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Attendance policies: Control absenteeism without breaking the law

By HR Specialist: Employment Law 8/1/2008 - 1:00pm Human Resources , Employment Law

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For most employees, regular attendance is a key job function. But while you are free to set and enforce attendance rules, you must also comply with key federal laws, including the following:

- The FMLA requires organizations with 50 or more employees to grant eligible employees up to 12 weeks of unpaid leave for qualifying medical events.
The ADA may require you to suspend or modify your attendance policy to accommodate a disabled worker.

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Bottom line: If an employee is absent from work because of circumstances covered under the FMLA or ADA, you can't discipline for the absence under your regular attendance policy.

Also, state laws may affect your ability to discipline or terminate employees for excessive absences.

What's new

While personal illness accounts for 34% of unscheduled absences, 22% are due to family issues, 18% to personal needs, 13% to employees' perception that they are entitled to leave and 13% to stress.

Juggling busy personal and professional lives can leave employees feeling like they often must use sick leave as last-minute personal leave.

A recent survey by CCH Inc. found the following programs were the most effective for reducing unscheduled absences: alternative work schedules, telecommuting, compressed workweeks, leave for school functions—and flu shots.

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How to comply

Manage absenteeism by establishing a reasonable and specific attendance policy that incorporates your organization's needs and the functional requirements of various work areas and employee functions. A sound attendance policy should cover all of the following:

- Tardiness
- Sickness
- Personal business
- Family and medical leave
- Disability leave

Set objective, measurable criteria for when absenteeism triggers disciplinary action. You may require documentation such as a doctor's note to explain absences that exceed a certain length of time or under other circumstances you specify.

The two most common types of attendance policies are no-fault policies and paid-time-off policies.

No-fault attendance policies regulate absenteeism by recording each absence as an "occurrence." Progressive discipline kicks in when the number of occurrences exceeds a certain threshold. For example, six occurrences may result in a written warning, eight occurrences may trigger a one-day suspension, and 12 would end in termination.

Paid-time-off (PTO) policies, also known as "paid leave banks," group all vacation days, holidays, sick days and personal days into one combined bank of days an employee is entitled to be absent from work each year. Employees who exceed the maximum number of absences may be subject to discipline. Employees who use less than the maximum number of absences may convert the remaining days into cash or carry them over to the next year's balance.

How to choose what works for you

There are five keys to implementing a successful attendance policy.

1. Examine your typical job functions to decide which attendance system best fits your organization. For positions that deal with the public, for example, coverage during regular business hours is essential. Other positions may permit greater flexibility. In some job functions, employees may be available to cover for absent co-workers; in others, only one or two people may be equipped to perform the work. Building in scheduling flexibility whenever possible helps reduce unexpected absences.

2. Next, make sure you and your supervisors keep accurate records, particularly for hourly employees. Casual or informal timekeeping practices for hourly employees are lawsuits waiting to happen.

In one recent case, two clerical workers sued for several years of overtime back wages. The workers said they had worked for years in a casual "comp time" setup, tracking their own hours and taking extra leave to offset the overtime. Because there were no official time records, the company was at the workers' mercy. It pays to be flexible with schedules, but not with documentation.

3. Communicate the attendance policy's terms to all employees, and include them in employee handbooks.

4. Apply your attendance policies consistently among employees. Employers that fail to do so expose themselves to discrimination claims.

5. Avoid taking any adverse employment actions after an employee returns from FMLA, ADA or other legitimate leave. Even if the action is unrelated to the leave, an employee may be able to make a case for retaliation or discrimination. If you must take action following a leave, make sure your files contain a well-documented business reason for the action.

Top strategies for controlling absenteeism

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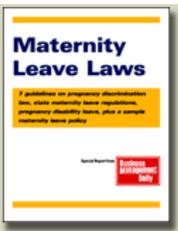
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Program	rating*	Percentage using
Paid-leave bank	3.6	60%
Disciplinary action	3.4	89%
Buyback policy	3.4	53%
Bonus	3.3	51%
Illness verification	3.2	74%
Yearly review	2.9	82%
Personal recognition	2.6	57%

*1 = not very effective
5 = very effective

Source: 2007 CCH Unscheduled Absence Survey, CCH Inc.

Tags: absenteeism, ada, discrimination, employee handbook, employee handbooks, employees, federal law, files, fmla, progressive discipline, retaliation, sick leave



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