

4 ways to Avoid FMLA Abuse

The FMLA entitles eligible employees of covered employers to take 12 weeks of unpaid, job protected leave in a twelve-month period for specified family and medical reasons, with continuation of group health insurance coverage. According to the 2014 Employer Leave Management Survey 37% of employers find it difficult to control employee abuse of the FMLA.



1. Ensure Provider Certification is complete and sufficient

If an employee's provider certification is found to be incomplete or insufficient, 7 working days must be given to complete and return the certificate, in accordance with 805.305 (c). Certifications can be deemed insufficient if the information provided is "vague, ambiguous, or non-responsive." All missing information should be complete before the leave of absence is treated as FMLA qualifying leave. Required information on a certification is outlined in 825.306.



2. Utilize Second and Third opinions

Regulation 825.307 explains that if an employer doubts the validity of a provider certification they may require the employee to obtain a second opinion. If the first and second opinions of the physicians differ, the employer may request a third opinion. The third opinion is final and binding. It is important to remember that second and third opinions are at the expense of the employer.



3. Use the "Honest Suspicion" rule

Employers who have a true, honest suspicion that an employee is abusing the FMLA can investigate these claims. Employers can interview the employee or question other employees about conversations they may have overheard. Private investigators can be hired to justify their suspicions. Proper documentation is key here, and be sure you have true reasons to question the validity of the absences as your supporting documentation will be required in the event of litigation.



4. Create a Documented absence process

Although the taking of FMLA leave cannot be used against an employee, an employee who is found to be abusing your FMLA leave policies can be disciplined in accordance with your policies.

Employers should have a clearly outlined plan of action that will be used in a case where an employee is found to be abusing leave privileges. Leave policies should outline call in requirements, to be sure that the employee provides proper notice of leave. Your leave policy should also outline what would be required of your employee if they exceed the frequency and duration of absences that the physician has recommended in the case of intermittent leaves.

Manage all Absences

— in one place

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