

Employee Benefits & Workers' Comp News



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Maroevich, O'Shea & Coghlan Insurance

Divisions of MOC Insurance Services
Farallon Associates Insurance Brokers
San Francisco Insurance Center

44 Montgomery Street, 17th Floor, San Francisco, CA 94104
Toll Free (800) 951-0600 | Main (415) 957-0600 | License # 0589960



FMLA

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Could Paid Family Medical Leave Be in Your Company's Future?

Although the federal Family and Medical Leave Act (FMLA) requires some employers to provide *unpaid* leave to workers for family or medical reasons, several states now mandate employers to provide *paid* leave.

California was the first state in the country to pass a paid family leave law. New Jersey has had partial paid leave since 2009 and Rhode Island since 2014. New York's paid leave laws went into effect this year and the District of Columbia and Washington state's programs are scheduled to start in 2020. Twenty-one other states have proposed similar legislation.

Even without state mandates, some employers provide paid time off for parenting and care giving, but most do not.

Generally, employees receive partial pay from an insurance policy they pay into. Sometimes, the employer pays, too.

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Don't Play the Blame Game with OSHA

Just because you've got workers' compensation insurance, you're not off the hook when it comes to safety. You may have insurance, but there's still OSHA.

OSHA fines can be huge. Some employers have paid millions or even tens of millions of dollars.

When cited by OSHA for non-compliance, employers will often try to defend themselves by claiming that the violations occurred because employees ignored or violated safety protocols. Sometimes that defense will work. But not always.

"OSHA looks pretty closely at any kind of employee misconduct defense," said Daniel Flynn, Chicago-based partner at Dins-

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Why Interest is Growing

Paid leave is becoming a popular benefit as employers look for ways to retain and attract talented employees and build a supportive company culture. And with more families needing two incomes and single-parent families on the rise, many families can't afford to make do for very long without a paycheck.

What FMLA Provides

FMLA is a federal law that applies to employers with 50 or more employees. FMLA provides eligible employees up to 12 work weeks of unpaid leave in a 12-month period. However, the job-protected leave can only be taken for specified family and medical reasons:

- ✱ Birth and care of a newborn child
- ✱ Time to bond with an adopted or foster child
- ✱ To care for an immediate family member who has a serious health condition
- ✱ To recover from a serious health condition
- ✱ Assist a family member who has been called to active duty

Up to 26 weeks leave is available in a single 12-month period for employees who need to care for a service member who has a qualifying serious injury or illness.

FMLA also requires employers to restore the employee to the same or equivalent job and to maintain the employees' health benefits.

Some states offer more generous FMLA

coverage — such as requiring smaller employers to offer coverage — so it pays to check your state's laws.

How Paid Leave is Handled on the State Level

For an example of what regulations might look like if similar paid leave programs are implemented in your state, take a look at what New York did at the beginning of this year.

The New York Paid Family Leave (PFL) is one of the most comprehensive family leave programs in the nation. The program requires employers to provide their employees with job-protected time off to bond or care for a new child (birth, adoption, foster), to care for a family member with a serious health condition, or to handle qualifying military exigencies for a family member.

PFL benefits provide insurance coverage and are funded through employee payroll deductions. All PFML laws have caps based on income, and some laws cap the weekly benefits at \$1,000 per week.

The rules are different for employers who self-insure.

The maximum weekly employee contribution for coverage is 0.126% of an employee's weekly wage. Based on an average wage, the employee would pay \$1.65 per week.

The number of weeks of paid leave varies according to the state and situation. For example, Washington, D.C., awards paid time off based on the situation, while Rhode Island provides for 4 weeks leave and California and New Jersey provide for 6 weeks. New York

more & Shohl L.L.P to Business Insurance magazine. "It's one of the most recognized and probably the most widely used affirmative defenses to an OSHA citation. To prove this, it is not just enough that an employer has a rule or policy in place that protects against hazards and that the employee violated that rule. The employer also has to show that they enforced the policy and provided the employee proper training" on following it.

In addition, if a foreman or someone in charge is also guilty of the misconduct cited, OSHA will not let the employer use that defense. The implication is that the employer is deliberately neglecting a culture of safety at the most basic level of the organization.

Rules are not enough. You've got to practice what you preach, too.



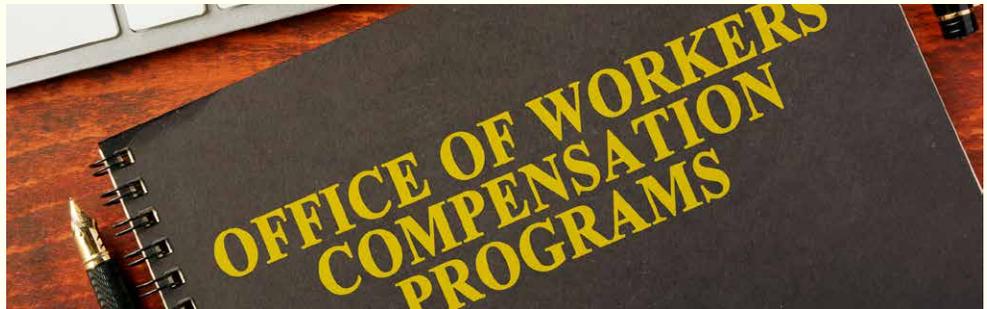
plans to increase its paid time off to a maximum of 12 weeks by 2021.

For more information on the FMLA and other compliance matters, please contact us.

Eight Steps to Effective Workers' Compensation Claims Management

These eight steps will help you create an effective workers' compensation claims management procedure. But getting the first step right is probably the most important thing you can do to ensure you get all the other steps right, too.

- 1** Support a workplace where there is trust and mutual respect. A negative work environment almost invites workers' compensation losses and can inevitably make them worse. Injured workers can often lack motivation to get better because they don't want to go back to a workplace environment they feel is unfriendly, unwelcoming or distrustful.
- 2** Inform employees of the injury reporting process. The process should be part of the employee rules of conduct and provide clear step-by-step rules for employees to follow in the event of an injury. Employees should know to inform their supervisor of an injury as soon as possible, get emergency help if needed or at least see a doctor if necessary. Employees also need to know where to find easily accessible information about how to fill out a claim form, benefits available and the importance of rehabilitation and returning to work.
- 3** Establish procedures to ensure that injured employees get prompt medical attention in the most appropriate ways. This should include establishing:



- a** relationships with occupational medicine practitioners who understand your business operations
- b** an early return-to-work program
- c** a referral program to appropriate medical specialists
- 4** Maintain a policy of reporting claims to your workers' compensation carrier the same day they occur. If a claims adjuster is able to quickly respond, this will minimize the sense of uncertainty that often results when someone is injured and confused about whether their claim will be handled promptly and equitably.
- 5** Investigate the accident thoroughly. This is essential not only to quickly resolve

the immediate claim and mitigate the loss but to prevent future losses. Your accident investigation should include:

- a** Written statements from the employee-claimant and any co-workers or witnesses at the accident site
- b** Written statement from the supervisor
- c** Supporting documentation such as photographs of the accident site, information about similar incidents at the site or similar sites and relevant loss prevention reports that may have been filed on this matter in the past.
- d** A review of all documentation with recommendations about corrective actions.

- 6 Maintain clear communications with the injured employee throughout the claims process. Help them understand the process, what to expect in terms of medical treatment, payments for their medical treatment and status of their pay. Remind them that you support them and want to see them back on the job as soon as possible. Lack of communication and a thorough explanation of how the claims process works is the biggest reason why injured workers retain an attorney.

This process can be quite a challenge for everyone, including adjusters, so stay involved. Many states have instituted reforms that can be confusing to all parties. It's crucial that all parties keep in close and honest communication.

Eddy Canavan, Orange, California-based vice president of the workers' compensation practice and compliance for Sedgwick Claims Management Services Inc., said new regulations can be a starting point for litigation. "My experience is whenever there are changes that impact human beings, there is some litigation that will result from that," Canavan told *Business Insurance* magazine. For example, California and many states are now limiting how healthcare providers prescribe opioid painkillers. An injured worker needs to understand that state laws are in play here, not employer or workers' compensation insurer cost-cutting. "There could definitely be challenges with the formulary, and applicants' attorneys will test it," said Canavan.

- 7 Have an early return-to-work program. These programs are win-win. They help employees recover faster by allowing them to quickly return to feeling like useful contributors. And they reduce the costs of temporary total disability payments and minimize the impact on your experience modification factor.
- 8 Reach out to your broker for help implementing your workers' compensation claims management process. We're here to help you. ■

What's The Best Health Care Account for Your Employees?

Help your employees achieve more control over their health care decisions and expenses by providing them with a savings account for medical expenses.

One of the most popular ways to save for health expenses is with a Health Savings Account (HSA). The Medicare Prescription Drug, Improvement and Modernization Act created HSAs in 2003 as a way for employees in qualified High Deductible Health Plans (HDHP) to save money on a tax-free basis to pay for qualified health care expenses. With money set aside for illnesses or injuries, employees have the freedom to shop for the best option for them and their families.

Other popular types of savings plans include the Flexible Spending Account (FSA) and Health Reimbursement Arrangement (HRA). These accounts are similar, but differ according to how much can be saved annually, who can contribute to the plan and how the funds can be used.

Health Savings Account (HSA)

An HSA must be paired with a qualified HDHP, which covers serious illnesses or injuries and some preven-



tive care. Since the deductible must be met before any plan benefits are paid, employees can use the money in their HSA to pay for qualified expenses, including medical and dental care, vision, prescription and some over-the-counter expenses; COBRA; retirement medical insurance premiums; LTC premiums or expenses.

Annual contribution limits for 2018 are \$3,450 for individuals and \$6,850 for families.

Advantages

- ★ An employer — not just the employee — can contribute to the employee's account.

- ✱ Employees can take the account with them to their next job if they leave your company.
- ✱ If there is money left in the HSA at the end of the year, 100 percent rolls over to the next year.
- ✱ Employees get triple tax savings.
- ✱ Funds from the account can be used to pay Medicare premiums and qualified long-term care premiums.
- ✱ Employer contributions are not taxable.

Disadvantages

- ✱ It can be difficult for employees to raise enough money to meet a deductible, in addition to saving enough money to pay for health related expenses.
- ✱ Employees pay a penalty if they withdraw funds for anything other than health care expenses.
- ✱ An HDHP/HSA is not always a good choice for those who have significant health expenses.
- ✱ Some HSAs charge a monthly maintenance fee or a per transaction fee.

Flexible Spending Account (FSA)

The Revenue Act of 1978 created the FSA program. An FSA is similar to an HSA because it allows employees to save money tax free for qualified medical expenses, including medical, dental, vision, prescription and some over-the-counter costs. Employees also can use FSA funds to pay deductibles, and co-payments, but not insurance premiums.

FSAs don't have to be tied to a health plan, but account funds must be used during

the plan year. You can offer a grace period of up to two and a half months; or you can let employees carry over as much as \$500 each year — but not both. Any money not used by the end of the stated period is lost.

2018 contribution limits are \$2,650 for healthcare expenses.

Advantages

- ✱ An employer, in addition to the employee, can add money to the account.
- ✱ Allows employees to set aside pre-tax money annually.
- ✱ Employer contributions are not taxable.
- ✱ 100-percent of the employee's annual election is available to them on the first day of the FSA plan year.

Disadvantages

- ✱ Employees cannot take the account when they move to another company.
- ✱ Only \$500 can be rolled over to the next year (at the employer's discretion).

Health Reimbursement Arrangement (HRA)

A Treasury Department Revenue Ruling in 2002 created the Health Reimbursement Account. HRAs are self-funded, tax-favored programs that do not have to be, but usually are paired with a health plan or HDHP.

HRAs must be funded solely by the employer. The employee cannot fund the plan through a salary deduction. Employers can contribute any amount in a lump sum or per pay period. Employers can deduct the cost of

both insurance plans and HRAs as a business expense.

Employees can use HRA funds to pay for medical, dental and vision care; prescriptions; and some over-the-counter expenses, as defined by their plan.

Advantages

- ✱ An HRA is funded by the employer and therefore is not portable, although it is allowed to cover former employees. When an individual's job status changes, the HRA funds stay with the employer. Employers may set up and fund a retirement HRA, and the HRA is subject to COBRA regulations.
- ✱ One hundred percent of any money left in the HRA at the end of the year rolls over to the next year if you allow it.
- ✱ Employer contributions are not taxable.
- ✱ There are no contribution limits.
- ✱ Small employers, under 50 full-time employees, can take advantage of a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) to allow contributions to reimburse individual health insurance premiums or healthcare expenses but have annual contribution limits.

Disadvantages

- ✱ Employees cannot contribute money to the account and must rely on the employer contribution.

Please contact us to discuss implementing any of these arrangements for your plan. ■

New Disability Insurance Regulations Designed to Provide Safeguards for Policy Holders

New regulations will affect employers and plan administrators who offer short-term and long-term disability plans.

New Employee Retirement Income Security Act (ERISA) regulations will change how employers handle disability claims and appeals. The U.S. Department of Labor's revised regulations became effective April 1, 2018.

If you offer your employees group disability plans, be sure to check if you and your vendors comply with the new regulations.

New Regulations

- ✦ Insurers cannot give bonuses to claims examiners or medical experts for denying claims. The purpose of the new regulation is to make sure claims and appeals are decided impartially.
- ✦ Insurers must send a detailed letter explaining the reason a claim is denied, the explanation must include why the insurer did or didn't agree with the disability determinations; an outline of company rules or guidelines the insurer used to determine the claim; and information about the claimant's right to access their claim file and relevant documents.
- ✦ Claimants have the right to appeal the decision within 45 days. Check your plan to ensure an appeal process is included.
- ✦ Plan administrators must follow procedures when retroactively rescinding a disability plan. Claimants don't have to go through a plan's claims procedures (including the appeal process) if the plan administrator does not follow the procedures. Plan administra-



tors must respond within 10 days in writing when the claimant requests an explanation.

- ✦ Communications must be understood by all policyholders. Translation services — written and oral — should be available to claimants who speak languages other than English. In counties where at least 10 percent of the population doesn't speak English, denial letters must include a statement in that language about the availability of translation services.
- ✦ When claimants are denied benefits, they must receive an exact deadline for bringing a suit. The notification must include a description of the contractual limitations period and the actual calendar expiration date. ■

