Practical Strategies for Creating Paid Company Leave Policies

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Why are Paid Company Leaves Important?

Patchwork of stated mandated paid leave	Family focused benefits are in demand	Employee as a whole person, not just a worker
Inconsistent benefits across multi-state employee populations	Offering paid company leave is a key way to attract and retain top talent	73% of all employees have some type of caregiving responsibility*
Only guaranteed leave is unpaid FMLA (subject to eligibility requirements)	41% of working Americans reduce their work hours to accommodate caregiving and 13% have resigned**	Over 50% of caregivers don't report their family challenges to their employer for fear that it will impact their job**

*Citation: Supporting Employee Caregivers Starts with Better Data (hbr.org)
**Citation: Caregiver discrimination lawsuits are on the rise: Are you in EEOC compliance? (benefitspro.com)

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Goals for Today's Session

- Cover best practices and potential pitfalls
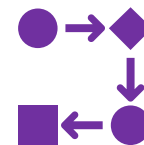- Review major plan design features of paid company leaves through the lens of:

Budget

Employee Satisfaction

Compliance

Practical Administration

Already Have Paid Company Leave?

Review your written policies at a regular cadence and consider impacts due to:

- **Regulatory changes**
  - State PFML programs
  - EEOC guidance
  - New case law

- **Changes in company offerings**
  - Moving from voluntary STD plan to an employer paid STD plan
  - Outsourcing leave administration or changing administrators
  - Introduction of new company leave programs

- **Budget constraints**
- **Changing workforce demographics and needs**

Plan Design #1 – Employee Eligibility

**When do employees become eligible to receive benefits?**

Best Practice: Align minimum service time with FMLA (12 months)

Potential Pitfall: Allowing employees with less than 12 months of service to qualify, which enables "stacking" of company paid leave and FMLA.

Which employee types are covered?

Best Practice: All full-time, benefits eligible employees

Potential Pitfall: Covering temp/part-time employees impacts budget considerations and may complicate administration
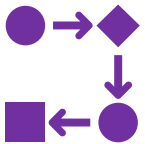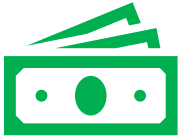
Plan Design #2 – Qualifying Reasons/Relationships

Paid Parental Leave

Best Practice:

- Bond with a new child (via birth, adoption, or foster placement)

Pitfalls:

- Including medical recovery from childbirth

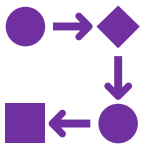- Not using FMLA documentation as proxy for approval

Paid Family Care Leave

Best Practice:

- Mirror FMLA covered relationships and definition of serious health condition

Pitfalls:

- Requiring proof of relationship

- Not using FMLA documentation as proxy for approval

Plan Design #3 – Length of Leave/Pay Rate

Best Practice: Define maximum duration in weeks. Replace 100% of the employee's straight pay.

Potential Pitfalls: Inadequate budget analysis. Variable pay rates by employee type. Multiple earnings definitions across benefits.

Paid Parental Leave

- Median duration is 6 weeks
- More than one quarter of employers offer 12 weeks or more of paid bonding leave

Paid Family Care Leave

- Median duration is 4 weeks
- One quarter of employers offer a duration of 8 weeks or greater

Citation: DMEC 2023 Leaves of Absence & Time off Trends

Plan Design #4 – Continuous vs. Intermittent

Paid Parental Leave

Best Practice:

- Mirror your FMLA policy to prevent stacking. Do what is best for your organization

Pitfalls:

- Allowing "stacking" of time, which means longer absences from work
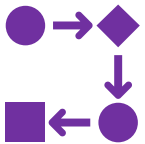
- Not accounting for state leave rules around bonding

Paid Family Care Leave

Best Practice:

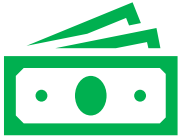- Continuous only or allow intermittent, if medically necessary.

Pitfalls:

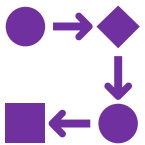- Not aligning minimum increment to FMLA if you allow intermittent leave

Plan Design #5 – Coordination with Other Programs

Best Practice: Run paid company leaves concurrent with all paid and unpaid leaves when permitted by law.

Potential Pitfall: Allowing employees to "stack" company paid leave.

Best Practice: Ensure employees do not receive more than 100% of pay through offsetting your paid company leave with any state mandated paid leave.

Potential Pitfall: Not offsetting the paid company leave for other benefits; inflates cost and reduces employee incentive to return to work

Other Considerations – Effective Date

When rolling out a new paid company leave or when making changes to an existing one, it's important to be clear about which employees/situations will be covered under the new policy.

If your leave management is outsourced to a carrier or TPA, it is highly recommended that you discuss any potential new policies or changes to policies in advance of implementing them.

Best Practice: Only cover events that occur on/after the policy effective date.

Potential Pitfalls: Grandfathering employees whose events took place before the policy effective date.

Final Thoughts

It's important to ensure that your written leave of absence policies are clear, comprehensive, and consistent with how you administer the benefit.

You can find sample policies through industry resources like the DMEC's CLMS Resource Guide, SHRM, etc.

When developing a new policy or updating an existing policy, it's always prudent to consult your legal counsel in addition to your carrier or TPA, if outsourced.