Any employer with at least 1 employee
- **Employee Eligibility:** Employees who have a work-related injury or illness
- **Leave Rules:** No defined limit to leave

D. Overlap Between the Laws

- Under certain circumstances, provisions of these laws may overlap. This overlap generally stems from the use of the terms illness, injury, or disability in each statute.
- It is important to note where the definitions differ. The ADA’s definition of “disability” is different than “serious health condition” under the FMLA. If an employee has a serious health condition that also qualifies as a disability, the ADA and FMLA protections overlap. If an employee suffers a work-related injury that requires hospitalization for more than three days and qualifies as a serious health condition, the FMLA and workers’ compensation will overlap.

Notes: An employee who is protected by both the ADA and FMLA, for example, is entitled to the rights afforded by both laws. In other words, 12 weeks of job-protected leave with benefits continuation under the FMLA, and a reasonable accommodation to allow the employee to perform the job’s essential functions under the ADA.

Importantly, if the law allows different rights in the same situation, the employee is entitled to whichever provides the greater benefit. Managers and Human Resource professionals should note this may depend on what the employee desires. If, for example, an employee is qualified for FMLA leave but wants to work with a reasonable accommodation, the employer must provide the

accommodation. If the employee could work with a reasonable accommodation but chooses to take FMLA leave, employers must allow the leave.

If an employee's work-related injury or illness is also a serious health condition, state workers' compensation and FMLA may both apply. Light Duty assignments are one area where FMLA and Workers' Compensation differ. Under the FMLA, an employee is entitled to 12 weeks of leave. The employee does not have to come back to work early to a different position or "light duty" work.

Under workers' compensation, however, if the company offers light duty work that the employee is medically capable of doing, the employee typically has to accept that position or lose benefits under workers' compensation. Importantly, an employee who accepts a light-duty position as opposed to remaining on FMLA leave does not give up their right to be reinstated to their former position, at least for the 12-month FMLA period.

E. Additional Leave Time

- If an employee has exhausted their FMLA time, consider whether the employee qualifies as an individual with a disability. If so, the ADA may entitle this employee to additional protections, such as additional leave time or a reasonable accommodation to the job for the disability. Employers should always consider whether the ADA factors into the FMLA equation.

Notes: Employers should revisit their documentation process for handling employees' leave requests. Companies who outsource their claims handling to third parties should not neglect in-house record keeping. Implementing training for managers on these laws can lower exposure in what can otherwise become costly litigation for leave-interference claims. Violations of these laws can trigger lost wages, back pay, reinstatement, compensatory damages, and punitive damages. Employers must carefully consider each law individually when an employee needs to take leave.

III. RECENT UPDATES IN NEW YORK LEAVE LAWS

A. New York Paid Family Leave

- **Increase to Maximum Weekly Benefits**

Employees taking covered leave will receive Paid Family Leave insurance benefits equal to either 67% of their weekly pay, or 67% of the SAWW, whichever is less. The SAWW, which is updated annually, has been set at \$1,688.19 for 2023. Accordingly, the maximum weekly benefit available to employees will be \$1,131.08. This is an increase of \$62.72 from the maximum weekly benefit for 2022.

- **Decrease in Employee Contribution Rate**

The employee contribution rate will go down in 2023. In 2023, employees will contribute 0.455% of their gross wages per pay period with the maximum annual contribution set at

\$399.43. This is approximately a 17% decrease from this year. Employees earning less than the SAWW will contribute less than the maximum contribution.

- **Expanded definition of family member to siblings.**

Employers should update their Paid Family Leave policy to include the expanded definition of a family member. Employers may wish to confirm that the 2023 employee contribution rate is properly updated to ensure correct payroll administration.

B. New York Lawful Absence Law

- As of February 19, employers may not discipline employees for taking lawful absences pursuant to federal, state or local law.
- Section 215 of the New York Labor Law, which prohibits employers from penalizing, threatening, or discriminating or retaliating against employees for engaging in activities that are protected under the law, has now been amended to include an employee's use of any legally protected absence pursuant to federal, local or state law as a protected activity.

Note: Many employers generally maintain and utilize “no fault” attendance policies and/or absence control practices and procedures to regulate and minimize employee absences and tardiness within the workplace. “No fault” attendance policies typically operate by penalizing workers for absences or tardiness through a points system. Points – also referred to as “demerits” or “occurrences” – are typically allocated to an employee’s record for taking time off from work, regardless of the reason for such absence. When an employee incurs points for each absence or lateness under these attendance policies, the employee may be disciplined, up to and including termination.

Some “no fault” attendance policies omit and/or include misleading information about statutorily protected absences afforded to workers. As a result of these broad absence control policies, procedures, and practices, employees might feel discouraged from exercising their right to use legally protected absences. Accordingly, the Legislature enacted the lawful absence law with the intent to curtail such “no fault” attendance policies by making it clear that workers shall not be punished or subjected to discipline for lawful absences.

Although the law does not expressly define a legally protected absence pursuant to federal, local or state law, it presumably protects the use of any absences or leaves granted by the New York Paid Family Leave Law, the New York Paid Sick Leave Law, the New York Emergency COVID-19 Paid Sick Leave Law, the New York Paid Leave for COVID-19 Vaccinations Law, the New York City Safe and Sick Leave Law, the Family and Medical Leave Act, and the Americans with Disabilities Act, as well as other laws that authorize employee absences or leaves.

- The amendment to Section 215 of the New York Labor Law also prohibits employers from "assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an

employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay." Accordingly, this provision effectively prohibits the use of no-fault attendance policies in New York.

Note: The law provides a private cause of action for current and former employees to initiate a lawsuit to recover damages from employers that violate their rights under the law. In addition, the New York Department of Labor (NYDOL) may require employers that violate Section 215 to provide liquidated damages, back pay, and reinstatement or front pay. The NYDOL can also impose civil penalties of between \$1,000 and \$10,000 on first-time violators and up to \$20,000 for subsequent violations.

IV. Other Important New York Leave Laws

A. New York State Paid Sick Leave

- On April 3, 2020, legislation was signed establishing the right to paid leave for New Yorkers. New York's paid sick leave law requires employers with five or more employees or net income of more than \$1 million to provide paid sick leave to employees and for employers with fewer than five employees and a net income of \$1 million or less to provide unpaid sick leave to employees.
- **On September 30, 2020**, covered employees in New York State began to accrue leave at a rate of one hour for every 30 hours worked. **On January 1, 2021**, employees could start using accrued leave.
- All private-sector employees in New York State are covered, regardless of industry, occupation, part-time status, and overtime exempt status. Federal, state, and local government employees are **NOT** covered, but employees of charter schools, private schools, and not-for-profit corporations are covered.

Q. Can an employee take Paid Family Leave ("PFL") consecutively with paid sick leave?

- Yes. If the employer allows employees to take PFL and paid sick leave consecutively, the employee may choose to do this. However, the employee cannot receive more than their full wages while collecting PFL benefits.

B. New York State COVID-19 Leave

- Leave is available to employees experiencing symptoms and who are not able to work from home during the quarantine or isolation period.
- Beginning in January 2022, the NYS DOH made self-certification forms available for employees to use to evidence the order of isolation or quarantine required under the law. Employees may complete the appropriate affirmation to satisfy the

law's requirement that they have an order of isolation or quarantine, as applicable, from a duly authorized government authority.

- Employees may take up to three periods of leave under the law. However, for the second and third periods, eligibility must be evidenced by a positive COVID-19 test, and the employee must submit documentation from "a licensed medical provider or testing facility" confirming the positive result, unless the employer performed the test.

C. NYC Earned Safe and Sick Time

Under NYC's Paid Safe and Sick Leave Law, covered employees have the right to use safe and sick leave for the care and treatment of themselves or a family member and to seek legal and social services assistance or take other safety measures if the employee or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking.

- Employers must allow employees to use safe and sick leave as it is accrued, with no waiting period for new hires.
- Employees can use safe and sick leave for unexpected reasons without giving advance notice.
- Employers must provide employees with a written safe and sick leave policy that describes the benefit and how to use it.
- Employers can require documentation only when employees use more than three workdays in a row of safe and sick leave, if the documentation requirement is explained in the employer's written policy.
- Employers must inform employees of their accrued, used, and total leave balances on a paystub or through an employee-accessible electronic system.

V. Best Practices for Leave Management

A. Benefits of Proper Leave Management

While leave management might sound confusing, it has a plethora of benefits for both your company and your employees. Enacting a good leave management policy can help in the following ways.

1. Helps Coworkers Be More Productive

- Research shows vacation time improves productivity at work.
- One study found that 78% of managers thought time off improved employees' focus.
- Another found that productivity increases by 31% when the brain thinks positively.

Notes: But the benefits go beyond individual effects. If an employee's coworkers are alerted early on that they'll be out for a certain time, they can plan ahead so they aren't taken by surprise. With

advanced knowledge of time off thanks to calendars or notifications, they can prep for the absence to avoid being slammed with extra work.

2. There's a Clear and Inclusive Policy

Here are some of the basics your leave policy should include.

- The number of paid time off days an employee has each year
- How many additional paid time off days employees get after more years of service
- How many days an employee can take off in a row without penalty
- Whether or not you allow unpaid time off
- Bereavement, parental leave, jury duty and voting time off policies
- Which holidays your company has off

Notes: With a policy that's clearly outlined and accessible, everyone knows exactly how much leave they have. This is especially important for employees who may not be in the proper headspace. For example, after having a child or experiencing the sudden death of a loved one, most people won't want to be scouring the employee handbook for the finer details.

3. Reduction of Paperwork and Manual Calculations

- A clear leave management system will make the math easy – and in many cases, automated.
- Leave management systems can automatically assign employees PTO or leave benefits based on their years of service or qualifying life events.

4. Helps You Stay Compliant

- With more and more companies choosing to stay remote, you may be hiring employees in various locations across the country. This can be a lot to keep track of when it comes to labor laws.
- Having your leave management policies clearly defined can help you stay compliant with labor laws in every location.

5. Shows Employees You Care About Their Well-Being

- Employees appreciate having clear guidelines on their time off and being encouraged to use it at their own discretion.
- Research shows that 30% of employees said having paid time off could help them avoid burnout.

Notes: Giving them clear and easy access to time off when they need it shows you're dedicated to keeping their mental and physical health in check.

B. Challenges of Leave Management

1. Clearly Communicating Company Policies

- When it comes to vacation time, 62% of employees say that their company discourages taking it, sends mixed messages about it or says nothing at all about it.

Notes: A lot of this might be because leave policies aren't clear or easily accessible. They might be obscured in your employee handbook or difficult to calculate without whipping out the calculator.

2. Tracking Time Off

Notes: It sounds simple enough to track leave. But when you have 10 employees all taking time off at the same time, some with PTO and others with FMLA benefits, it can get tricky. You have to pay attention to leave deadlines with FMLA (which could vary depending on what state your employee is in), as well as whether or not the employee has enough PTO hours to cover their leave. This can be a headache for even the most seasoned HR professional.

3. Making Sure There's Enough Coverage

One major hurdle in managing leave is making sure the company has enough coverage in specific areas.

Notes: If everyone from the finance department wants to take a leave at the same time, this could result in a complete stoppage of productivity. You might experience project delays or workload buildups that cause you to lose clients. It can be hard to track overlapping requests, especially if you have several managers approving time off in the same department.

4. Making Sure Employees Aren't Abusing Their Time Off

- Leave management requires you to always double-check that PTO hours are accurate for all employees—especially if they never put in an official request but didn't come into work.
- Your policy may also require you to ask for doctor's notes if an employee has been sick for more than a few days.

5. Making Sure Employees Are Paid Appropriately

- In addition to correctly documenting all days off, you also have to make sure employees are being paid correctly.
 - Did they get paid for their time off?
 - Was it for the correct amount?

Notes: Your company may have policies where not all leave days are paid—or they could be paid at a different rate. Messing this up could mean you're cheating your employee.

6. Employees Refusing To Take a Leave, Even When Sick

- Presenteeism
- Studies estimate that employers lose an average of 57.5 days a year per employee due to presenteeism.

Notes: Even if you're offering a great paid leave plan, some employees might feel pressured to come to work no matter what. This is known as presenteeism, and it's a real problem in the Covid-19 era. Studies estimate that employers lose an average of 57.5 days a year per employee due to presenteeism. It's your job to encourage employees not to come in when they're sick – but it's not always an easy one.

C. Leave Management - Best Practices

1. Keep Immaculate Records

Notes: Keeping good leave records is crucial. Not only does it help you and your employees know what their remaining balance is, but it can also help you calculate what percentage of your employees aren't using all their PTO. As we mentioned above, taking time off can lead to increased productivity, so you'll want to encourage employees who aren't using PTO to go on an extended vacation.

To keep records, consider using an automated system that subtracts time after every approved request. These systems can also add set PTO amounts each pay period so totals are always accurate and up to date. Keep a backup of these amounts in an Excel sheet on your computer so you can do any calculations you need to.

2. Stick to Your Predefined Policy

Notes: Once you have a policy, be stringent about it. Don't bend the rules for someone – it could lead others to make the same request. This might not sound like a problem, but over time, it can lead to perceived favoritism, which could throw your company culture out of balance. It's safest to just create a lenient policy so everyone is happy without needing special treatment.

3. Use Leave Management Software

Notes: If you're feeling a bit overwhelmed with all that leave management entails, the easiest way to get help is by using leave management software. These applications can track time off for each employee, auto-calculate remaining PTO and even set predefined policies for employees that live in different states. They take all the work out of your hands so you can focus on other areas of your HR duties.

4. Keep Everyone Updated to Changes in Policy

Notes: If you need to make changes to your policy, don't sweep them under the rug. Make sure to announce them to your entire company in a clear and public way. If possible, schedule a meeting

with employees so you can chat through their concerns and gather their feedback. It's always important to make employees feel heard, so if a majority of the company disagrees with the changes, it might be worth investigating an alternative policy approach you can take.

5. Use Automation Features

Notes: Using a leave management system can help you utilize automation tools that simplify the leave process. For example, you might be able to send out reminders before PTO expires so employees remember to use it before it's gone forever. Or, if an employee hasn't taken a leave in more than six months, you can send a reminder email that they should go on a vacation.

It's even possible to remind managers to approve time off requests that have been sitting for too long. Automated warnings can also let you know if more than two people in the same department have requested time off over the same period. Features such as these reduce the manual work you have to do with leave management – and ensure things keep running smoothly.

Source: <https://www.forbes.com/advisor/business/leave-management/>