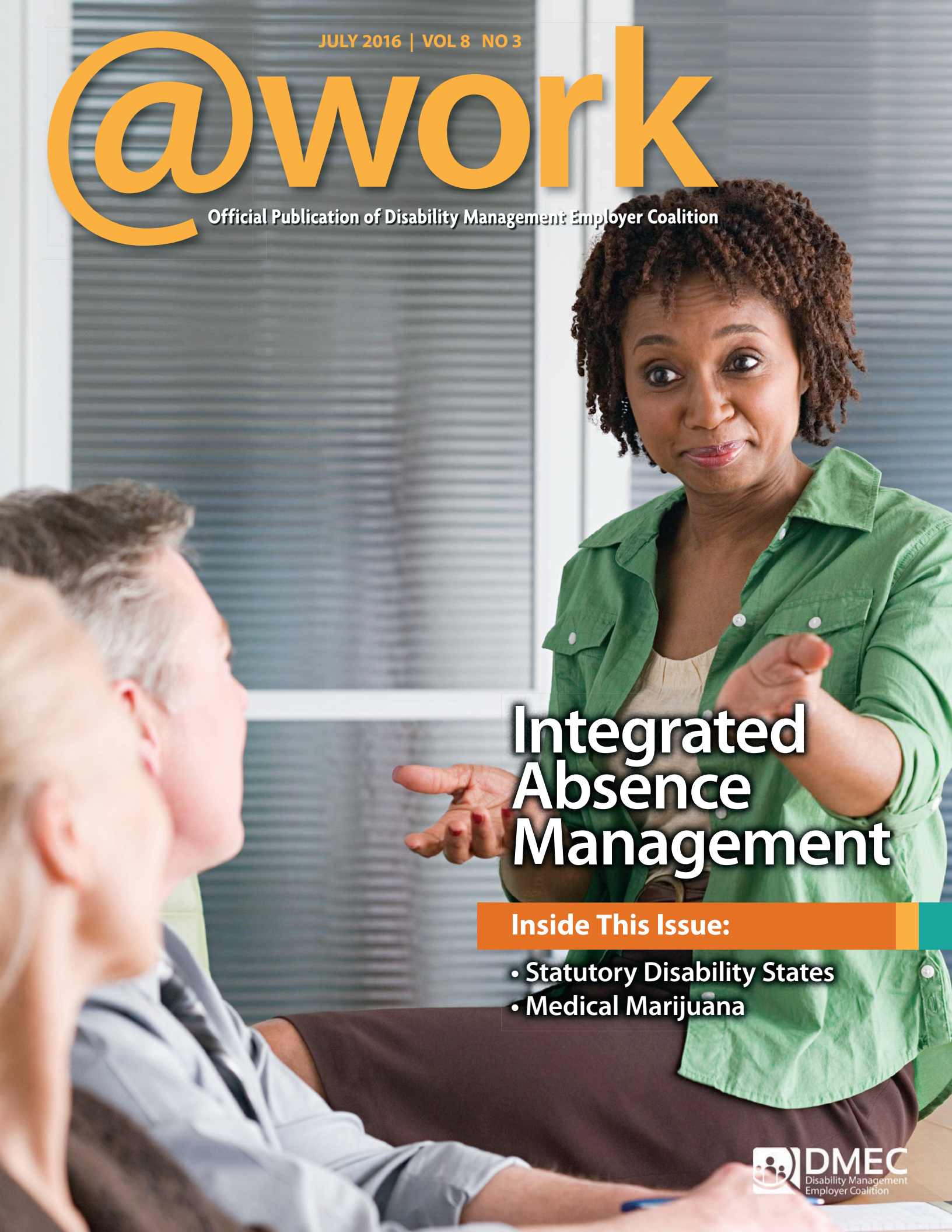
JULY 2016 | VOL 8 NO 3

@work

Official Publication of Disability Management Employer Coalition



Integrated Absence Management

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- Medical Marijuana

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@Work magazine is the official publication of the Disability Management Employer Coalition.

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Terri Rhodes
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An Invitation to Workers' Compensation Professionals

The growth of disability accommodation is moving integrated absence management (IAM) professionals to reach out again to our peers in the workers' compensation (WC) field.

We figured out how to use the professional knowledge of all stakeholders, and we broke down the barriers. I know first-hand that there is opportunity to make the shift to IAM.

For overall efficiency and effectiveness, it was never the preferred strategy to have WC operating in isolation. Absence management has always overlapped with WC and creating greater integration is the focus of IAM. We have often reached out to our peers in workers' compensation, and we invite you again to collaborate with us on case management and return to work (RTW). The case for cooperation is more compelling than ever.

Let's start with basics: A disability is defined as ANY physical or mental illness, injury, or health condition that limits a person's ability to engage in physical, social, or work activities. The term "absence management" is used to describe a process that minimizes or prevents employee absence or lost work time. This process often includes a number of stakeholders with an interest in the employee's return to productivity (e.g., employee, supervisor, HR, medical provider, insurer, etc.) The concept of paying employees when they spend time off work due to illness or injury began in the U.S. in the early 1900s, when workers' compensation insurance became law in most states.

During the '30s and '40s, employee "safety net" insurance evolved. Social security was enacted in 1935, and was later amended in 1956 to include disability coverage. A federal unemployment insurance program also became law in 1935. Non-occupational, employer-paid health and disability benefits came about in the '40s and '50s as a result of the rising labor movement in America as well as an employer strategy designed to attract the most desirable employees in a competitive post-war labor market.

More recently these paid benefit programs have been integrated with other state and federal leave and disability programs — such as paid sick leave ordinances, federal Family and Medical Leave Act (FMLA), and Americans with Disabilities Act (ADA). The combined effect has seen an increase in the time away from work that employees are entitled to when they have an illness or injury.

Even with the many advantages of coordinating these programs, WC occupational disability and non-occupational disability operate with only nominal links to other programs. After more than 25 years, there are still silos, and I hear the comment, "our IAM program doesn't include WC" on a regular basis. Many have argued the professional differences between Risk Management and HR. WC operates under the jurisdiction of state workers' compensation laws, while short-term and long-term disability (STD and LTD) operate under the federal Employee Retirement Income Security Act (ERISA). However, WC has more alignment with state leave laws than with disability. WC professionals are used to dealing with multiple state WC laws, whereas disability is typically managed under a plan. It is one of the reasons why the silos bother me so much.

When utilization of the Family and Medical Leave Act (FMLA) began to increase, we thought

The CEO's Desk continued on pg. 38

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Compliance Memos

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CM #9 EEOC Targets Employer Roadblocks to Disability Leave

The Equal Employment Opportunity Commission (EEOC) in May announced it is monitoring a "troubling trend" that employer disability programs are driving employment policies in a way that may violate the Americans with Disabilities (ADA). The EEOC said these policies "may cause many workers to be terminated who otherwise could have returned to work after obtaining needed leave without undue hardship to the employer." The announcement targeted as especially troubling, "employer policies that require employees on extended leave to be 100% healed or able to work without restrictions." To learn more, visit https://www.eeoc.gov/eeoc/publications/ada-leave.cfm.

CM #10 Lowe's to Pay $8.6 Million to Settle EEOC Lawsuit

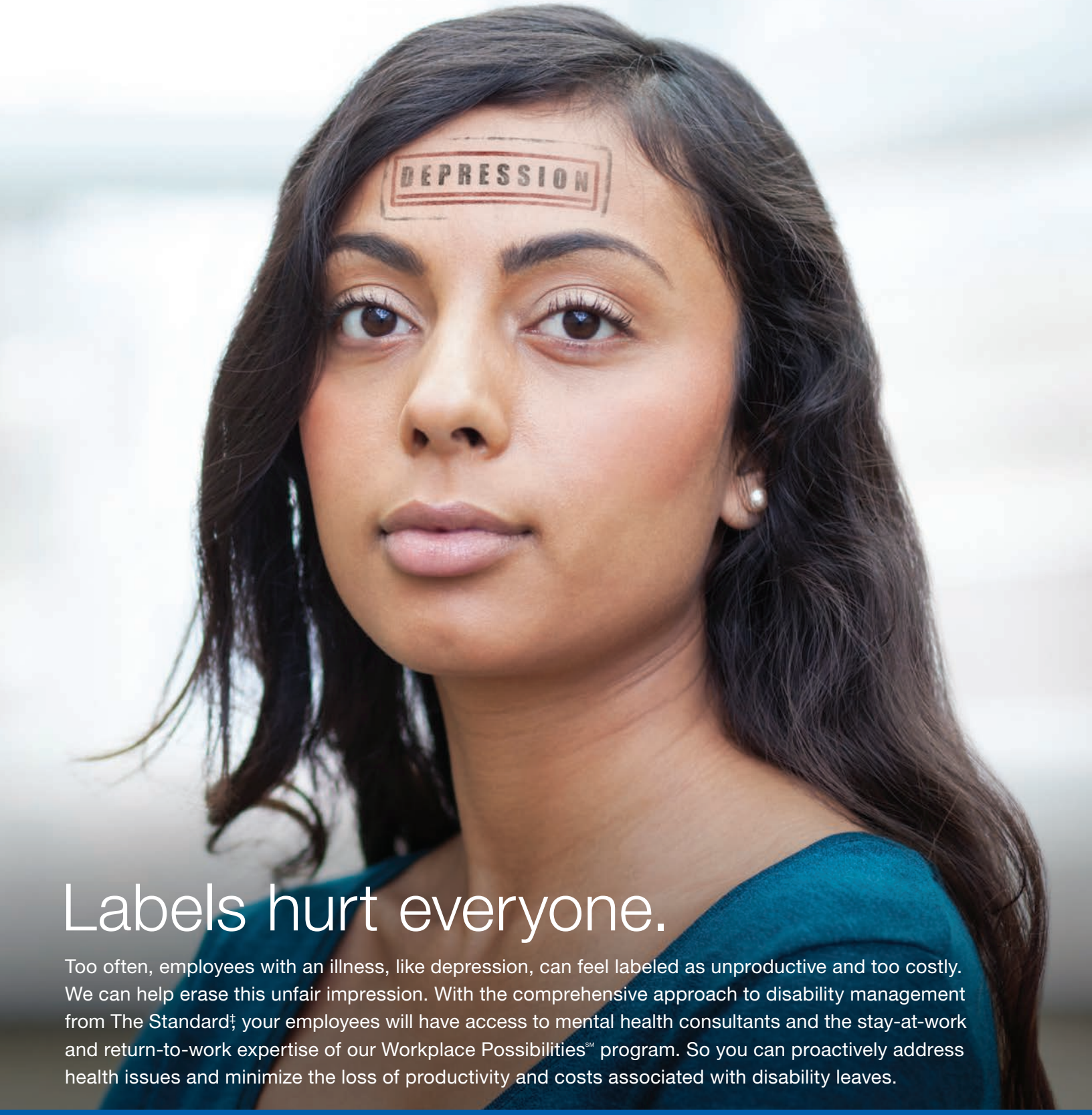
The EEOC announced in May that home improvement giant Lowe's will pay an $8.6 million penalty as part of a four-year consent decree. For employees who exceeded the company's maximum medical leave of absence (first set at 180 days, then at 240), Lowe's had an inflexible policy to terminate, with no discussion about individual accommodations. This settlement makes clear that employers' policies limiting the amount of leave may violate the ADA when they call for the automatic termination of employees with a disability after they reach an inflexible leave limit. To learn more, visit http://dmec.org/2016/05/17/lowes-pay-8-6-million-settle-eeoc-disability-discrimination-suit/.

CM #11 EEOC Issues Final ADA & GINA Wellness Program Rules

In May, the EEOC gave employers guidance on how to align employee wellness programs for compliance, as part of final program rules for Title I of the ADA and Title II of the Genetic Information Nondiscrimination Act (GINA). The rules govern what incentives employers can provide when requesting health information from employees and their spouses, when the employer is providing health or genetic services as part of a voluntary wellness program. In some instances, the more restrictive EEOC rules for ADA and GINA compliance may supersede less restrictive rules in the Health Insurance Portability and Account-ability Act, as amended by the Affordable Care Act. The DMEC Legislative Updates blog includes details about the 30% and 50% incentives for participation. To learn more, visit http://dmec.org/2016/05/23/eeoc-issues-final-ada-gina-rules-wellness-programs/.

CM #12 DOL Updates Overtime Regulations

On December 1, new Fair Labor Standards Act rules will open overtime pay to millions of employees formerly categorized as exempt. Under the new rules, anyone earning less than $47,476 annually ($913 per week) cannot be considered exempt; this is more than double the former ceiling of $23,660. The new regulations also establish a mechanism for automatically updating the ceiling every three years. To recoup higher costs, some employers may shift costs to employees for some benefits such as dental, vision, and disability. To learn more, visit http://dmec.org/2016/05/18/dol-updates-overtime-regulations/.



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By
Katie Zayed, CPDM
Leave Manager
McMaster-Carr

RTW Challenges with **Statutory** Disability Benefits

State-mandated disability plans provide partial wage benefits for employees who are off work due to a non-occupational disability. They are regulated and overseen by state agencies. Currently, five states offer disability benefits for employees who are unable to work due to a qualifying health condition: California, Hawaii, New Jersey, New York, and Rhode Island. Puerto Rico also has mandatory insurance requirements.

For most employees, the availability of disability insurance is a positive benefit for recovery time and general well-being. In my own experience in leave management, employees who are uncompensated during a disability must often return to work (RTW) sooner than recommended by a doctor or traditional duration guidelines. This could cause setbacks resulting in longer and sometimes permanent disability or poor performance. Studies also show that "workers with unmet needs for leave may experience more stress, more work-family conflicts, and even worse health outcomes."[1]

Also, for the employee who is truly unable to work, the financial hardships of leave can be unsustainable.[1] The financial strain can also help cause comorbid mental health conditions, making it nearly impossible to predict disability duration or recovery times. This is a negative for both employees and employers. Beyond better employee health outcomes, paid leave may reduce employee turnover, which saves money for employers in the long run.[2]

"In our experience as a multi-state employer, the states that mandate partial income replacement for disabled workers have higher leave and duration numbers compared to non-statutory disability states."

However, as any human resources specialist knows, 10% of employees take up 90% of our time. The trouble with paid time off is that it reduces RTW incentives. In our experience as a multi-state employer, the states that mandate partial income replacement for disabled workers have higher leave and duration numbers compared to non-statutory disability states.

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Two of the states have RTW incentives built into their statutory disability programs: Rhode Island and California. They cover partial wages if a recovering employee can RTW on a reduced schedule. States also can curb abuse by requiring an employee to attend an independent medical exam. This mandatory exam is required in order to continue to receive benefits; New Jersey, California, and Rhode Island have this, but they are much less likely to use this provision than an employer who is in a voluntary plan.

Another way to help prevent abuse and improve RTW results is to adopt a voluntary plan of self-insurance instead of participating in the state plan. The states place various requirements for employers that self-insure. All five states except New York require the employer to opt out if a private plan is going to be administered. And in Puerto Rico, an employer must administer the government plan for one year before establishing a private plan. In Hawaii, employers can begin a private plan immediately, but all benefits must be paid on Hawaiian soil. The Hawaiian Temporary Disability Insurance website provides a list of authorized carriers.[3] New Jersey private plans can only be established on the first day of a calendar quarter, and employee consent is required when implementing a contributory private plan for the first time.

All self-insured employers in statutory disability states must meet qualifications for equal or better benefits than the state plan. However, once all compliance aspects are met for each state, there is more flexibility for self-administering. But qualifications for disability can be better regulated and thus yield better RTW results.

"FMLA only provides 12 weeks of protected leave, whereas all of the statutory disability plans offer wage benefits well beyond that timeframe. This is where the ADA process can be helpful in picking up where FMLA left off."

Choosing a voluntary plan over the state plan has pros and cons. The cons involve administrative complexity: a multi-state employer might need different short-term disability (STD) plans for different states. It also can be more expensive in the short-term because the state plans are either partially or completely employee-funded, so the company will have to pay nothing or a reduced wage rate for people who are receiving statutory disability benefits.

Despite administrative complexity, voluntary plans can reduce employer costs in different ways. If an employer decides to self-insure, STD programs have built-in tools, people, and departments that focus on RTW outcomes. Most STD and LTD programs will have integrated absence management programs, RTW incentives, and even help navigating the Americans with Disabilities Act (ADA) if needed. Using a vendor's assets can help an employer navigate an employee's RTW in a seamless way.

Besides voluntary plans, RTW prospects can improve when you work with all other aspects of leave. Statutory disability has significant interaction with the Family and Medical Leave Act (FMLA) and the ADA. An employee on leave could be involved with just one, two, or even all three of these.

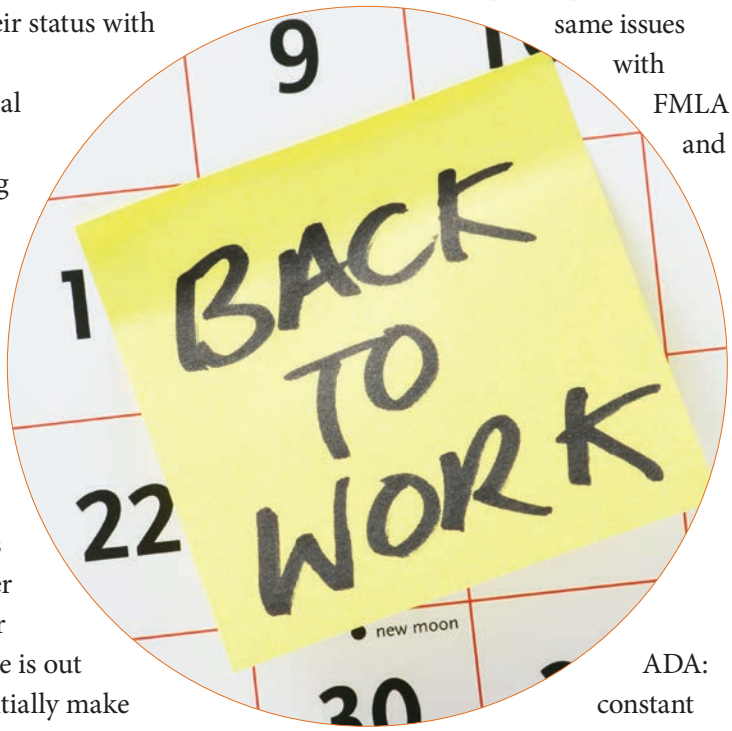
Statutory disability benefits are built around compensation. FMLA has nothing to do with wages and everything to do with job protection: it is federally protected unpaid leave. The ADA is an interactive process involving accommodation for a disability. In this complex environment, constant communication with employees is vital.

Instead of letting an employee slip through the cracks during a leave, make sure the employee remains accountable by requiring an updated FMLA certification or documentation with each office visit. Compliance with all FMLA requirements and state specific laws will keep the employee in the loop regarding their status with the company.

Constant verbal communication is critical to ensuring employees out on disability leave will maintain a close connection with their employer. A voice to go with the ink on the form letter notices will create a deeper tie to the employer while the employee is out of work and potentially make them feel that their return is important to the company. Any negative feelings that an employee has toward the employer will only increase the absence duration and create further challenges as the case progresses.

FMLA only provides 12 weeks of protected leave, whereas all of the statutory disability plans offer wage benefits well beyond that timeframe. This is where the ADA process can be helpful in picking up where FMLA left off. Sometimes, the interactive process cannot begin right after the 12 weeks of protected FMLA time. But as soon as the window opens, it is important to begin that conversation. By being upfront about FMLA and ADA from the beginning of a leave, the interactive process can be clear from the outset. Constant contact and deft leave management will make sure that this is completely seamless.

Workers' compensation (WC) does not come into play until a WC claim is denied. When that happens, the employee can file for disability benefits. Throughout a WC claim and the transition to leave, it is important to keep on top of all of the same issues with FMLA and ADA: constant medical updates, open communication, and careful tracking of the leave. A WC claim that transfers to leave can get lost in the shuffle between carriers and departments. In many companies, the teams managing leave and WC claims are different, so interdepartmental communication and openness become critical. The employee's transition from a carrier to a vendor can create a vacuum, so the employer can be a resource and a bridge between the employee and the carrier. This creates more of a feeling of the company watching out for a disabled employee.



As I briefly touched on earlier, vendors can also be helpful in the RTW process due to the tools and checkpoints they provide. Many vendors have RTW predictors and timelines to help guide the process, usually including goals for duration and curbing abuse. However, as many adjusters and case management professionals would agree, the caseload can create trouble in paying individualized attention to cases that need it the most. Tools and resources can help, but the employer should not rely solely on the vendor to accomplish these goals. With difficult cases, the employer representative and the adjuster can both use their resources to help facilitate the best outcome for returning to work.

Statutory disability is an evolving landscape. In 2016, we have seen paid family leave laws pass in municipalities such as San Francisco and states such as New York. The current climate is creating more opportunities for paid leave. Therefore, due to the greater potential for longer duration, higher frequency, or even abuse, it is important to begin the leave process with FMLA and ADA information and continue to keep that constant contact with the employee. For most employees, mandatory paid leave can be a positive influence on the employee's situation, as well as on the company's workforce as a whole. But with the potential for return-to-work challenges, it is important to create an open human resources climate that practices constant vigilance.

References

1. https://www.dol.gov/featured/paidleave/cost-of-doing-nothing-report.pdf

2. Miller, Claire Cain. The economic benefits of paid parental leave. New York Times. January 30, 2015; retrieved at http://www.nytimes.com/2015/02/01/upshot/the-economic-benefits-of-paid-parental-leave.html.

3. http://labor.hawaii.gov/dcd/files/2013/01/TDI-Carriers.pdf

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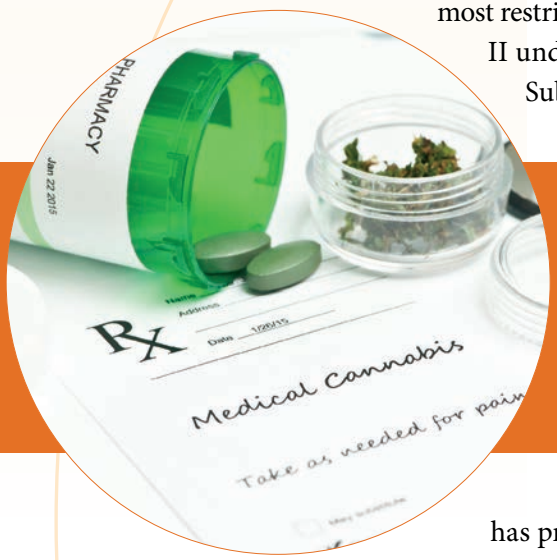
Medical Marijuana Erodes "Zero Tolerance" Federal Drug Policy

The medical marijuana movement is beginning to drive public policy in ways that may erode the federal "zero tolerance" policy against marijuana in the workplace.

The Drug Enforcement Administration (DEA) is expected to announce soon whether it will reclassify marijuana from Schedule I (the most restricted drugs) to Schedule II under the Controlled Substances Act. The DEA has promised an announcement about this "in the first half" of 2016.



"If the federal government reclassifies marijuana into the less restrictive Schedule II category, this may complicate drug testing for employers."

Whether or not marijuana is reclassified in 2016, "It is coming, it is just a matter of time," says Edward Canavan, VP of Workers' Compensation Practice and Compliance, Sedgwick. The rapidly growing medical marijuana movement now has marijuana-friendly legislation in 39 states. If the federal government reclassifies marijuana, this may complicate drug testing for employers.

The Schedule I listing of marijuana allows employers to test for marijuana and terminate employees who test positive. The Drug-Free Workplace Act of 1988 set the standard for promoting a workplace free of intoxicants, legal or illegal; it is required for qualifying federal contractors and grantees, and is promoted as best practices for all others. In the past, litigation has upheld drug testing, even in states with legalized medical marijuana, as illustrated in two recent lawsuits.

In *Coats v. Dish Network* (Colorado Supreme Court, 6/15/2015), the issue was whether a Colorado law protecting lawful off-duty conduct also protected against termination for medical marijuana use. It did not, despite factors favoring plaintiff Brandon Coats: he had a valid license to use medical marijuana, and

there was no evidence he ever used the drug while on duty or that he was ever observed in an impaired state at work. The Colorado Supreme Court held that the lawful off-duty conduct law refers to both state and federal law and that Coats' conduct was not lawful under federal law.

"Right now, it's easier to prove that somebody is impaired on alcohol than on marijuana." Edward Canavan, VP of Workers' Compensation Practice and Compliance, Sedgwick

In *Garcia v. Tractor Supply Company* (U.S. District Court of New Mexico, 1/27/2016), the court noted that the law's language did not require employer accommodation of medical marijuana cardholders. The court also rejected Garcia's argument that he was terminated because of his serious medical condition, on the logic that "using marijuana is not a manifestation of HIV/AIDS." Alyssa M. Smilowitz of Jackson Lewis PC noted, "The Court's decision followed the holdings of similar cases in California, Colorado, Michigan, Oregon, and Washington."

New Definitions of "Impairment"?

If a drug test is given as a result of reasonable suspicion (meaning other behaviors or physical factors existed that indicated impairment), a positive drug test is used to validate that suspicion.

One DMEC member, a senior human resources executive in a healthcare company, offered to comment anonymously. "In a reasonable suspicion drug test, no amount of legal or illegal drugs in the body system is permissible at our company," this person said. "We don't make a value judgment on the level of the drug as compared to legal limits. Our policy simply states you can't test positive…we don't want anyone who is impaired caring for our patients."

Safety is such a critical issue in some industries — including healthcare — that this margin of safety certainly seems beneficial. What is the alternative? A work environment requiring case-by-case, individualized assessments of relative level of impairment could be a nightmare for line managers, putting safety and productivity at grave risk.

Even so, some medical marijuana advocates want to make impairment the core issue. Under Delaware's law, an employer cannot terminate a medical marijuana user due to a positive drug test alone. The employer must show that the employee possessed or used the drug at work or was impaired on the job. However, the law and supporting regulations do not define "impaired," leaving that open to litigation, which has not happened yet, according to Delaware attorney William Bowser, partner in Young Conaway Stargatt & Taylor, LLP.

Marijuana and alcohol testing have significant differences. Blood alcohol levels directly indicate level of impairment, but most testing for marijuana does not detect the THC (delta-9-tetrahydrocannabinol) that causes impairment. Instead, it detects carboxy THC (THCC), a metabolized form of THC stored in fat cells for days or even weeks.

THCC does not cause impairment, but it indicates that the person ingested THC at some point. Most testing firms set 50 nanograms of THCC per milliliter as the trigger for a positive urine test. Hair, saliva, and blood tests also may be used. The Colorado marijuana law specifies that a driver with five nanograms of THCC per liter of whole blood is driving impaired.

"Right now, it's easier to prove that somebody is impaired on alcohol than on marijuana," said Canavan of Sedgwick. "Marijuana impairment is determined by visually examining someone, which can be unreliable. We really need an effective, reliable test for impairment by THC."

Blood testing is the most accurate technology available. It can measure both THC and metabolized THCC; when testing blood for marijuana, employers should clarify which one the testing firm is reporting on. Yet blood testing is inconvenient, expensive, invasive, and still does not identify level of impairment.

Saliva testing closely approximates blood testing and is performed conveniently in the field.[1] It indicates marijuana use within the last four to eight hours and is in pilot stages of implementation as a test for driving impaired in America and Canada, notes Christine Moore, PhD, VP of Toxicology Research & Development, Immunalysis. She noted several countries have already approved saliva testing for marijuana use by drivers, including Australia, Italy, Spain, and the United Kingdom.

Medical Marijuana Movement

The federal government's position against marijuana has significantly eroded in the last three years during rapid adoption of medical marijuana by many states. With only a few exceptions, federal law or drug enforcement agencies have not used their powers under the Controlled Substances Act and other laws to shut down medical marijuana dispensaries. Medical marijuana is legal in 24 states and the District of Columbia,[2] with six more states considering legislation or ballot measures in 2016.[3]

Although medical marijuana is outside the mainstream of American medical practice, more than a million Americans use marijuana[4] to treat diverse health problems. THC often is used for relief from chronic pain and from nausea and appetite loss due to chemotherapy. Some patients with seizure disorders use the extract cannabidiol ("CBD" often delivered in an oil base) to reduce seizures. Pure CBD is not intoxicating.

The DEA's promise to review policy began when eight U.S. senators challenged the effectiveness of the DEA's program in Mississippi that grows marijuana for all federally sanctioned research. DEA Acting Administrator Chuck Rosenberg, who survived a media firestorm last November after calling medical marijuana "a joke," is now reportedly more positive about research.

On March 30, 2016, at the National Rx Drug Abuse & Heroin Summit in Atlanta, "Rosenberg said that he supports increased research and that we should 'let the science decide,'" said Mark Pew, SVP of Prium, a workers' compensation medical consulting firm in Georgia. *@Work* contacted the DEA's Office of Congressional and Public Affairs, but a spokesperson did not respond to questions.

If marijuana were reclassified to Schedule II, it would still be heavily restricted.[5] Other powerful Schedule II drugs include cocaine, fentanyl, methamphetamine, and oxycodone. Two drugs based on synthetic THC were approved in 1985, Marinol in Schedule III, and Cesamet in Schedule II.

Can the federal government downgrade marijuana to Schedule II and still require a "zero tolerance" policy in the workplace? The answer may hinge on

one phrase: Schedule II includes a subcategory of "currently accepted medical use with severe restrictions."

As more people use medical marijuana in more states, employers face more conflicts with employees who claim marijuana, CBD, or other extracts are a medical necessity. The flash point may be CBD: 16 states have "compassionate use" laws allowing CBD oil for patients with seizure disorders,[6] and 15 of them approve only CBD, not broader medical marijuana; all 16 CBD laws were passed since 2014.

Recreational marijuana is legal in Alaska, Colorado, Oregon, Washington, and the District of Columbia. It is on the November ballot in Florida and likely to reach the ballot in California, Massachusetts, Nevada, and other states. A majority of Americans believe marijuana should be legalized.[7]

Health Benefits of Marijuana?

Most employers ignore CBD because it is not a safety issue like THC and licensed physicians do not prescribe CBD (let alone THC) for several reasons:

- As a marijuana extract, CBD is a Schedule I drug, so prescribing CBD is illegal under federal law; physicians can only "recommend" it.
- There is no uniform CBD purity standard, making accurate, consistent dosages virtually impossible. This is true also for medical marijuana, with the exception of Marinol and Cesamet.
- The therapeutic effects of CBD are not fully understood.
- The process of extracting CBD also captures THC in varying amounts, depending on the level of THC in the marijuana plant. Some marijuana varieties are bred for high concentrations of THC, others for high concentrations of CBD and low THC, and others for other qualities.

Despite the marginal medical status of CBD or THC, some state laws are attempting to elevate them to prescription drugs. In New Mexico, state legislation and case law both require employers to pay for medical marijuana for employees with workplace injuries. In other states, similar attempts were defeated on appeal, Canavan said. "Some carriers have told us that they do not want us to authorize marijuana for claimants and that they will accept responsibility to defend against a bad-faith claim," he added.

All other medications are dispensed through a pharmacy under the parameters of evidence-based medicine. But in New Mexico, a physician could recommend marijuana to a worker with a back strain, "the worker could go to a marijuana dispensary, talk with a poorly trained person

behind the counter about different marijuana strains and ways to ingest it, and make a purchase," Canavan said. This unregulated, confusing environment could result in the worker overdosing and having a medical crisis — "and the employer would bear the full cost and responsibility," he said.

Before marijuana could enter the medical mainstream, it would take several years for research and practice to produce a reliable evidence base for medical decisions about utilization. "If (marijuana is) rescheduled, employers and administrators will be challenged in properly addressing the efficacy of marijuana utilization until proper research is finalized providing evidence-based guidelines," said Canavan.

Shifting Cultural Factors

"The zero tolerance policy will never go away," said Mark Pew of Prium.

That may hold true among federal contractors, which includes most large employers. But for employers with no federal contracts, other factors drive decisions about drug testing. In workplaces that are primarily entry-level jobs for young people, marijuana use may be so prevalent that pre-employment testing creates more problems than it solves.

Restaurants and retail aren't the only industries affected this way. "At a conference in Colorado, a woman in the front row said her construction firm was forced to stop doing post-accident testing," Pew said. "She said if they didn't, soon they would have no employees left. Other people were nodding their heads in agreement." Under conditions like this, he said, some employers may choose to test only when a person obviously appears impaired.

These shifting cultural factors affect all employers. Quest Diagnostics Employer Solutions, which processes more drug tests than any other organization, noted in 2015 that positive tests for marijuana, cocaine, and methamphetamine all increased substantially in 2013 and 2014 after a decade of decline. The first year of increasing positive tests was 2013, and in 2014, the overall positive results for all drugs combined increased by 9.3%. In 2014, overall marijuana positive results were up 14.3% and up by 6% even in the safety-sensitive workforce (commercial drivers, train operators, airline, and nuclear power plants).[8] Quest has not yet reported 2015 figures.

Formerly black-and-white employment practices might become more nuanced, with attention to multiple issues related to level of impairment.

Conclusion

The growing popularity of medical marijuana is putting pressure on the historic zero tolerance drug testing policy followed by federal contractors and other employers. Marijuana advocates are attempting to change this policy. Major challenges could arrive soon if marijuana is reclassified as a Schedule II drug. Even if this change does not occur or it is tightly contained, federal and state legislation will continue to threaten the zero tolerance policy. Formerly black-and-white employment practices might become more nuanced, with attention to multiple issues related to level of impairment.

References

1. Saliva testing to detect recent marijuana use among drivers. Traffic Injury Prevention. 15, 111–118. 2014.

2. States with medical marijuana laws, retrieved at http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881.

3. States considering medical marijuana laws in 2016, retrieved at http://medicalmarijuana.procon.org/view.resource.php?resourceID=002481.

4. Number of patients licensed to use medical marijuana, by state, retrieved at http://medicalmarijuana.procon.org/view.resource.php?resourceID=005889.

5. Controlled Substances Act information, retrieved at https://en.wikipedia.org/wiki/Controlled_Substances_Act.

6. State laws allowing medical use of CBD, a marijuana extract, retrieved at http://medicalmarijuana.procon.org/view.resource.php?resourceID=006473.

7. JM Jones. In U.S., 58% back legal marijuana use. Gallup. October 21, 2015; retrieved at http://www.gallup.com/poll/186260/back-legal-marijuana.aspx.

8. Illicit drug positivity rate increases sharply in workplace testing. Quest Diagnostics. October 9, 2015; retrieved at http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing.

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A Tool for Using and Defending Job Analyses in ADA and Section 503 Cases

Clear, legally valid job descriptions including "essential job functions" are incredibly useful for many key functions in hiring and return-to-work (RTW) programs. They are especially valuable during litigation over jobs requiring high skills and physical demands, most commonly found in utilities, police, fire, and some manufacturing or transport industries.

The most legally defensible essential job functions are identified in a formal worksite study that typically validates several key items:

- A list of tasks that are truly essential job functions
- Physical and cognitive capacities or special skills needed to perform the tasks
- Valid testing criteria to determine whether a job candidate or returning employee is able to perform the tasks.

A validated study like this can be expensive and most employers use a simpler process. Frequently, talks between a case manager, supervisor, and employee are sufficient to produce a less robust job analysis that is adequate to help form the basis for an RTW plan.

But many things can turn a "simple" RTW case into an Americans with Disabilities Act (ADA) claim: extended disability duration, significant impairments, or a workplace that is not supportive to a returning employee. To avoid negative outcomes, a validated job analysis provides important data to support a more thorough and effective case management process. It may also help deter litigation. Plaintiff attorneys may conclude they will need a higher level of evidence to prevail in court against employers that use validated job analyses, said Dan Biddle, PhD, CEO of Biddle Consulting Group.

ADA-Based Tool

But even lacking the advantage of a systematic job analysis program, case managers can use another tool to improve their effectiveness. A partial job analysis based on six criteria, identified below, specified in the ADA, can bring rigor to the RTW process, ADA accommodations, litigation, and other functions.

"You can apply this to any job in America, and you would be able to identify its essential functions," said Biddle, who developed a tool based on the six criteria. Knowing the essential functions can bring focus and efficiency to several functions in claims and case management. Many of Biddle's clients use this tool but chose not to comment on their experience, an increasingly common corporate practice.

Biddle developed a six-step review tool to help employers determine whether job duties are "essential" under the ADA. The tool also may help cultivate the cooperation of returning employees and ADA claimants. A key goal of the ADA is to reduce unnecessary restrictions and blockages that prevent qualified individuals with disabilities from applying and competing for job opportunities. The process of accommodation based on objective job analysis was written into the ADA as a key tool toward that goal.

Using this tool "actually increases the application and employment rates of qualified individuals with disabilities because it will remove artificial barriers — changing duties from 'essential' to 'not essential' when that is the case," said Biddle.

Section 1630 of the ADA in 1990 included six criteria to determine if a task or function is essential to a job. Biddle's tool summarizes the six criteria in an acronym, FCLASP, with these parts:

- Fundamental: Does the job exist to perform this duty?
- Consequence: What is the consequence if this duty is not performed or not performed well?
- Limited: Is this duty distributed over a limited number of employees (reducing options to reassign job

functions)?

- Assignable: Can a job duty be readily assigned to another incumbent without changing the fundamental nature of the job?
- Specialized: Are incumbents placed in this job based on training and special categories of abilities?
- Percent of time: How frequently is this task performed?

It's convenient to apply the FCLASP criteria in sequence, but every job has unique factors causing nuanced interactions between the criteria. For example, if a task is performed very seldom, this criteria often makes the task nonessential but not always. A task or duty may have great consequence, or only a limited number of employees may be available to perform the task. How many times in a ten-year period does a firefighter have to drag a heavy person out of a burning building? The percentage frequency may be low, but the consequence is life or death.

For that reason, one of Biddle's clients, a fire chief, stated in court, "We don't accommodate, period." The chief held that at a fire scene, firefighters must be able to perform any function. However, the work environment and functions of a firefighter are so rare as to make this job almost unique in this regard.

FCLASP Limitations

Over time, a case manager can become competent at working with the nuanced interactions between the FCLASP criteria. Once the essential job functions are identified, however, the tool does not analyze the physical capacities needed to perform them. FCLASP doesn't replace a complete job analysis.

When testing a job candidate or a returning employee for job readiness, Biddle said one of the most accurate and defensible procedures is to require a work sample test. This requires an accurate recreation of the actual work site and tasks. Much more convenient is simple strength testing or other physical tests — but if these measures are not validated, the employer has made a legally weak "inferential leap," he said.

When compliance officers from the U.S. Department of Labor or the Office of Federal Contractor Compliance Programs are visiting a worksite, they review lifting requirements. "If the employer's weight handling requirement is a rounded number, this can sometimes reveal that it's not been validated," said Biddle. Compliance officers may give more credibility to specific measures such as "must carry 68 pounds up to 12 times per shift, over irregular surfaces." When compliance officers see numbers like this, he said, "they may leave that item alone, at least during the initial review, when they are trying to find more obvious hiring infractions."

Another Layer: Section 503

The ADA is the primary federal driver of employer efforts to accommodate, but it is not the only one. Revisions to Section 503 of the Rehabilitation Act of 1973 require federal contractors to periodically reassess jobs for changes to essential job functions. Section 503 applies broadly to most large employers, because it is not limited only to the work units performing federal contract work but covers the entire organization. "The FCLASP review process can be a useful tool to help employers identify which job duties are actually 'essential' under Section 503 and the ADA," Biddle said.

Conclusion

The six criteria for assessing essential job functions prescribed by the ADA give employers a valuable tool for effective accommodations and RTW case management. Embedded in this tool is the broader purpose of the ADA to reduce unnecessary boundaries and increase workplace fairness, with potential to support greater employee loyalty and prevent ADA claims.

Employee Performance Issues and Employer FMLA Compliance

By
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There are times in an employee's life when he or she needs to be away from work, but ultimately, the goal is to return. The Family and Medical Leave Act (FMLA) was enacted to help workers balance medical needs and family emergencies with workplace demands. And while the law guides employers on how to properly respond to employees' leave requests, many employers find managing FMLA leaves and FMLA compliance to be a costly struggle.

While on its face, leave of absence management appears to be straightforward, there are significant nuances to consider. For instance, many states have their own leave programs and definitions of what constitutes an "immediate family member" for FMLA compliance purposes.

Failing to obey all of these rules — federal, state, and local — can result in legal costs, brand damage, and employee engagement issues. This article will review two cases involving FMLA leave in association with employee performance issues that resulted in litigation. We will discuss what went wrong and effective practices for employers to follow in scenarios like these.

Neither of these cases involve return to work (RTW) from disability leave, yet both cases had disability-related issues. Even where no formal disability case is involved, some employers apply RTW case management to extended FMLA leaves. In both cases below, that approach would have promoted attention to FMLA issues as well as early intervention for potential disability issues.

FMLA Abuse and Litigation

Complying with these complex legal and administrative responsibilities can be burdensome for employers. This is particularly challenging in situations where an employer is contemplating separating an employee because of poor performance. While FMLA does provide employees a level of job protection, the law permits companies to deny a leave or decline to reinstate an employee after a leave based on a planned job termination, assuming the employer has a legitimate and nondiscriminatory reason for the termination.

"The legal and administrative burdens of FMLA compliance are not for the fainthearted."

For example, employers may lay off an employee on FMLA leave as part of the company's workforce reduction plans if the employee would have been laid off regardless of their leave status. Similarly, an employee who would have been terminated due to misconduct is not protected simply by invoking their FMLA leave rights. However, an employee's job cannot be terminated simply because the person is on FMLA-qualified leave.

Many labor disputes arise from employers terminating employees on leave. These disputes often turn into litigation with employees alleging wrongful job termination. The number of FMLA-related lawsuits has grown dramatically in the past four years, from 291 suits in 2012 to 1,139 in 2015, according to the Administrative Office of the U.S. Courts.

If an employee on an FMLA-qualified leave subsequently sues the employer for wrongful job termination, the burden of proof is on the employer to show that the employee would have been terminated independently of their taking leave. To verify that an employee on FMLA-qualified leave was about to be terminated due to performance issues, the employer must provide the employee's performance record and other documentary evidence indicating sub-par work.

Recent cases demonstrate the difficulty proving that an employee who was on an FMLA-qualifying absence was terminated due to inferior work. A case in point is *Hartman v. Dow Chemical*. The plaintiff in the lawsuit, who prior to her leave had favorable performance reviews, followed the letter of the law in notifying the employer of pending surgery for psoriatic arthritis, which fell under FMLA-qualified leave, and was granted leave.

Upon the plaintiff's return to work, she was criticized for "poor performance," specifically the failure to complete a number of tasks that other employees had to assume. Thereafter, the employer discovered a 60-hour discrepancy in the hours the employee recorded on her time sheet and the hours she was physically at work, which led to her termination. She subsequently sued the employer for wrongful termination, arguing that the time sheets failed to reflect work she had performed at home each evening.

The U.S. District Court ruled in her favor, finding that the plaintiff was terminated for exercising her rights under the FMLA. In this case, the discrepancy between the employee's performance ratings pre- and post-leave, as well as the timing of the investigation into the time sheet discrepancy, caused the court to question whether the employer's termination of the employee was due to the employee's use of FMLA.

In *Preddie v. Bartholomew Consolidated School Corporation*, the plaintiff, an African-American teacher, sued his employer after his contract was not renewed because of alleged poor performance and multiple absences. The plaintiff attributed the absences to his diabetes and his son's sickle cell anemia. The plaintiff sued the defendant for wrongful job termination, based on claims of racial discrimination, disability bias, and retaliation. Although the Seventh Circuit Court of Appeals ruled against these claims, it permitted the case to proceed under FMLA. The court ruled that an email from the teacher notifying the school's principal that he was taking leave to care for his son constituted notice of FMLA-qualifying reasons for the teacher's absences.

Furthermore, the court found in the plaintiff's favor, determining that the employer had interfered with the employee's FMLA rights since one of the stated reasons for terminating the teacher's contract was his "absences," which were related to FMLA-qualifying conditions. This case clearly points out the need for training managers and supervisors about FMLA. If the principal had been properly trained in how to address employees' need for leave, he would have been able to properly request certification to support the leave request.

Hard and Soft Costs

When an employee is not at work, the big picture costs for the employee and the employer are numerous. The legal and administrative burdens of FMLA compliance are not for the fainthearted. Not only can the financial repercussions be severe, public disclosure of the legal proceedings can tarnish an employer's reputation. Leery of the litigation and reputational backlash, some employers may become lenient — approving an employee's leave of absence for dubious medical and other FMLA-qualifying reasons.

When employers fail to police the small percentage of the workforce that looks to use FMLA for questionable reasons — additional vacation time, long weekends, and so on — honest and hard-working employees end up doing more work. Frustrated by the employer's lack of action, they become increasingly disengaged in their jobs, spreading their discontent throughout the organization.

Another unintended consequence of employer inaction is that it establishes a pattern of FMLA abuse; for example, inadvertently sending a message to all employees that the company likely will not request certification of an alleged health condition from medical care providers for FMLA-qualifying leave.

What's an employer to do? Managing FMLA leave starts by realizing that

RTW Case Study cont'd on pg. 36

Aligning IAM Programs to Comply with FMLA and ADA Requirements

By
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As the world of unpaid, job-protected leave laws continues to grow, employers are continually aligning their policies and practices to support integrated operations. Unlike integrated disability management in which major upgrades are made to key insurance silos only once or twice in a decade, today's integrated absence management (IAM) environment requires an ongoing upgrade process.

The drivers of change in the IAM universe are the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and the many related state and municipal leave laws. Return to work (RTW) from disability leave, productivity, and cost reduction remain important, but now they are pursued in compliance with leave laws. Disability is not managed in isolation.

The Equal Employment Opportunity Commission (EEOC) underscored that on May 13, 2016, by announcing that home improvement giant Lowe's will pay an $8.6 million penalty as part of a four-year consent decree. For employees who exceeded the company's maximum medical leave of absence (first set at 180 days, then at 240), Lowe's reportedly had an inflexible policy to terminate, with no individual accommodations.

As a last line of defense against serious, costly mistakes, your organization should employ a checkpoint on any employee termination for an extended leave of absence, a failure to return to work, and/or an inability to perform job duties due to medical conditions. Only allow terminations after a full review rules out any potential conflicts with FMLA, ADA, and state or local leave and disability laws.

Groundwork for Alignment

But your prevention effort should be woven into daily operations as well. Many employers maintain an ongoing effort to coordinate all of their IAM programs. If your organization wants to do a compliance makeover to adopt this approach, the first step is to perform a critical analysis of how well each program is operating in compliance with the appropriate law(s). Once you know your underlying processes are correct, you can then explore ways to get them aligned and working together.

Because FMLA administration has so much overlap with so many other programs in the IAM universe, it can be the place to start. Checkup questions for FMLA administration include:

- Do you have lawful and complete policies and paperwork processes in place, and are they up to date?
- Is your program — whether in-house or outsourced — processing leaves correctly?
- Do employees know how to request leave?
- Are your managers trained to recognize a potential FMLA claim (even if not specifically requested by the employee) and play their role in starting the process?
- After a leave, are employees appropriately returned to their positions upon certification of fitness for duty?

Next, how does your ADA administration look? As a result of the ADA Amendments Act (ADAAA), employers should generally no longer be asking whether to accommodate but how to. Check-up questions for ADA administration include:

- Does your organization have an ADA policy?
- Has it been updated since the ADAAA was passed?
- Do employees know how to request an accommodation?
- Are your managers trained to recognize an employee's request for an accommodation?
- Do you have a system to launch employees into the interactive process?
- Do you have procedures for documenting the process?
- Do you perform follow-up reviews to assess the effectiveness of accommodations?

How is your workers' compensation (WC) process working? Historically, several factors allowed the WC process to operate in isolation. That approach is no longer viable — if it ever was — because now, most WC injuries are also FMLA-qualifying events. Generally speaking, where applicable, FMLA leaves and WC leaves should run concurrently.

And, with the ADAAA's more liberal definition of disability, WC injuries are often also covered by the ADA. Add to this the fact that some state WC systems make an occupational injury, by definition, a "disability," regardless of severity, and the need for an integrated and coordinated system becomes even more evident.

Facilitate coordination so your workers' compensation and risk management staff can notify other IAM units about claims. An employer's respective departments generally can share appropriate and necessary information about employees, including leave, disability, and WC information, within a closely held "need to know" circle without violating privacy laws. You have only one checkup question for workers' compensation:

- Is your WC staff coordinating with other IAM departments about claims that will cause absence from work?

Know the Laws

To get your organization's entire IAM effort coordinated, you will need to review even more than FMLA, ADA, and your disability silos. You also must stay updated on the constantly growing list of state and local leave laws that apply to your workforce. These examples might apply to some of your company's work sites:

- About a dozen states now have some form of school leave law, mandating job-protected paid time off for employees to attend events at their child's school or day care.
- About five states mandate leave time for employees to provide bone marrow or organ donation, and some include blood donation.
- Collective bargaining units sometimes negotiate special leave rights for their members, and some employers voluntarily provide leaves for special needs — such as grieving after a pet dies.

More than 25 jurisdictions now have some paid sick leave, mandating employees receive pay and job protection for, among other reasons, their own illness or treatment.

Most employers access external

Compliance Makeover cont'd on pg. 39

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Employee Engagement During SAW & RTW

Marti Cardi, JD
VP Product Compliance
Matrix Absence Management

Enabling the Employee to Continue Work

Studies show that the longer employees are off work due to a disability, the less likely they are to return to work. What alternatives to leave of absence can an employer lawfully propose under the ADA and FMLA in order to keep employees engaged and avoid or reduce leaves?

Under the ADA, an employer can require the employee to accept a workplace accommodation rather than a leave of absence, if the alternative accommodation effectively enables the employee to perform the essential functions of the position and does not interfere with the employee's medical care or recovery. If the employee is not covered by the FMLA at the same time and the employee declines an effective alternative accommodation, the employer can count disability-related absences against its attendance policy

The FMLA is different. If the employee has protection available and the leave qualifies for FMLA, an employer cannot require an employee to accept a workplace accommodation rather than take an FMLA leave of absence but, using noncoercive means, can suggest accommodations to enable the employee to continue working. If the employee declines, job-protected FMLA leave is required.

A number of effective accommodations are available under the ADA and are detailed below.

Light duty generally means a temporary or permanent position that is physically or mentally less demanding than an employee's normal duties. Examples include excusing employees from some of the demanding functions of their current job or transferring them to a different position that is less demanding than their usual job. The ADA may require assignment to light duty if the employer reserves certain jobs for light duty and reassignment to a vacant light duty position would not cause an undue hardship.

The FMLA allows an employer to offer light duty as an alternative to FMLA leave if approved by the employee's provider. The employee who declines the position may no longer qualify for workers' compensation benefits but is entitled to continue on unpaid FMLA leave or may receive pay if there are other options, such as PTO or vacation time available. Time spent working light duty does not count toward FMLA usage. The employee is entitled to restoration to the original or equivalent position when able.

Job restructuring as an ADA accommodation, includes redistributing marginal job functions or altering when and/or how essential or marginal functions are performed. Under the FMLA, the employer may alter the functions of an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

Modified or part-time schedules are required under the ADA absent undue hardship. This may involve adjusting shift start and end times, periodic breaks, or changing when certain functions are performed. Some schedule modifications can benefit the employer when they keep the employee involved and productive, and when full return to work is more likely than it is after full-time leave. And of course, modified schedules are what FMLA intermittent or reduced schedule leaves are all about.

Transfer or reassignment to a vacant position is a reasonable accommodation under the ADA if there is no accommodation that will keep the employee in the original position. The employee must be "qualified" for the new position (e.g., has the required skills, experience, etc.) but does not need to be the best qualified person for the position. Watch for more on reassignment in my next column!

An employer can require an employee to transfer temporarily to another position during FMLA intermittent or reduced schedule leave if the need for such leave is foreseeable, the position better accommodates recurring periods of leave, and the employer provides equivalent pay and benefits to the employee. The employer must still allow the periods of leave supported by a certification. The employee is entitled to reinstatement to the original position when FMLA leave is no longer required.

Sharon Andrus
Director National Technical Compliance
Sedgwick

Complying with the Complexities of the ADA and ADAAA: Using Leave as a Reasonable Accommodation

Just over 18 years after enactment of the Americans with Disabilities Act (ADA) of 1990, the law was amended by the ADA Amendments Act (ADAAA), which took effect on January 1, 2009. The ADAAA retained the original ADA definition of disability but expanded the interpretation of its terms. The intent of the ADAAA is to encourage broad coverage of individuals with disabilities. Employers are expected to place less emphasis on determining whether an employee is disabled and focus instead on the interactive process to identify a reasonable accommodation so that disabled employees can perform the essential functions of their position.

A special challenge for employers comes when an employee requests a leave as a form of reasonable accommodation. This can be especially confusing when the request for leave comes on the heels of time away from work that was protected by other laws and/or company policies and these have been exhausted. The ADA was not intended to be a leave law (remember, its goal was to provide opportunities for individuals with disabilities to work, not to miss work), but one of the outcomes of the ADAAA expansion has been an increase in requests for additional time off work, both continuous leaves and sporadic absences. The Equal Employment Opportunity Commission, which enforces the ADA, has developed guidance to assist employers when faced with a request for an extended leave as a reasonable accommodation.

A key consideration in such cases is whether attendance is an essential function for a position. When evaluating a position to determine whether attendance is an essential function, several factors should be considered, such as staffing, overtime costs, enforcement of attendance rules, job descriptions, training requirements, and other leave policies. If it is determined that attendance is an essential function of a position, then the next question is whether the time off requested is reasonable or if it will cause an undue hardship for the employer.

Unlimited, indeterminate, extended leaves, without regard to attendance guidelines, are not typically considered reasonable. Nor are irregular, unpredictable schedules, such as an open-ended request to come and go as needed. In contrast, shorter durations of leave are more likely reasonable, such as a couple of days per month, especially when the employee can complete the essential functions before and after the leave and/or with minimal assistance from coworkers. Keep in mind the facts of the specific situation will dictate the outcome and must be thoroughly analyzed.

It is also important to remember that a leave of absence may not be the only solution. The interactive process may identify other accommodations that can meet the needs of both the employee and the employer, such as a modified schedule, telecommuting, or a change in work locations. Keep in mind that documentation is critical. Each conversation and interaction should be captured. This information may be needed later when an accommodation needs modifying or is no longer applicable. It is also needed for defending allegations of disability discrimination.

Finally, remember to engage your employment counsel — sooner rather than later — as you handle complex accommodation situations. In a healthy scenario, a supervisor has enough training to spot a potentially complex ADA claim and hand it off to Human Resources, which begins the interactive process and engages legal counsel early in the claim.

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Financial Wellness: Employers Play a Role

Financial wellness is top of mind for employers who recognize the important role it plays in contributing to their employees' productivity and workforce management. A recent Aon survey noted that 89% of employers plan to expand their financial wellness tools in 2016 and 80% noted they are doing so in their quest to improve employee engagement.[1]

Further it is clear that employers are on the right track as according to the American Psychological Association, stress and financial stress in particular has a negative impact on health as well as cognitive abilities that reduce decision making skills.[2]

Financial well-being is a combination of many factors. At the core of financial wellness is a simple concept, having enough money for day to day expenses with some more in savings for emergencies. Most experts advise to have between 3-5 months in savings as a best practice. However, building that type of savings requires individuals to gain an understanding of their personal spending habits and learning effective budgeting techniques.[3]

Many people need help budgeting, saving, and maintaining their savings to reach a modest level of financial wellness. They may look for guidance and education on how to save better. They may be looking for information about the benefit options available at work, as well as investment options that can help them best achieve their financial goals

More employers now realize the correlation between financial stress and productivity is real and that they are in a unique position to promote mutually beneficial solutions. In research by Prudential Insurance Company of America, 82% of surveyed finance executives agree that their companies would benefit from having a workforce that is financially secure and 78% feel that the employer should assist employees in achieving financial wellness during working years.[3] And according to a recent study by Bank of America, 79% of employers believe workplace financial solutions lead to increased productivity.[4] By making financial guidance and education available on topics like budgeting, employers are able to help provide access to financial planning that can put employees on the right path to meet all their financial goals. Likewise, thoughtful benefit programs can help protect an employee's savings.[5] Return-to-work offerings as part of a disability plan help get employees back to their whole salary in a timely manner.

These types of employer-sponsored financial well-being programs have the potential to decrease the risk of financial stress. As employers consider strategies to improve the well-being of employees, they are hearing from many sources that financial wellness programs are an effective way to begin. Employers are in a unique position to influence and provide information relative to the importance of overall well-being, and employees who experience well-being are more positive about their work experience and experience less time away from work.[6]

References

1. Aon Hewitt. 2016 hot topics in retirement and financial well-being. 2016. Retrieved at http://www.aon.com/attachments/human-capital-consulting/2016-hot-topics-retirement-financial-wellbeing-report.pdf.

2. American Psychological Association. Paying with our health. 2015. Retrieved at http://www.apa.org/news/press/releases/stress/2014/stress-report.pdf

3. CFO Research/Prudential, "The Value of Employees' Financial Wellness," 2016. Retrieved at http://research.prudential.com/view/page/rp/32138

4. 2015 Workplace Benefits Report: Helping employees live their best financial lives [Bank of America | Merrill Lynch / April 2015]. Retrieve at http://www.bofaml.com/content/dam/boam-limages/documents/articles/B2_078/b2_078_workplace_benefits_report.pdf

5. L Eliav. What is financial wellness: Five elements of financial well-being. HelloWallet. September 2014. Retrieved at http://hrpost.hellowallet.com/retirement/financial-wellness-5-elements-financial-wellbeing/

6. Witters D, S Agrawal. Well-being enhances benefits of employee engagement. Gallup Business Journal. 2015. Retrieved at http://www.gallup.com/businessjournal/186386/enhances-benefits-employee-engagement.aspx

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Privacy and Information Exchange

In this issue, we'll review the legal framework around the sharing of medical information. This is one of the most challenging and confusing issues in terms of security and privacy.

Minimum Necessary Standard

Federal and state laws differ in the way they regulate the sharing of medical information, but the basic legal principle is quite simple. Often referred to as the "minimum necessary standard," an employer is not allowed to share medical information about an employee for any purpose or from any benefit silo unless there is a legitimate business reason to do so. And when it is deemed necessary, the employer can only disclose the minimum amount of information required.

A common employer mistake is to copy supervisors and managers on letters and documents sent to an employee regarding a medical leave without regard to this principle. Does a supervisor need to know what kind of doctor an employee is seeing, what the employee is in the hospital for, or why they are bedridden, or do they only need to know when the employee will be off?

However Information Is Obtained…

The Health Insurance Portability and Accountability Act (HIPAA) prevents a health plan or healthcare provider from disclosing medical information to an employer without an employee's authorization. Sometimes, however, an employer is also the insurer of an employee's health benefits, so the employer might receive medical information as part of a disability claim.

Even employers that are not self-insured have a variety of ways to obtain medical information about an employee's health condition. Often this type of information is provided when the employee requests time off or completes a medical certification or health insurance application. Even if an employee volunteers the information to someone in Human Resources or a supervisor without being prompted, the employer is still obligated to keep it confidential.

Conflicting Regulations

Depending on where you operate, you might need to understand and comply with both federal and state regulations. Under the Family and Medical Leave Act, although you can't share medical information, you can ask for a diagnosis for a serious health condition (SHC), although you can't require it. You may only require sufficient information to assess that the condition is keeping the employee from doing one or more essential functions of the job. However, under California's equivalent, the California Family Rights Act (CFRA), an employer is not allowed to ask for the underlying diagnoses or even for a description of the symptoms. This means that a different medical certification form is used in California that has no place to enter the diagnoses. To be eligible for a CFRA leave, employees only have to provide the dates when they will be off (if known) and a medical certification stating that as a result of the SHC, they cannot work or are unable to perform one or more of the essential functions of their position.

However, if an employee is eligible to benefit from an accommodation (including leave) under the Americans with Disabilities Act or California's Fair Employment and Housing Act, the employer does have the right to know what the disability is. In fact, an employer can require the employee to provide medical documentation to substantiate that he or she has a qualified disability and needs the requested accommodation. Once again, however, the employer can only ask for the information required to make this determination.

Confusion Abounds

Illustrating how frequently organizations misunderstand the regulations, the Office of Civil Rights has received over 130,000 HIPAA complaints since 2003. The most frequent issue investigated relates to impermissible uses and disclosures of protected health information (PHI), and the fifth most frequent issue is the use or disclosure of more than the minimum necessary PHI.

Phil Bruen
VP Group Life and Disability Products
MetLife

Employee Financial Well-Being: The Right Solutions Can Impact Productivity

Is your productivity suffering due to financially stressed employees? Fifty-nine percent of employers strongly agree that employees are less productive at work when worried about personal finance problems, and 60% agree that benefits can actually enable productivity, according to MetLife's 14th Annual U.S. Employee Benefit Trends Study.

Today, employees continue to worry about their financial futures. Only 46% of employees expect their financial situations to get better in the next year (down from 52% in 2014), according to the study. Fifty-eight percent are worried about having enough money to pay their bills if someone in their household is no longer able to work. And 52% are worried about their ability to make the right financial decisions for themselves and their family.

Employers can capitalize on this environment by not just sponsoring benefits but also actively promoting solutions in ways that resonate with their employees. A financial education program is a good start. When solutions are explained in terms of how they meet an employees' unique needs, there is an enormous benefit for your employee and for you.

Optimize your benefit program with financial education

Employers today have a unique opportunity to drive loyalty and productivity by empowering employees to make informed benefit decisions. Employees, particularly Millennials, are looking to their employers for help when it comes to addressing financial matters.

The best programs combine:

- Education: Offering easy-to-understand materials and enrollment information
- Motivation: Delivering resources and effective communications
- Action: Providing personal consultations

Five Building Blocks of a Successful Program

With four generations in the workforce, it may seem impossible to meet the unique needs of all your employees. It's not. These five building blocks can help you build a financial wellness program aligned to the needs of your diverse workforce.

1. Ongoing. Offer the program year-round. A strong employee financial wellness program is something that is "always on."

2. Holistic. Focus on the big picture, not just defined contributions. Help employees succeed long-term by focusing on every aspect of their financial life.

3. Accessible. Accommodate all schedules by making it easily accessible for everyone. Provide multiple ways into the program, whether it's online or in person.

4. Personal. Provide individualized experiences for your employees through one-on-one, personal guidance.

5. Empowering. Help employees make informed decisions by providing information, education, and individual support.

With a rise in the number of employees who believe their employer has responsibility for their financial well-being, up 5% from last year, now is the time to help your organization succeed by further enriching the benefits experience for all your employees. At a time when 71% of employees consider work to be the foundation of their financial safety net, by offering the benefits they seek along with the support and guidance to help them achieve financial wellness, you can continue to grow a loyal and productive workforce.
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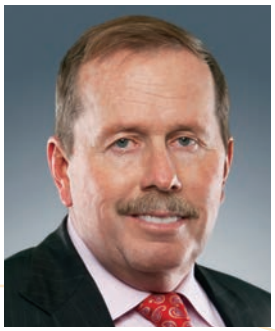
References

1. MetLife's 14th Annual U.S. Employee Benefits Trends Study. 2016. Retrieved at https://benefittrends.metlife.com/us-perspectives/opportunity-is-knocking/



Jim Allsup
CEO and Founder
Allsup Inc. and Allsup Employment Services, Inc.

The Long View: Integrating Disability Support and Return-to-Work Services Is the Future

The growing costs of chronic illness, disability, and workforce absence are creating tremendous pressure on the Social Security Disability Insurance (SSDI) program and the Disability Insurance (DI) Trust Fund. Congress and federal policymakers must find ways to balance SSDI system costs against the legitimate needs of eligible claimants who deserve access to the insurance they invested in when working.

SSDI is the federal insurance program, funded by federal taxes, providing monthly income to people with severe, long-term disabilities. A portion of beneficiaries also have long-term disability (LTD) insurance plans, which are designed to coordinate with SSDI.

Nearly five million former workers have entered the SSDI program in the past five years, and only a small fraction eventually leave the program for full-time employment. In my experience, and backed by our own data, many would like to go back to work if their condition improves. Congress enacted the Bipartisan Budget Act in 2015 to prevent a shortfall in the DI Trust Fund that would have cut benefits. Most lawmakers see the measure as falling short of a full solution, and so do I.

More substantial solutions are proposed by the McCrery-Pomeroy SSDI Solutions Initiative,[1] which was formed by the bipartisan Committee for a Responsible Federal Budget. For example, "Expanding Private Disability Insurance Coverage to Help the SSDI Program" suggests employers adopt automatic enrollment (or opt-out) for employer-provided disability insurance. The paper suggests fewer people will end up on SSDI if they have the income protection and re-employment support common in group plans.

More people can end their use of SSDI cash benefits with the help of the Ticket to Work Program, a return-to-work (RTW) initiative of the Social Security Administration (SSA). The SSA recently sought feedback on TTW service providers called employment networks (ENs). This positive step opens the door to TTW program changes that can help ENs more efficiently deliver RTW support for beneficiaries.

Another solution comes through new regulations in Section 503 of the Rehabilitation Act of 1973. Section 503 rules require federal contractors to pursue a goal of employing people with disabilities to the level of 7% of their workforce. Contractors are looking to ENs and other organizations for help with this challenging objective.

These initiatives signal to employers: Your role is prominent and expected. Anticipate more scrutiny of what employers are doing to ensure an inclusive workforce. People with disabilities and those who experience disabilities mid-career have valuable skills and can be vital to your organization's success. Pay more attention to workers who use LTD benefits and obtain SSDI, because many of them want to return to work when their medical condition stabilizes. Work with ENs to identify job candidates. The long view is one in which employers recognize the capacity and contributions of all individuals, including those requiring accommodations, and bring that value into their organizations.

As someone who operates on both ends of the disability spectrum — SSDI representation and an EN supporting individual RTW efforts — I advocate for reforming the Ticket Program as part of SSDI reform. The priorities must be removing barriers to deserving claimants with disabilities who need to re-establish income via public and private benefits, reducing SSA's administrative costs, and protecting the Trust Fund. They are all intertwined.

Long-term and short-term, we need to focus on workforce re-entry when disabling health conditions stabilize. That's good for employers who need skilled workers, and most important, it's good for individuals whose futures won't be limited by a disability.

References

1. http://ssdisolutions.org/ssdi-about.

Les Kertay, PhD, ABPP, LP
Chief Medical Officer
Behavioral Medical Interventions

Build Psychosocial Interventions into IAM Programs to Improve RTW Outcomes

More and more we accept that the main drivers of workplace absence duration are psychosocial factors that aren't psychiatric conditions requiring treatment.[1] Instead, they are attitudes and life stresses that don't fit well in traditional treatment models. Historically, they have been ignored by integrated absence management (IAM). Perhaps it's time to change that.

In a perfect world, a sick or injured employee takes leave, gets good healthcare, is supported by appropriate compensation and rehabilitation programs, and returns to work in the shortest appropriate timeframe. That positive outcome, or something like it, happens in roughly 90 to 95% of short-term disability or worker's compensation claims. But it's often the minority that don't go as planned that take up the majority of time and resources in IAM programs.

IAM is all about creating the conditions to maximize ideal outcomes and minimize or manage negative ones. DMEC has long been a leader in the movement to break down worker's compensation, disability, and leave program silos, and utilize accommodations and other tools to maximize employee health and productivity.

IAM programs that integrate management of psychosocial factors are the next logical step to improve return-to-work (RTW) outcomes. To accomplish this, we will have to change some of our attitudes and try novel approaches. Here are some things to consider:

1. Motivation operates on a spectrum. The employee with delayed RTW is rarely simply "unmotivated." Instead, there are competing motivations, including fear of re-injury and anxiety about RTW, that operate as barriers to success. As the late Dr. Ken Mitchell said, "There is no such thing as an unmotivated person; he or she is simply not motivated to do what you want them to do."[2]

2. Psychosocial barriers to RTW often are not psychiatric conditions requiring treatment, but they do require a holistic understanding of the employee's life circumstances. We don't need to accept a separate mental health claim to address motivational barriers such as employee and physician attitudes about work and disability, the perception of workplace support, and the employer's willingness to accommodate when necessary.

3. Training for claims staff, case managers, human resources staff, and front-line managers in the workplace is essential. One effective tool is motivational interviewing,[3] but the most important tool is simply learning to listen to the employee's concerns and offering practical suggestions to improve coping, build confidence, and accommodate as appropriate in order to facilitate early RTW.

4. Consider including professional services into your IAM program. When psychotherapy is indicated, ensure that providers are focused on improved function and not simply symptom relief.[4] When there is no psychiatric condition, programs such as Progressive Goal Attainment (PGAP),[5] the Cope with Pain Program,[6] and TeleGard[7] are potential resources with a growing evidence base.

For employers that already have integrated programs, incorporating a focus on psychosocial risk factors and RTW barriers can raise success to the next level. For those who are new to integration, it's possible to get a head start with a focus on psychosocial drivers of workplace absence.

References

1. L Kertay. The health care professional's role in disability benefit systems. Kertay L, M Eskay-Auerbach, MH Hyman, eds. AMA Guides to Navigating Disability Benefit Systems. Chicago: AMA Press. 2016.
2. K Mitchell. Unmotivated, or just stuck. @Work. 2(2):12-14. 2010.
3. Miller WR, S Rollnick. Motivational Interviewing: Helping People Change. 3rd ed. Guildford Press. 2012.
4. Lagerveld SE, RWB Blonk, et al. Work-focused treatment of common mental disorders and return to work. *Journal of Occupational Health Psychology*. 17(2):220-234. 2012.
5. http://www.pgapworks.com.
6. https://theimcsgroup.com/services-COPE.html.
7. http://r3continuum.com/absence-management/.

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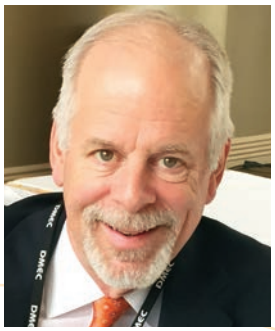


Skip Simonds
Managing Principal
Simonds & Associates

"Seamless" Disability and Absence Management

If you've got two or more disability vendors, you've got seams. But what if you have only one vendor?

As a consultant, I hear the following from vendors of all types. "Absolutely, our claims process is seamless." Nevermind that there is one person who handles short-term disability, another the long-term disability, a third the statutory leaves, plus a nurse, a vocational rehab specialist, an MD, and occasionally a customer relationship manager. There are seams everywhere.

There are a few strategies out there in the vendor marketplace to make the process as seamless as possible, but unless you have one person doing everything for everyone all the time, there's always a seam. The issue is not "is there" but rather "how many" and "how much impact."

No program or process is really "seamless." What you want to avoid are those invisible gaps that a claim falls into like an inconsistently managed transition between two separate payers for short- and long-term disability claims.

Also, you want a single point of contact so your employees aren't being contacted by a variety of people, each with their own need for information. This can be confusing to someone who is sleeping poorly due to pain or has any number of other difficult symptoms.

You want seamless, but realistically, you're going to end up with some seams. So the best outcome is that the seams you end up with do not impact the claims process: it is "seamless-like." Let there be seams, but make sure the seams don't create friction and don't represent weak "tear points" in the fabric of services that your vendor partner is providing.

And how are you going to ensure that you achieve this?

When selecting a vendor to provide services, you will be shown the "seamless-ness" of their service delivery models. They'll use the term seamless when they sum up elements of their presentation.

When assessing the vendor capabilities you should request a list of former clients. I typically recommend you talk with at least four clients, but six is better. You want three current clients who are about your size and preferably in the same industry. More importantly, you want three former clients who are no longer with the vendor for whatever reason.

Call them.

Ask about their experience with the actual claim process. Ask them how it went. Ask what problems they encountered and how the vendor resolved them. Ask about timeliness of decisions and payments and overall claimant satisfaction ("seam" indicators). And then just sit back and let them talk about their experience with that vendor without too much direction or focus. Some seams might impact you less, while others might be a recipe for disaster given your organization's claims history and risk factors.

To paraphrase Forrest Gump, "seamless is as seamless does." Kick the tires, lift the hood, but talk to former clients most of all.

"RTW Case Study" cont'd from pg. 23

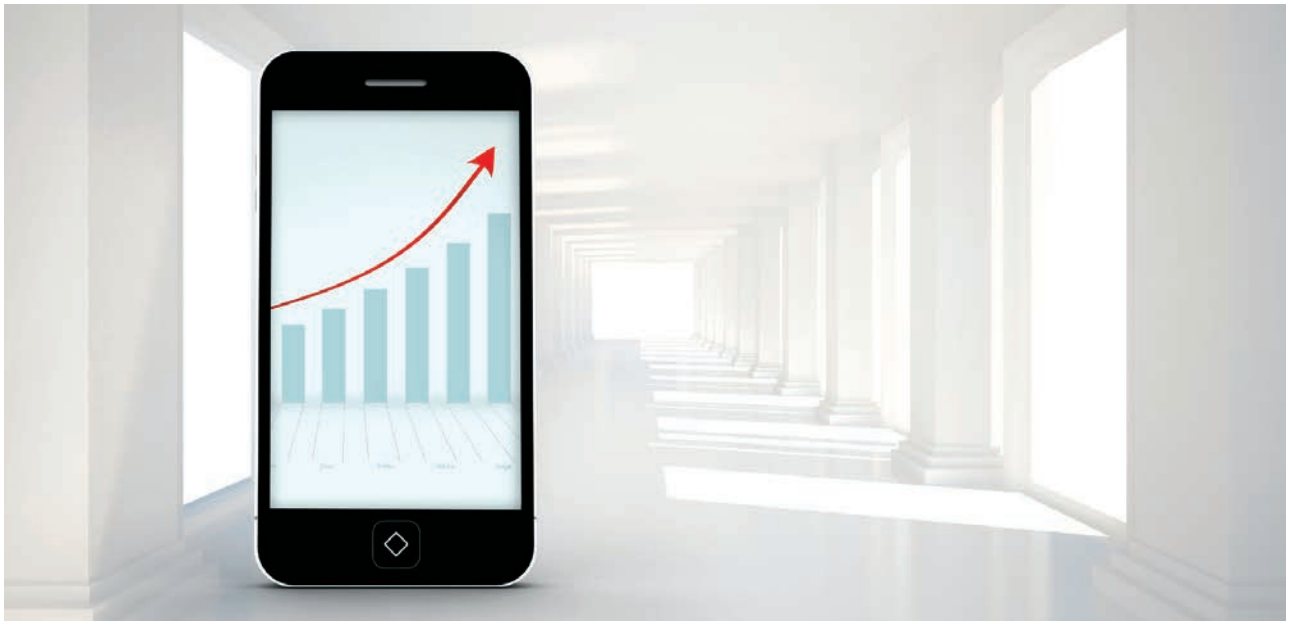
these regulations are complex, thorny, and burdensome. Given these challenges, together with the significant hard and soft costs of noncompliance, many employers seek assistance from specialized FMLA management providers.

Such providers have the knowledge and expertise to help an employer develop clear FMLA policies, ensure the consistent application of these policies, and train managers to document and proactively address employee performance issues.

In situations involving an FMLA-qualifying leave, a specialized provider can serve as a trusted intermediary, handling all FMLA-related correspondence and other communications between employees and the employer, while dealing directly with healthcare professionals. Providers also can discern and examine questionable leave requests and help employers achieve consistency in enforcing proper and lawful disciplinary actions across their organization.

Despite all the administrative burdens, FMLA provides important benefits. Effective compliance helps employers improve employee engagement, retention, and recruitment, while avoiding both the hard and soft costs of poor administration.

Elevating The Customer Experience



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2016 Employer Leave Management Survey Released at DMEC Annual Conference

The 2016 DMEC Employer Leave Management Survey, the sixth year in this series, will be released during the DMEC Annual Conference, July 18-21, in New Orleans.

Three new questions in the survey cover new employer hot spots in this expanding field, which is beginning to add benefit cost to administrative cost.

The new questions — about parental leave, paid sick leave, and outsourcing ADA services — will explore the growing impact of leave mandates on employers.

"This survey has become an important resource to our industry," noted DMEC CEO Terri Rhodes. "We continue to expand the questions to keep up with the complexity in regulation and provide feedback to our members.

Four states have paid parental leave laws: California, New Jersey, New York, and Rhode Island. By 2018, California's Paid Family Leave program will pay 60% of wage to most participants for up to six weeks and 70% to low-wage earners. San Francisco recently passed a law requiring employers there to supplement the California program, bringing benefits up to 100% of pay. New York's recently passed law will provide eight weeks of paid leave beginning in 2018, increasing to 12 weeks by 2021. The new paid sick leave for federal contractor employees, to take effect in 2017, will extend up to seven days of paid sick leave annually to an estimated 437,000 employees who lack this benefit now.

Employers also are experiencing a growing impact from the Americans with Disabilities Act (ADA), which is generating more leave requests now due to the ADA Amendments Act.

The Employer Leave Management Survey will explore the diverse employer responses to managing mandated leaves. Nearly 1,000 professionals participated in the 2015 survey; your participation is a valuable contribution to this survey in 2016! Watch your email inbox for your link to participate in the survey.

The CEO's Desk continued from pg. 6

this would help breach the cultural divide between risk management and HR. Most employers run FMLA concurrently with disability claims, including WC, creating a need for timely communication between risk and FMLA leave managers. This need has not driven as much collaboration as many of us hoped.

I have pushed for companies to embrace IAM during my career. In three separate organizations, I found a way to make IAM work. I worked in risk management, corporate benefits, and HR, and in all three roles, my team managed WC, STD/ LTD, state and federal FMLA, and leave programs including ADA. There were different program nuances, but we figured out how to use the professional knowledge of all stakeholders, and we broke down the barriers. I know first-hand that there is opportunity to make the shift.

With so much focus on the ADA recently, we thought this would finally bridge the divide between risk management and HR. In any WC claim involving time off from work and where a workplace accommodation process is used, the employee has ADA rights. Effective WC claim management and RTW does not preclude an employee's ADA rights. An employer that ignores this is at risk for litigation from the Equal Employment Opportunity Commission, which is making it a priority to identify systemic barriers to ADA rights like this (see *Compliance Memos* on page 8).

IAM includes WC, period. It is our duty as professionals to provide the best process for employees and minimize risk to employers. Using an integrated absence management process does this best.

Terri L. Rhodes
DMEC CEO

DMEC Resource Guide Series Gets Upgrade

Wall-to-wall updates make the DMEC Resource Guide Series — The Return to Work Manual, Tools of the Trade, and Terms of the Trade — an immediate must-have for practitioners.

Forty-two absence management professionals contributed their unique knowledge, experience, and insight to make these references authoritative. Together, the three books in the series provide a rich resource for solutions to daily professional challenges and a common language for professionals working together in coordinated initiatives.

The series is loaded with visuals to help busy professionals quickly access the information they need through checklists, flow charts, summary tables, sample reporting metrics, bar charts, links to industry-standard websites, and more.

To learn more about the DMEC Resource Guide Series and purchase your set, visit www.dmec.org/bookstore.

2017 Compliance Conference in Minneapolis

The 2017 DMEC FMLA/ADA Employer Compliance Conference will be held at the Hilton Minneapolis in May 2017. As attendance continues to increase each year, the industry has identified this conference as a must-attend event for professionals managing FMLA and ADA compliance. Recognizing the significance of this conference, the U.S. Department of Labor used the 2016 meeting to unveil a long-awaited Employer's Guide to the FMLA. Watch www.dmec.org for more on this important event.

Compliance Makeover cont. from pg. 26

sources of expertise for help with this constantly-growing knowledge base about leaves. In addition to law firms, many employers use third-party administrators, but there are other options.

One of our clients described their approach: "We are considered a 'tech only' client.' We use a vendor's technology, get their input on leave plans and configuration of those plans, but we are the initial point of contact for all employee leaves and requests for accommodations. All are processed through this in-house program. After the leave is requested, we transfer to the disability carrier for their piece in cases where that is needed."

Their experience provided many of the questions and important details in this article.

To summarize, first your IAM effort must identify all the leaves that apply to your work sites, then you must have all of the corresponding tools in place to ensure that your compliance effort is running effectively.

Supervisor Buy-In

As already indicated in the check-up questions for FMLA and ADA, supervisors and line managers have a

Compliance Makeover cont. on pg. 42

DMEC Career Center: Your Portal to Job Opportunities

As you use DMEC programs to enlarge your professional knowledge and capabilities, visit the DMEC Career Center to see where they can take you.

The career center is your targeted source for job openings at leading corporations and vendors in disability and absence management. Instead of 10 million jobs that don't apply to you, the career center mines your profession for the opportunities that you want to hear about.

The employers who post openings in the Career Center understand the value of your CPDM (Certified Professional Disability Management) designation and other professional credentials. They sponsor and participate in the same conferences and webinars that you attend. In short, they speak your language and their programs reflect that.

Designed around quick results to fit your busy schedule, the center lists featured jobs on the home page. Then you can quickly dive into a customized search. It's like visiting your favorite clothing store and discovering a rack with your name on it! But keep an open mind — try different searches and look closely at the language in some of the postings. You may learn that employers now put a higher value on skills and experience that you already possess.

And employers, the DMEC Career Center is the most cost-effective tool to make a big splash and do a deep reach into the recruiting market you want. How often have you attended a DMEC conference and thought, "that's the person I want, but this one is locked into a job right now; how can I find more people like this?" The answer is, they're on the career center right now looking for you!

Compliance Makeover cont. from pg. 39

huge role to play. They are usually among the first people in the organization to be aware of a potential FMLA or WC claim, or the need for a reasonable accommodation due to an employee's medical condition.

Well-trained managers can quickly spot these issues and call in the company specialist to manage the case appropriately. Managers need to understand the low threshold for triggering employee rights under all of these laws and the importance of confidentiality about employee medical conditions.

Conclusion

Install your last-ditch defense first: ensure that no employee terminations are approved until a full review has been conducted to rule out potential conflicts with FMLA, ADA, or state and local leave and disability laws. Then coordinate between all your IAM programs to avoid undermining your organization's compliance with FMLA, ADA, and other leave programs. And finally, train and equip managers and supervisors to play their important role at the start of claims.

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