

Common misconceptions in integrated disability and absence management

BY **BRYON BASS**

*SVP, Disability and Absence Practice
& Compliance, Sedgwick*


In the disability and absence management industry, there are some common misconceptions related to the Family and Medical Leave Act (FMLA), statutory disability and leave, and the Americans with Disabilities Act (ADA). Each one includes rules and regulations for employers that can be difficult to navigate. This article explores key issues in each area to help shed light on complex topics related to disability and leave.

FMLA

When it comes to managing benefits under the FMLA, some of the primary challenges for employers include dealing with intermittent leave, understanding how specific regulations apply to their company, and responding to employee requests. Below, we outline some FMLA myths and questions and help clarify the rules associated with them.


TRUE OR FALSE ?

Employees are required to expressly request FMLA leave.

 **FALSE** There are no magic words employees must use when requesting a leave under the FMLA and they are not required to specifically mention FMLA in their request. Employers are responsible for seeking information at the time of the request to determine if the leave is due to a qualifying reason. As a reminder, when an employee requests a leave under the FMLA, employers only have five business days to provide them with the Eligibility and Rights and Responsibilities Notice. If in doubt, provide the required notice and certification requirement.


TRUE OR FALSE ?

Employers do not have to allow intermittent or reduced-schedule leave if it disrupts the workplace.

 **FALSE** There is no undue hardship provision within the FMLA. If the certification supports the need for leave on an intermittent or reduced schedule basis, it must be granted. FMLA regulations support a transfer to an alternate position for foreseeable planned medical treatment. This does not include leave for illness/flare-ups.

TRUE OR FALSE ?

The Department of Labor only requires employers with 50 or more employees within a 75-mile radius to display the FMLA poster at the worksite.


 **FALSE** The requirement is that all covered employers are required to display the poster at each worksite regardless of the number of employees. The 50/75 rule is an eligibility requirement, not a posting requirement. Private sector employers are covered by the FMLA if they employed 50 or more employees in 20 or more workweeks in the current or previous calendar year.

Statutory disability/paid family leave

There are many state-specific rules related to disability and leave benefits and the various regulations can cause challenges for employers. With different rules applying in California, New Jersey, New York and other states, questions and myths abound on topics from California State Disability Insurance (SDI) and the waiting period for paid family leave, to temporary disability benefits and light duty work in New Jersey, to the guidelines around insurance for statutory disability benefits and beyond.


 TRUE OR  FALSE ?

In California, new regulations require that the SDI and Voluntary Plans (VP) eliminate the waiting period for paid family leave, but a seven-day waiting period is always required before the disability benefits can be paid.

 FALSE An employer that establishes a VP as an alternative to SDI has the option to require a disability benefit waiting period that is less than seven days or eliminate the waiting period altogether.


 TRUE OR  FALSE ?

New Jersey temporary disability benefits allow for a wage loss calculation if the employee is not able to perform all the duties of his or her employment, but can perform light duty work.

 FALSE The employee who is not able to perform his or her regular job is considered disabled and cannot be denied based on the refusal to accept light duty work.

 TRUE OR  FALSE ?

Not all states with mandated disability/paid family leave allow employers to insure their programs.


 TRUE Rhode Island does not allow employers to insure or self-insure Temporary Disability Insurance or Temporary Caregiver Insurance. These benefits are only administered by the state's Temporary Disability Insurance Division, which is part of the state government.

ADA

Key areas of the ADA that can cause concern for employers include hiring requirements, and understanding and allowing accommodations. The information below highlights some of the myths associated with ADA rules and regulations, and helps clarify common compliance-related questions.


TRUE OR FALSE ?

Under the ADA, employers must give people with disabilities special privileges.

 **FALSE** Accommodations are not special privileges. Reasonable accommodations are intended to ensure that qualified individuals with disabilities have rights in employment equal to, not superior to, those of individuals without disabilities. A reasonable accommodation is a modification to a job, work environment or the way work is performed that allows an individual with a disability to apply for a job, perform the essential functions of the job, and enjoy equal access to benefits available to other individuals in the workplace.


TRUE OR FALSE ?

If you give an accommodation to one employee, you have to allow it for everyone.

 **FALSE** If you give an accommodation to one person, you do not have to allow it for all. A reasonable accommodation is provided to an individual who has a mental or physical impairment that substantially limits one or more major life activities and these limitations prevent them from performing the essential functions of their job. Each request for an accommodation must be accompanied by an individualized assessment to determine the needs of the employee as well as the business. For example, an employee with diabetes may sometimes need to eat while working. You can allow her to do that and not allow any other employees the same privilege.

 TRUE OR  FALSE?

Providing accommodations for people with disabilities is expensive.

 **FALSE** The majority of workers with disabilities do not need accommodations to perform their jobs, and for those who do, the cost is usually minimal. According to the Job Accommodation Network (JAN), a service from the U.S. Department of Labor's Office of Disability Employment Policy, 57% of accommodations cost absolutely nothing to make, while the rest typically cost only \$500. Moreover, tax incentives are available to help employers cover the costs of accommodations, as well as modifications required to make their businesses accessible to persons with disabilities.

If you have questions or need additional information on the FMLA, statutory disability and leave benefits or the ADA, please see the resources listed at the end of this article.

For questions related to your disability and absence program at Sedgwick, please contact your client services director.



RESOURCES

Webinar

<http://online.dmec.org/e/123092/play-id-1fvqzk/2cc9tk/208748030>

Presentation

<http://online.dmec.org/e/123092/ion-Post-webinar-Final-pdf-pdf/2cc9tk/208748030>

FMLA

<https://www.dol.gov/general/topic/benefits-leave/fmla>

CA paid family leave benefits

http://www.edd.ca.gov/Disability/About_PFL.htm

CA AB908

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB908

CUIC 2627 b

http://www.edd.ca.gov/about_edd/pdf/prisor2706-1.pdf

NJ temporary disability benefits

<http://www.nj.gov/labor/tdi/tdihome.html>

NJAC Section 43:21-27 (g)

<http://nj.gov/labor/uimod/pdfs/UI.pdf>

New York Paid Family Leave

<https://www.ny.gov/programs/new-york-state-paid-family-leave>

NYCRR 380-2.5

<http://www.wcb.ny.gov/PFL/pfl-regs-text.jsp>

ADA

<https://www.ada.gov/>

Job Accommodation Network (JAN)

<https://askjan.org/>