



FIVE COMMON, AND AVOIDABLE, FMLA MISTAKES

BASIC, an award winning company providing comprehensive customized HR solutions since 1989 for companies of 1 to 100,000 employees.



Five Common, and Avoidable, FMLA Mistakes

FMLA administration consistently shows up on various polls of important HR topics. The reason why this is a hot topic is due to the complexity and the possible ramifications of mishandling FMLA administration.

Below are five mistakes BASIC sees with FMLA administration, and each of these mistakes can lead to undesirable consequences. With the proper precautions these mistakes can be avoided.

1. Not recognizing FMLA.

It is a misconception that the employee has to request FMLA specifically. In fact, the employer has the responsibility of recognizing potential FMLA based upon the information available. For example, I express my battle with depression and the side effects of my prescribed medication during a job review. If there are attendance issues then there are enough warning signs to discuss FMLA. I have seen this mistake result in a \$300,000 court decision, and unfortunately this happens to often.

2. Direct manager involvement.

While managers may be the first to know of an employee's serious health condition it may not be wise to have a direct supervisor involved in the certification process. The reason this may not be the best practice is due to the medical information in the certification forms. Managers can be named either as a codefendant or as the lone defendant in a FMLA lawsuit.

3. Make assumptions about information on a certification.

Making your own judgment about questionable information on a certification is never a good decision. If you do not seek clarification or seek a second opinion you will make it harder on yourself when you defend your decisions in a court case. My point is made by referencing *Alcazar-Anselmo v. City of Chicago*. The City of Chicago made a determination that a condition did not qualify for FMLA without seeking a second opinion. Ms. Alcazar – Anselmo had two specialists that testified differently. The court award Ms. Alcazar – Anselmo \$416,000.

4. Employers beware of terminations without consideration.

FMLA is only twelve weeks and I have seen companies that want to terminate an employee immediately following the expiration of leave. Without a consideration of a reasonable accommodation under ADAAA you may have paved your way to the EEOC office. It is essential to go through the appropriate steps before you terminate an employee that has used up all of his/her FMLA leave and is unable to return to work with or without accommodation.

Accommodation can include, under ADAAA, additional time off.

5. Training and more training.

While I believe it is a mistake to involve managers in the certification process I do feel that it is a good idea to provide training to your managers. Providing more knowledge about your process and rules involving FMLA will help your managers handle the interaction with an employee better. When managers are not trained properly the simplest of phrases can be used as proof of retaliation or discrimination. It is highly recommended that employers conduct regulatory compliance (EEOC/Title VII and DOL) training at least every 18 months.

Need Help? Receive a FREE Consultation by an FMLA expert.

Click Here: https://www.basiconline.com/product_services/free-consultation/

Want more free information and tools? Check us out at:

www.basiconline.com