

THE COST OF FMLA MISMANAGEMENT

The causes of employee absences can be varied and complex, particularly those related to the Family and Medical Leave Act (FMLA). Passed over two decades ago, the FMLA requires employers to provide employees with job-protected, unpaid leave for qualified medical and family reasons.

Managing FMLA leaves continues to challenge employers, and lack of awareness or misunderstanding of FMLA regulations can lead to non-compliance, resulting in possible financial losses due to decreased productivity, fines by the US Department of Labor (DOL), employee misuse, and legal action.

THE COST OF LOST PRODUCTIVITY

The average cost of employee absences in the US is over 6% of payroll¹. And although the FMLA helps many employees meet their family and medical needs, it can create job disruptions and unwelcome effects on the workplace due to additional costs and a loss of productivity — from retraining existing team members and hiring temporary help, to overtime pay and morale issues with other employees.



THE AVERAGE COST OF ABSENCES IS OVER 6% OF PAYROLL

In fact, the average productivity loss from unplanned absences is 37%; planned absences 23%; and extended absences 34%¹ — and since all of these leave types can qualify for FMLA, mismanaging the process may amplify the impact.

THE COST OF THE U.S. DEPARTMENT OF LABOR (DOL) INVESTIGATIONS

When an employee feels that his/her leave was unfairly managed, he/she may initiate a formal complaint with DOL. The DOL will quickly investigate, and may file suit to ensure compliance and recover damages if a complaint cannot be resolved administratively. Actions can include:

- Conduct general onsite visits to scrutinize all employment practices beyond the initial complaint.
- Examine past and current employment paperwork and files.
- Fines can range from hundreds to thousands of dollars — and even smaller fines, such as \$110 per violation for noncompliance with general FMLA notices requirements, can add up quickly².

DOL investigations may continue even after a complaint has been resolved

In addition, the DOL doesn't need employee complaints to investigate — they may prioritize resources to businesses and companies with previous complaints, where emerging business models lead to violations, and where workers are least likely to exercise their rights.

In 2014, more than 43% of investigations were initiated by the DOL — not from employee complaints. This resulted in over \$240 million in back wages for more than 270,000 workers.²

THE COST OF EMPLOYEE MISUSE

Employees don't have to take all 12 weeks of FMLA leave at the same time. Managing intermittent leave is a leading challenge for the majority of employers due to the sporadic and disruptive nature of these absences.



OF EMPLOYERS HAVE DIFFICULTY MANAGING INTERMITTENT LEAVE³

To avoid conflicts and liability risk, employers may adopt a rubber-stamp approach to approving FMLA leaves. While this can reduce potential liability, it may encourage employee misuse of FMLA, and may also backfire on an employer if

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The Guardian Life Insurance Company of America
7 Hanover Square
New York, NY 10004-4025
www.guardiananytime.com

1. Total Financial Impact of Employee Absences Across the United States, China, Australia, Europe, India and Mexico, Society of Human Resources, 2014. 2. US Department of Labor Wage and Hour Division, 2014 Fiscal Year Statistics. 3. The 2017 Guardian Absence Management Activity IndexSM and Study. The Guardian Life Insurance Company of America®(Guardian).

an employee has a legitimate FMLA claim after using time towards a non-legitimate FMLA leave.

Significantly, companies that self-administer FMLA have higher rates of misuse, which correlates with higher approval rates, higher intermittent leave times, and more total hours in FMLA absences.⁴

THE COST OF LEGAL ACTION

U.S. federal courts saw a 26.3% increase in the number of FMLA lawsuits filed in 2014². If a claim becomes a lawsuit, there are fines, legal costs, time away from work to deal with the claim(s), as well as how it affects the overall work environment and employment relationships. Plus, managers and supervisors may potentially be sued directly and held personally liable for paying damages⁵.



INCREASE IN FMLA LAWSUITS

What's more, lawsuits can be lengthy and time consuming to resolve, and even if the employee loses, there are costs involved for legal defense, etc.

JUST HOW COSTLY?

Walters v. Mayo Clinic Health Sys. (Eau Claire Hosp., Inc.) No. 12-CV-804-WMC, 2015 WL 1000015 (W.D. Wis. Mar. 5, 2015)

An employee brought action against her former employer for violation of FMLA and the Americans with Disabilities Act (ADA) arising from her termination for attendance issues.

FMLA JUDGEMENT ITEM	AMOUNT
Back pay — 3 years (wages plus benefits)	\$259,205
Pre-judgment interest	\$12,715
Liquidated damages	\$271,920
Plaintiff's attorney's fees and costs	\$393,514
Plaintiff's non attorney legal fees	\$19,184
TOTAL	\$956,538

CONTACT YOUR BROKER OR SALES REPRESENTATIVE FOR MORE INFORMATION



4. HRO Today, 2012. <http://www.hrotoday.com/news/engaged-workforce/absence-minded>. 5. Schultz v. Health & Hospice Corp. (N.D. Ill., 2002). Guardian's Group Disability Insurance is underwritten and issued by The Guardian Life Insurance Company of America, New York, NY. Products are not available in all states. Policy limitations and exclusions apply. Optional riders and/or features may incur additional costs. This policy provides disability income insurance only. It does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Department of Financial Services. Plan documents are the final arbiter of coverage. Long Term Disability Policy Form # GP-1-LTD07-1.0, Short-term Disability Policy Form # GP-1-STD07-1.0.

OUTSOURCING CAN HELP

By outsourcing FMLA administration, employers engage a neutral party to manage claims based on the most current rules and guidelines, allowing for fair and consistent treatment of leaves across all employees in all company locations.

And since many FMLA claims are related to an employee's own health issue, outsourcing both disability and FMLA has been proven to help promote better absence management outcomes, such as improved productivity, and reducing lost time and direct costs³.

Our [Guardian AbsenceWorks® program](#) offers an affordable absence management solution for employers with 50 or more employees, making it possible for even smaller companies to take advantage of high-quality, integrated services that can enhance employers' compliance while helping get employees back to work sooner.

PROGRAM HIGHLIGHTS



USING THE SAME EXTERNAL VENDOR FOR SHORT-TERM DISABILITY (STD) AND FMLA ADMINISTRATION YIELDS MORE POSITIVE ABSENCE MANAGEMENT RESULTS³

- End-to-end management of short term disability, long term disability, state and federal Family and Medical Leaves, and company leaves
- Expert resources to help enhance adherence with state and federal leave laws — including industry leading software and services backed by compliance experts and attorneys specializing in FMLA law
- Rules driven systems, tools and methodology to ensure that federal, state and company leaves are automatically applied, based on the employee information provided on the eligibility file and captured during the new leave request process
- Experienced intake, disability claims, leave and clinical support teams in one location to promote better sharing of information, driving better return to work outcomes and a better customer experience

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