HRtelligence

Webinar 22 – November 27, 2024

Management of Leave Laws – Best Practices for Employers

WEBINAR OUTLINE

INTRO/SETTING THE STAGE
- What are Common Issues Related to Leave Laws?

AN OVERVIEW OF FEDERAL LEAVE LAWS
- ADA
- FMLA
- Interplay Between the ADA and the FMLA – Common Questions

AN OVERVIEW OF NEW YORK STATE LEAVE LAWS
- New York State Paid Sick Leave
- New York Paid Family Leave
- New York City Sick and Safe Leave

RECENT UPDATES TO NEW YORK STATE LEAVE LAWS
- New York State Paid Family Leave Updates
- New York Paid Prenatal Leave Law – Effective January 1, 2025

BEST PRACTICES FOR LEAVE MANAGEMENT

HRtelligence TIPS

INTRO/SETTING THE STAGE

What are Common Issues Related to Leave Laws?

- Understanding the legal requirements
- Knowing what leave employees qualify for
- When employees are eligible for intermittent leave
- Recordkeeping and documentation

AN OVERVIEW OF FEDERAL LEAVE LAWS

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

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"

Interplay Between the ADA and the FMLA – Common Questions

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.
- **Does the condition qualify as a disability under the ADA?**
  This is crucial as the ADA only applies to individuals with disabilities, while the FMLA covers a broader range of serious health conditions that may not meet the ADA definition.

- **Can an employee take additional leave beyond the FMLA 12 weeks if their condition requires it?**
  If an employee's medical condition qualifies as a disability under the ADA, they may be able to request additional leave as a reasonable accommodation, even if they have already used their FMLA leave.

- **How is it determined if an employee needs to use FMLA or ADA for their leave request?**
  Assess the severity of the medical condition and whether it significantly impacts the employee's ability to perform essential job functions; if it meets the ADA definition of a disability, the employee may be able to request further accommodations beyond the FMLA leave.

- **Can ADA leave be used intermittently?**
  Yes, if the medical condition requires frequent, short periods of leave, the employee may be able to request intermittent leave as a reasonable accommodation under the ADA.

AN OVERVIEW OF NEW YORK STATE LEAVE LAWS

New York 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.

New York Paid Family Leave (NY PFL)

Eligible workers can get up to 12 weeks of paid time off to care for family.

Workers can take Paid Family Leave to:
- bond with a child within 12 months of birth, adoption, or foster placement.
- care for a family member with a serious health condition.
- assist loved ones when a family member is deployed abroad.
- care for yourself, a child, or a family member during a COVID-19 order of quarantine or isolation.

Additionally:
- Leave doesn't have to be taken all at once, but has to be taken for full days, not half days.
- You can get paid up to 67% of your average weekly wage.
- Paid Family Leave also provides:
  - job protection
  - continued health insurance
  - protection from discrimination or retaliation
- Immigration status doesn't affect eligibility.

Eligibility:
- Full-time employees (20+ hours a week) are eligible after 26 consecutive weeks of
- employment, beginning with the employee's start date.
- Part-time employees (<20 hours per week) are eligible after working 175 days, beginning with the employee's start date. The 175 workdays do not have to be consecutive.

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.

New York City Sick and Safe Leave

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.

RECENT UPDATES TO NEW YORK STATE LEAVE LAWS

New York Paid Family Leave

Starting January 1, 2025, the following changes will take effect:
- Eligible employees taking leave under the NYPFLL will continue to receive 67% of their average weekly wage, up to a cap of 67% of the current Statewide Average Weekly Wage (NYSAWW). For 2025, the NYSAWW is $1,757.19, which means that the maximum weekly benefit for 2025 is $1,177.32 (a $26.16 increase from 2024).
- Eligible employees will contribute 0.388% of their gross wages per pay period, with the maximum annual contribution for 2025 set at $354.53. Employees earning less than the current NYSAWW of $1,757.19 will contribute less than the annual cap of $354.53, consistent with their actual wages.

New York Paid Prenatal Leave

On January 1, 2025, an amendment to New York Labor Law section 196-b, the state's paid sick leave law, will go into effect. The amendment requires New York employers to provide employees with 20 hours of paid prenatal leave during any 52-week period.
The amendment provides that paid prenatal leave may be taken for "health care services received by an employee during their pregnancy or related to such pregnancy, including physical

examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy."

Employees may take paid prenatal leave in hourly increments at their regular rate of pay or the applicable minimum wage, whichever is greater. Paid prenatal leave is in addition to existing leave entitlements such as paid sick and safe leave, paid family leave, and leave under the Family and Medical Leave Act.

Paid lactation breaks
Starting June 19, 2024, New York employers must provide nursing employees with 30-minute paid lactation breaks.

COVID-19 emergency quarantine sick leave law
This law will expire on July 31, 2025.

BEST PRACTICES FOR LEAVE MANAGEMENT

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.

Tracking Time Off

Making Sure There's Enough Coverage

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

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.

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?

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.

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.

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

Reduction of Paperwork and Manual Calculations

- A clear leave management system in many cases make math automated so mistakes can be avoided.
- Leave management systems can automatically assign employees PTO or leave benefits based on their years of service or qualifying life events.

Helps Employers 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.

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.

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TIPS

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- Employers would be well-advised to take note of their differing requirements under the many leave laws that apply in New York and under federal law.
- As a best practice, ensure policies are updated and that you are familiar with all of them.
- It is also imperative that leave entitlement is communicated clearly to employees.
- In addition, ensure managers and HR representatives are adequately trained in all applicable leave laws.
- Ensure proper recordkeeping
- Use Leave Management Software
- Keep Everyone Updated to Changes in Policy
- Use Automation Features