



**2024 COMPLIANCE
DMEC CONFERENCE**

DALLAS, TX | MARCH 25-28, 2024

**File a Claim or
Call the
Game?**

**Mutual of Omaha
Wednesday,
March 27, 2024**

Presenters



Zach Jones

Paid Family and Medical
Leave Group Claims Team
Leader



Sarah Hipp

Paid Family and Medical
Leave Compliance
Manager

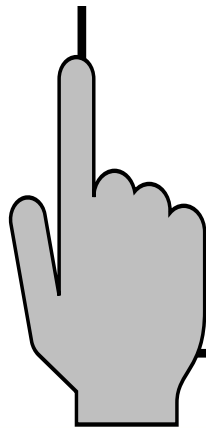
The Absentee Conundrum



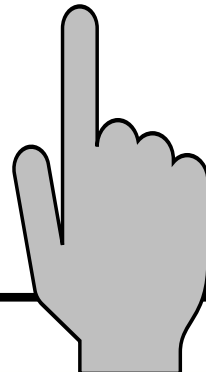
Addressing leave abuse can be challenging



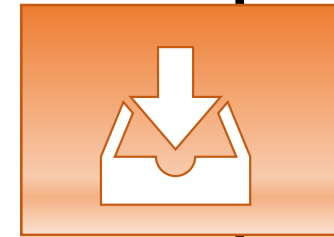
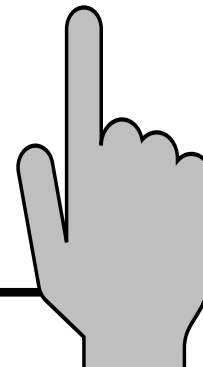
Employers may not know HOW to investigate



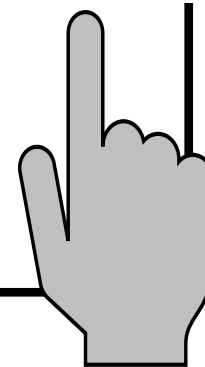
Employees have many rights



Employers want to be empathetic and discerning



Coworkers must perform extra duties



Scenario #1



Colonel Mustard was in a car accident that resulted in a leave of absence from work. After an initial 6-week period of continuous leave, Colonel Mustard returns to work on a modified schedule: 4 hours a day, 3 days a week.

The 2 days a week Colonel Mustard requests off – Monday and Wednesday - are the 2 days where workloads are the highest and weekly reporting is due.

Colonel Mustard's coworkers start reporting to their employer that outside of work Colonel Mustard is involved in several activities that are inconsistent with the limitations and injuries reported: golfing, yard work, hiking.

Scenario #1

What should
Colonel
Mustard's
employer do?

A

Fire Colonel Mustard

B

Ignore the concerns because there is
no proof

C

Set up surveillance on Colonel Mustard

D

Talk to Colonel Mustard about the situation

Employer Prohibitions

Employers are prohibited from interfering with, restraining, or denying the right to exercise FMLA rights

Employers cannot discriminate or retaliate against an employee for having used FMLA rights

Examples of prohibited conduct:

- Refusing to authorize FMLA leave for eligible employees
- Discouraging employees from taking FMLA
- Manipulating work hours to avoid FMLA responsibilities
- Using an employee's FMLA request against them in employment actions such as hiring, promotions, or disciplinary actions
- Counting FMLA leave under attendance policies

Honest Suspicion

An employer has the right to investigate, inquire, and take necessary steps if they have an *honest suspicion* that the employee has engaged in leave abuse

What could prompt suspected misuse?

- Question whether the employee's absences are related to a SHC
- Conflict between the employee's absence reason and reports received
- Pattern of absences is identified
- Excessive absences are reported that are not supported by the medical certification

Let's Dive
Deeper



Challenges

Intermittent leave can be particularly challenging because of the nature of some medical conditions: migraines, back pain, Crohn's disease

Sporadic and disruptive

Tracking time

Certifying and recertifying

Intermittent
leave

Fraud

Misrepresenting the medical condition for which the employee seeks leave

Falsifying records or certifications

Using approved leave time for non-leave purposes

If an employee fraudulently requests FMLA they are not entitled to benefits or restoration rights

Scenario #2



Miss Scarlet requests intermittent leave to care for her sick mother.

Miss Scarlet's employer requests medical certification with no response. Finally, after multiple requests Miss Scarlet submits a completed form.

A coworker mentions Miss Scarlet is having difficulty finding childcare on certain days, leading Miss Scarlet's employer to suspect she is taking leave due to childcare issues, not her medical condition. The employer also suspects Miss Scarlet completed the medical form, not her mother's physician.

Scenario #2

What should Miss Scarlet's employer do?

A

Authenticate the certification

B

Have a conversation with Miss Scarlet

C

Deny the leave request based on suspicion

D

Start the recertification process



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Causes for Concern



- More frequent/lengthy absences
- Friday/Monday/Holiday misses



- Working other jobs
- Participating in activities inconsistent with the medical condition
- Social media activity



- Altered or suspicious certifications
- Substantial change in recertification
- Failure to provide or respond to requests for certification

Absence patterns

Suspicious behaviors

Medical inconsistencies

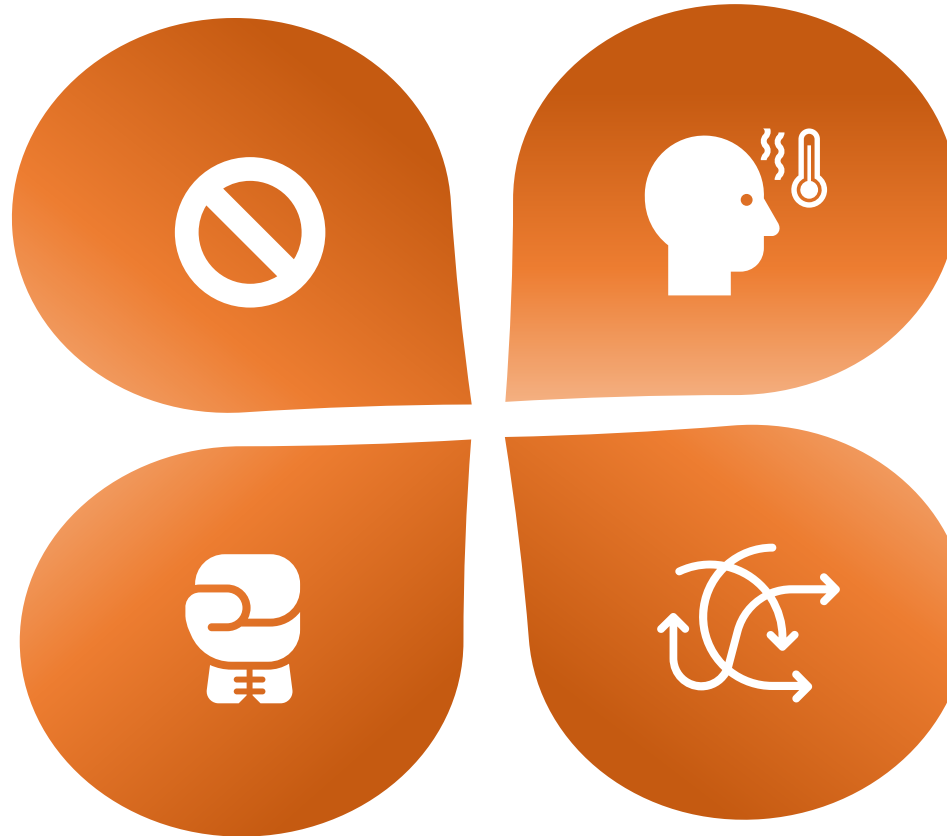
Calling the Game



Underlying Issues Leading to Abuse

Under performing employees may request leave to avoid termination or performance management

Burnout, disengagement, or other conflicts in the work environment



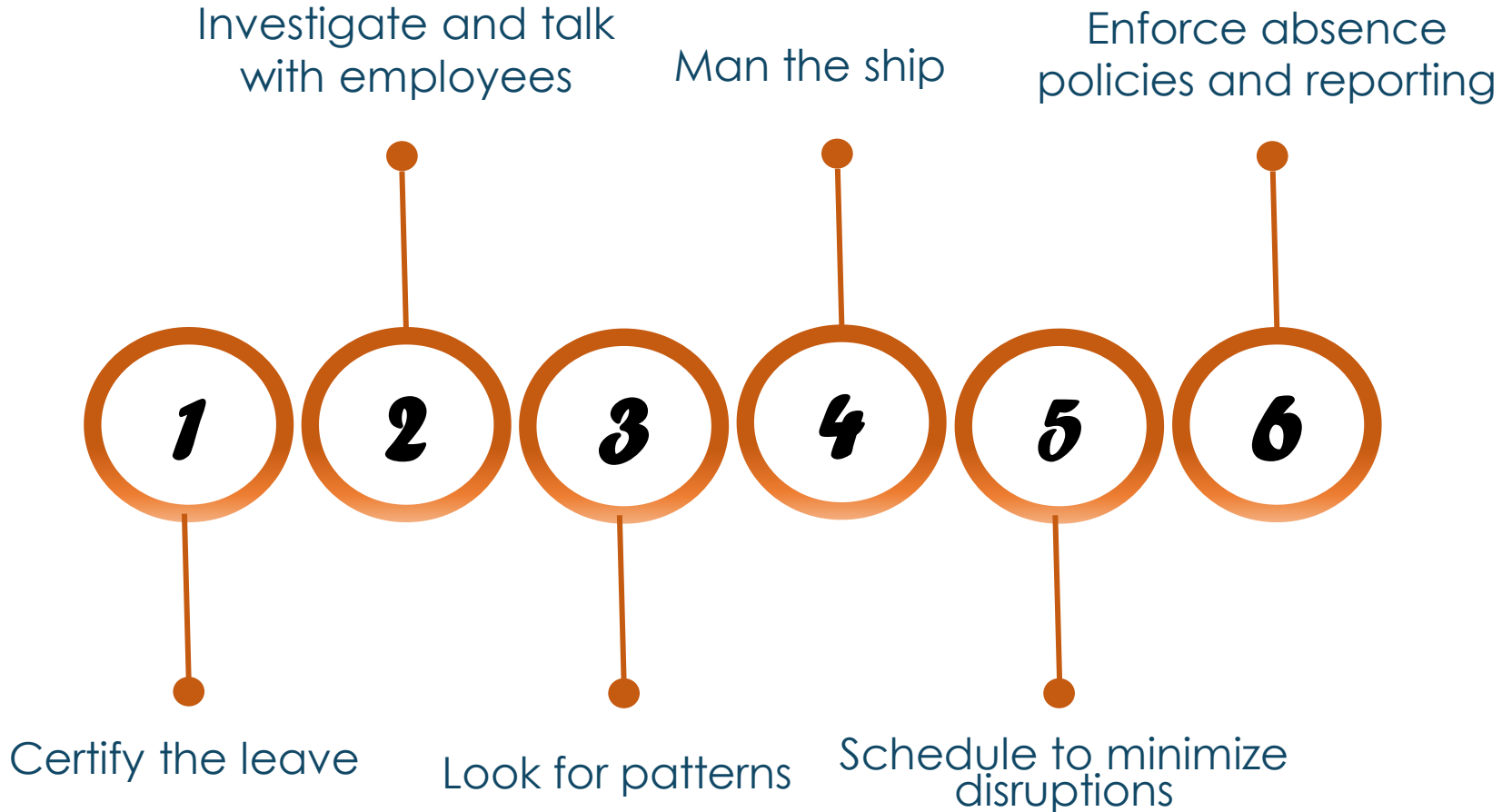
Late arrivals, missed deadlines, unusually high number of call-ins or sick days may be signs of additional concerns

Unclear policies may lead to more abuse



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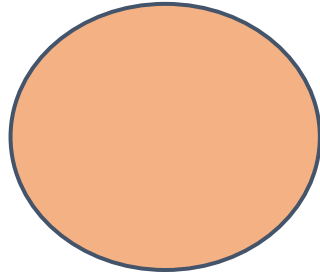
Minimizing Abuse





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Questions?





Zach Jones

Zach.Jones@mutualofomaha.com

Sarah Hipp

Sarah.Hipp@mutualofomaha.com



Mutual of Omaha

Thank
you!

