

Office Management: Personnel Issues Overview

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Employers continue to face an increasing number of personnel issues in managing medical practices. Because of the personnel issues and the ever-present effect they can have on a medical practice, this article addresses personnel issues faced by many employers, including medical practices.

Although it is impossible to address in detail all personnel concerns that could affect a medical practice, the information provided deals with the most common or frequent problems faced by employers. This article addresses basic background information relating to the most common and frequent problems faced by employers, including

- The Family and Medical Leave Act
- The Americans with Disabilities Act (ADA)
- The Civil Rights Act of 1964
- The Age Discrimination in Employment Act (ADEA)

This article also addresses basic methods that employers can use to avoid or effectively deal with personnel issues when they arise, including employee handbooks, investigations of claims, and termination of employees.

Although this article is not exhaustive and should not be relied on for any specific personnel issues that employers may face, it does provide basic information relating to personnel matters and related concerns.

Family and Medical Leave Act

Purpose

The Family and Medical Leave Act is an attempt to allow employees to have more time

with their families under warranted circumstances. “The act is intended to balance the demands of the work place with the needs of families, and to promote national interests in preserving family integrity” [1]. By providing assurances to family members and employers that employees can address family issues with some job security, it was Congress’ intent to benefit employers and employees with a productive and stable work environment [2].

Affected employer

The Family and Medical Leave Act applies to employers that employ at least 50 or more employees each working day during each of 20 or more calendar workweeks in the current or preceding calendar year within a 75-mile radius [3]. When determining if an employer has 50 or more employees, the term “employee,” for the purposes of the Family and Medical Leave Act, is taken from the Fair Labor Standards Act [4]. This definition is broader than a simple master-servant relationship. The courts have stated that there is no one definition that solves all problems and limitations of the employer-employee relationship under the Family and Medical Leave Act and that a determination of the relationship cannot be based on isolated factors but depends on the entire set of circumstances surrounding employment relationships [5].

Included in the definition of employer is the idea of joint employment. Joint employment is when two or more businesses exercise some control over the work or work conditions of employees. Under these circumstances, a business may be a joint employer for purposes of the Family and Medical Leave Act. For example, the regulations specifically address the issue of leased employees. “For example, an employer who

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jointly employs 15 workers from a leasing or temporary help agency and 40 workers is covered by FMLA” [6]. Based on this description, employers are the primary employer for permanent workers and the secondary employer for the leased employees. Nevertheless, both sets of employees must be counted for purposes of establishing if an employer is subject to the provisions of the Family and Medical Leave Act.

Notice

Employers subject to the requirements of the Family and Medical Leave Act must post a notice summarizing the Family and Medical Leave Act’s important provisions and the procedures for filing a charge with the Department of Labor Wage and Hour Division for an employer violation of the act. The notice must be posted in a conspicuous place on the premises, where it can be seen easily by employees and applicants [7].

If employers provide their employees with an employee handbook or other written guidance concerning employee rights, information concerning employee rights and obligations under the Family and Medical Leave Act must be included in the document [8].

Eligibility

Not all employees are entitled to leave under the Family and Medical Leave Act. The law sets minimum lengths of service and hours of work requirements that employees must satisfy. Before employees become eligible for leave under the Family and Medical Leave Act, they must have been employed by the same employer for at least 12 months and must have worked at least 1250 hours during the 12 months preceding the leave. The Family and Medical Leave Act states that the 12 months of employment do not need to be consecutive [9].

Reason for leave

The Family and Medical Leave Act provides up to 12 weeks per year of unpaid leave to eligible employees and requires employers to restore those employees to the same or equivalent position upon their return. The Family and Medical Leave Act allows for specific circumstances and how or when leave must be taken. The Family and Medical Leave Act allows for eligible employees (male or female) to take leave for (1) the birth and care of a newborn child; (2) the adoption or placement in foster care of a child; and (3) the care

of a seriously ill child, spouse, or parent or the employee’s own serious illness.

Serious health conditions

Serious health conditions entitling employees to time away from work pursuant to the Family and Medical Leave Act include, but are not limited to

- Inpatient care in a hospital, hospice, or residential medical care facility; any period of incapacity; or any subsequent treatment [10]
- Continuing treatment by a health care provider after a period of incapacity (inability to work, attend school, or perform other regular activities as a result of the serious health condition, treatment, or recovery) of more than 3 consecutive calendar days and any subsequent treatment [11]
- Period of incapacity as a result of pregnancy or prenatal care [12]
- A chronic serious health condition [13]
- A period of incapacity that is permanent or long term for which treatment may not be effective (Alzheimer’s, stroke, or terminal diseases) [14]

Employee duties

Employees must provide employers 30 days advanced notice of the need for foreseeable leave because of an expected birth, placement of a child for adoption or foster care, or planned medical treatment of a serious condition of the employee or family member [15]. If earlier notice is not practicable, or the need for leave is not foreseeable, notice must be given as soon as is practicable. It is expected that notice be given within 1 or 2 working days [16]. Notice should be given in person, by telephone, or by electronic method. Employees are not required to request Family and Medical Leave specifically by name to have leave started [17].

Medical certification

If the leave request is based on an employee’s own serious health condition or the serious health condition of an employee’s family member, employers can require that the request be accompanied by certification from a health care provider. Employers can require any employee to obtain a second opinion (at the employer’s expense) if the validity of the certification is in doubt. If the two

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