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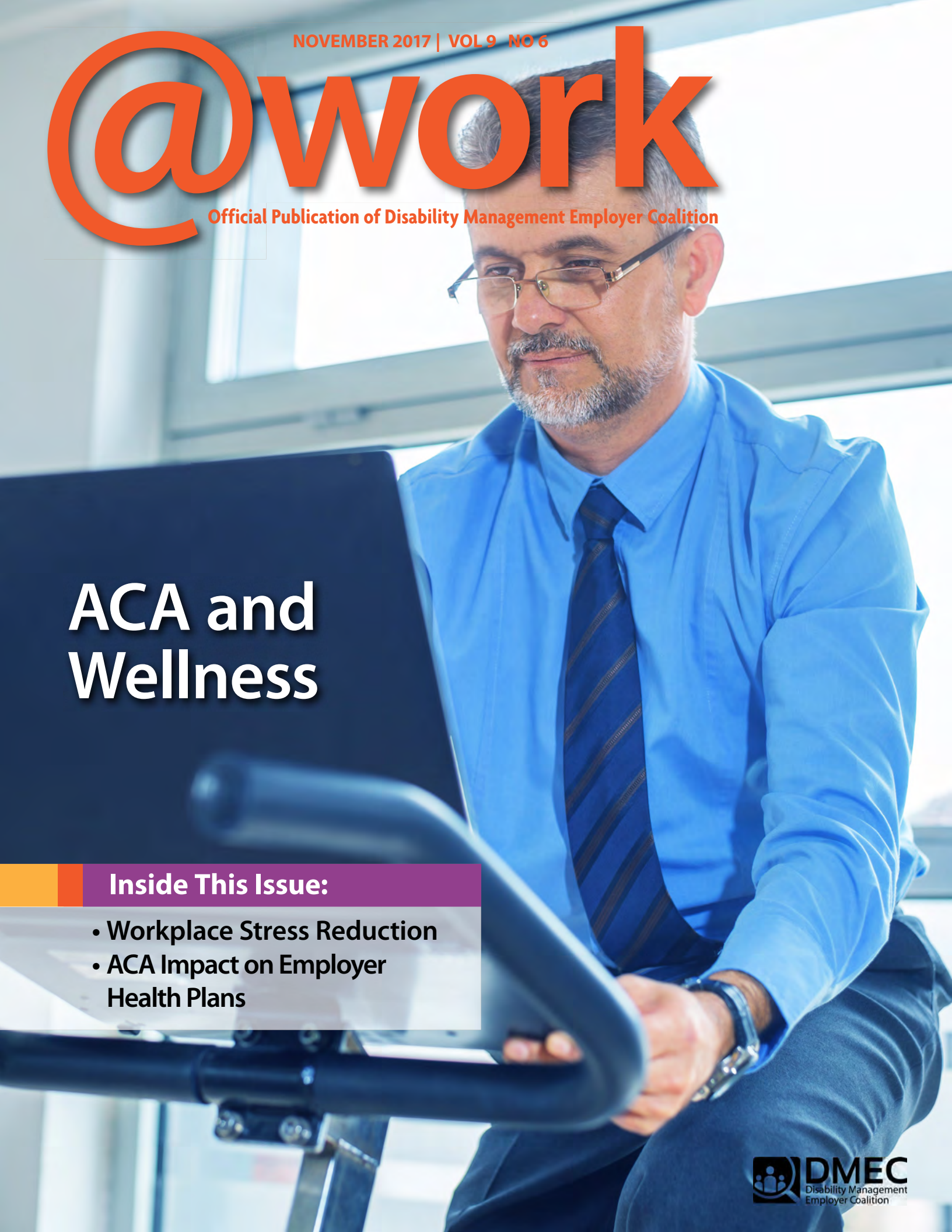

ACA and Wellness

Inside This Issue:

- Workplace Stress Reduction
- ACA Impact on Employer Health Plans

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Contents

NOVEMBER 2017 | VOL 9 NO 6

Departments

SPOTLIGHT Articles

Features

Columns

@work

Editorial Policy

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

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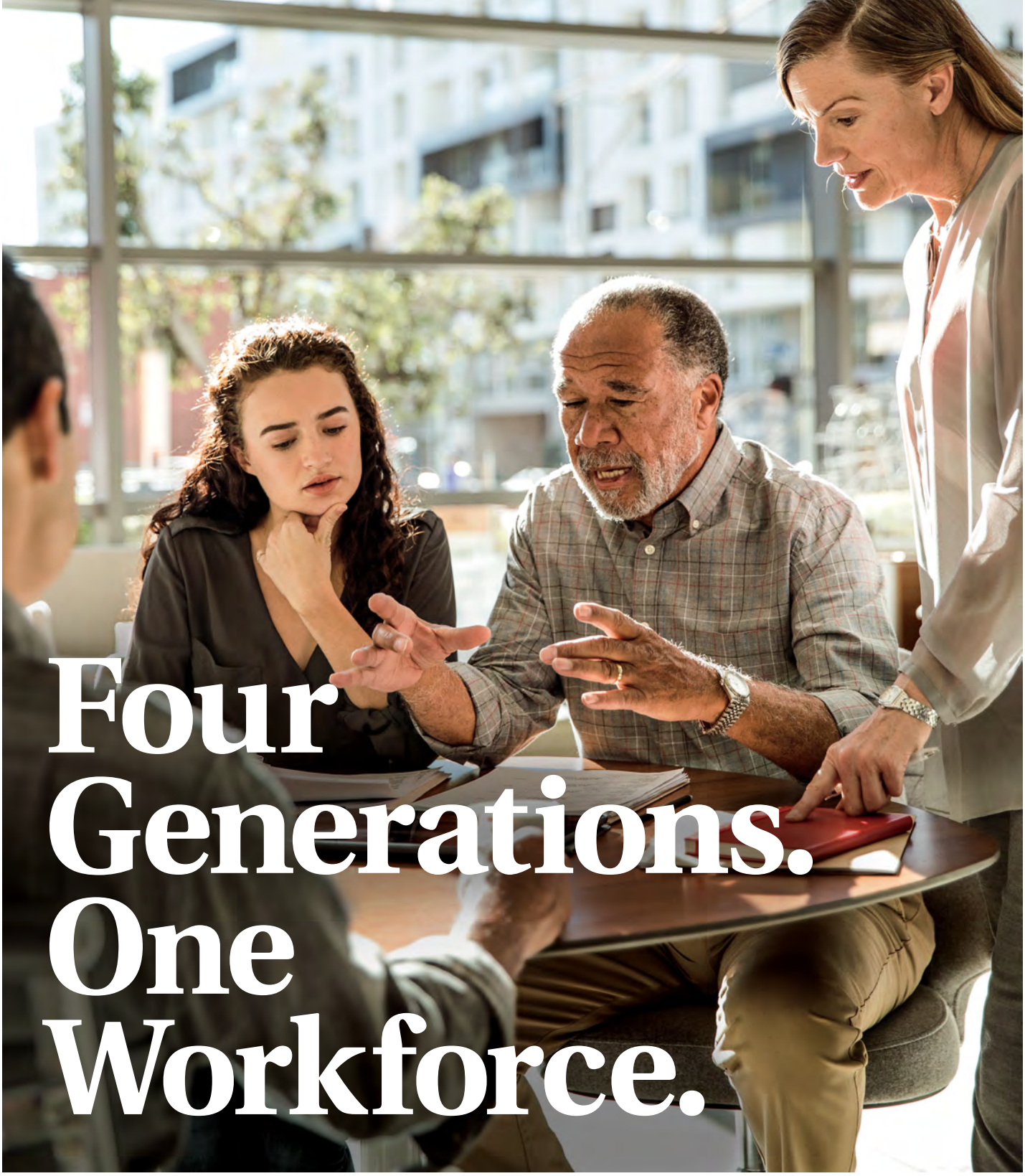
In Case You Missed It



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Navigating life together

Terri Rhodes
MBA, CPDM, CCMP
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Employee Productivity With a Revised ACA

As integrated absence management (IAM) professionals, we must always stand ready to defend the value of employee absence management and productivity programs. The best way to do this is to articulate how our programs contribute to the success of the organization. We can accomplish this by networking with peers, both at work and with those outside of work. At work, we can develop shared projects that improve collaboration in those difficult scenarios where disability and risk overlap such as a return-to-work program. Outside of work, we can discover what other organizations are doing and discuss the solutions that worked for them. And we can keep our organization's leadership updated on our contributions.

"Again employers will be required to shift their strategies. They will find and provide the right solutions for the ever-changing workforce."

Sometimes, however, even when you are doing the right thing, something new comes along and changes your course. This happened recently with the Affordable Care Act (ACA) when some employers briefly considered ending their group health plans and sending employees out to the new individual markets created by the state exchanges. Some publications ran surveys predicting a significant decrease in the number of people covered by employer-provided healthcare. Ultimately, this didn't happen.

What did happen is that millions of individuals who otherwise had no health insurance were able to obtain coverage. Employers continued to offer group health insurance for the value it provides to employees and the value it provides as part of a comprehensive recruitment and retention strategy. IAM professionals found ways to show how an integrated approach increases employee health and productivity.

Now efforts are underway to replace the ACA with new health insurance options.

Because of the Oct. 12 executive order, employers will be able to send employees out to individual markets to purchase healthcare for the 2019 plan year. The executive order will create new regulations for health reimbursement arrangement (HRA) accounts with more flexibility to fund healthcare purchases, whether in group or individual markets.

So what is different this time? The new HRA vehicles are expected to solve some of the funding problems that made the ACA state exchanges a difficult choice to replace group health plans. Ironically, if the ACA is still operating a year from now, the state exchanges may enroll more new HRA customers for the 2019 plan year than other options available on the individual market.

Once again, employers will ask, "Is offering a group health plan still worth the effort? Or do we want to move away from our group health plan and let employees make their own choices by entering the individual markets? How will this impact employee wellness and mental health care? What will happen to the productivity efforts we have put in place over the last 10 years?" And again, employers will be required to shift their strategies. They will find and provide the right solutions for the ever-changing workforce.

As we wrap up *@Work* for the year, I wish you all good health, happiness, and a joyous holiday season. With Thanksgiving around the corner, I am reminded of the many things for which to be thankful, good healthcare being one.

Terri L. Rhodes
DMEC CEO

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Compliance Memos

John C. Garner
CEBS, CLU, CFCI, CMC
Chief Compliance Officer
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CM #19 White House Halts Cost-Sharing Reduction Payments

The Trump administration announced on Oct. 12 that it would end cost-sharing reduction payments (CSRs) to insurance carriers participating in the Affordable Care Act (ACA). The administration claims that President Obama usurped the authority of Congress when he authorized the CSR payments. Ending the CSRs was temporarily upheld by a California federal district court on Oct. 25, which rejected a legal action by 19 state attorneys general to reinstate the CSRs until a lawsuit against the Trump administration is resolved. Parallel to this legal action, Congress is considering legislation to restore CSRs.

The status of the CSRs has little immediate impact on most employers, who have employee health plans outside the ACA. Most carriers participating in the ACA have raised their 2018 premiums to cover the loss of the CSRs. Low-income individuals who qualify for ACA cost-sharing subsidies will see no change to their net premiums or cost-sharing because their tax credits will increase to cover the loss of CSRs. However, middle- or higher-income individuals using the ACA will not receive increased tax credits. Other actions by the Trump administration and Congress may give them other options for low-cost coverage on individual markets.

CM #20 Employers Adjust to New Federal Cost-of-Living Rates

The federal cost-of-living adjustments (COLAs) for 2018 will affect numerous employee benefits. There will be small increases in the ceilings for some benefit programs, while others will have the same ceiling as in 2017. Benefits or funding devices affected include: voluntary employee salary reductions for contributions to health flexible spending arrangements will increase $50 to $2,650; monthly fringe benefit exclusion for transit and parking will increase $5 to $260; the maximum exclusion for qualified adoption expenses furnished pursuant to an adoption assistance program will increase $270 to $13,840; failing to file correct payee statements, such as W-2s and 1095-Cs will increase $10 to $270 (since forms must be provided both to the employee and the IRS, the total is $540 per employee). For more important details, visit http://dmec.org/2017/10/20/irs-announces-number-2018-cost-living-adjustments/.

CM #21 Reasons to Begin Disaster Planning Now

Headlines about Hurricanes Harvey, Irma, and Maria, plus U.S. west coast earthquake predictions should prompt employers to prepare for the next natural disaster. Group health plans are required by the Health Insurance Portability and Accountabilty Act security regulations to have data backup plans, disaster recovery plans, and emergency mode operations plans.

New guidance from the Internal Revenue Service (IRS) permits employers to waive the restrictive rules usually imposed on loans and hardship distributions from tax-favored retirement plans. The guidance also permits employers to adopt leave-based donation programs to facilitate contributions to charities assisting victims of the disasters. In addition to the new relief, employers may also make "qualified disaster relief payments" directly to employees under certain circumstances. IRS Notice 2017-48 allows employees to donate vacation, sick, or personal leave in exchange for cash payment that the employer makes to an eligible charitable organization. As long as certain requirements are met, the employee is not subject to tax on the value of the leave, and it will not be included in income. The employee is not entitled to a charitable deduction, however, the employer may be eligible for a deduction for the donation. To learn much more, visit http://dmec.org/2017/09/28/disasters-prompt-employers-plan-next/.

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Promoting Employee Wellness

Through Healthier Workplaces

Employers may hold the key to reducing employee health risks; through corporate wellness programs, employers can take aim at new health risks such as workplace stressors.

The traditional wellness model focuses on employees' personal health behavior that can drive up health risks and medical costs. To reduce the personal health risks of employees that are believed to drive a significant portion of medical costs, these programs incent employees to participate in health screening and behavior risk reduction. Employers sometimes use other methods, such as bans on tobacco or unhealthy foods on their campuses, to send a consistent message about the importance of personal health.

While employers may gain medical and lost-time cost reduction through these programs, employees may actually benefit the most. In dramatic cases, lives are saved, and many more lives are enhanced by reducing identified health risks through smoking cessation, exercise, weight reduction, chronic condition management, and other activities.

"Many wellness programs have expanded to include non-medical factors that can increase stress, which is a major cause or contributor to health problems."

Expanding Wellness

Long-term behavior change such as improved personal diet and nutrition can be difficult at best to maintain, especially for people with entrenched high-risk behaviors. Many deep-rooted psychosocial factors drive habitual high-risk behavior.

Research has shown that bounce-back weight gain following weight loss is not just mental or emotional, but has a physiological component as well. People who have lost weight quickly must

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fight an internal war against their own hormonal and metabolic changes; their bodies are programmed to a higher weight and fight back to restore it.[1]

Behavior that drives obesity is only one of a constellation of high-risk behaviors that wellness programs attempt to reduce. Across the entire field of high-risk behaviors, many wellness and disease management programs have observed that people who need help the most are often the most resistant to the challenge of health change.

As a result, many wellness programs have expanded to include non-medical factors that can increase stress, which is a major cause or contributor to health problems. Debt reduction, retirement savings, improved options to care for aging parents, and legal services are all popular new stress-busting additions to wellness programs. To make these and other resources available to employees, many wellness programs have strong links with employee assistance programs (EAPs) that traditionally deliver these programs.

All of these approaches assume employees are ready to participate and change, and that they have a robust internal locus of control that will make them the stars of their own health-improvement drama. It's a wonderful, inspiring narrative that does not always materialize.

What Employers Can Control

When employees are not ready to partner with wellness programs on behavior risk reduction, there may be other options to reduce risk factors that are under the employer's control. Employers may be able to act unilaterally to significantly reduce workplace stress factors that increase employee health risks, according to a February 2017 research study in *Health Affairs*.[2]

Most work environments contain a constellation of stress factors that can be reduced. The *Health Affairs* study found that these may increase the risk of hypertension, one of the leading risk factors for cardiovascular disease. The study of 13,978 blue collar workers in 24 Alcoa aluminum manufacturing plants from 1996 to 2012 relied on worker ratings of social environment, together with rating of workplace physical and psychological hazards in job-specific assessments by health and safety managers.

The study concluded that "these broader aspects of the work environment, taken together, represent a potentially large burden contributing to hypertension."

Psychological Demand

When the factors were isolated for their impact as independent variables, "psychological demands" of a job was the second most significant factor, with a higher level of demands associated with 15% greater prevalence of hypertension. The only higher correlation with hypertension was a coefficient that measures the impact of living, early in life, in a state with high income inequality, where prevalence of hypertension was 17% higher. The strongest association among physical work factors with hypertension were having a sedentary job which had 7% higher hypertension, and a job that involved a lot of reaching, which had 6% higher hypertension. An earlier study found that working in a job with high psychological demands put employees at "greater risk of serious injury."[3]

The authors acknowledged that "it is an open question whether workplace characteristics are easier to change than individual health behaviors — each is a challenge for different reasons." Part of the challenge in trying to modify workplace characteristics to reduce health risk is to understand how the factors affect each other, and the nature of their relationship to risk.

Some of the findings seem intuitive and therefore relatively simple to apply as criteria for worksite management. Job psychological demand had a clear and significant linkage with hypertension, so reducing psychological demand could be a reliable strategy.

In another example, "better impressions of the company and more meaningful recognition were associated with lower hypertension." While this does not answer the important question of which types of recognition are most meaningful to employees, it reminds us that meaningful recognition actually can reduce stress.

"Better impressions of the company and more meaningful recognition were associated with lower hypertension."

But some significant factors operated in ways that would appear to make them difficult to manage. For example, the study found that "positive feelings about the supervisor and work-life balance were associated with greater hypertension." So if an employee likes their supervisor and their work-life balance, is this a stressor? Perhaps if the employee is worried about losing these valued conditions. But how does an organization take steps to reduce the stress that can arise from this scenario?

Perhaps continuous positive support by a supervisor can make a big difference for an employee, a belief that has been a part of many work cultures.

In looking at how much of hypertension could be explained by groups of factors, the social environment was associated with 40% of the prevalence of hypertension (the study design could establish association but not cause), and the psychological hazards and physical hazards were each associated with about 10% of the hypertension. So the workplace itself appears to be a significant contributor to hypertension — thus making it an important target for changes to improve health.

Conclusion

The *Health Affairs* study provides a clear indication that modifying workplace culture has potential to significantly reduce stress and thus improve employee health. But what would be the right approach for any individual organization? Companies could survey employees to identify which aspects of the work culture have the highest impact on employees, consider strategies for change, implement changes, and evaluate whether these improve employee satisfaction and result in better health for employees.

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2018 Employer Healthcare Agenda: Pressing On Despite a Weakened ACA

Despite challenges, the Affordable Care Act (ACA) remains in place with many provisions that will continue to directly affect employer group health plans.

The repeal-and-replace effort came up short in Congress in 2017. While this effort may be restarted by the Trump administration's recent actions, this complex scenario will take time to play out. The basic course of the ACA is set for 2018. Some analysts are saying that the flurry of administration activity on Oct. 12, 2017 will have its primary impact on healthcare in 2019, but that there may still be an impact on the ACA in 2018.

"With the effort to repeal or replace the Affordable Care Act still dominating the agenda, efforts to simplify ACA regulations may be slow."

In 2018, understanding the current ACA environment for employers remains important, including compliance issues, making cost-efficient high-deductible health plans more attractive to employees, and concerns about the stability of ACA state health exchanges.

Employer Shared Responsibility

Reporting. At the top of the list of ACA compliance issues is the employer shared responsibility reporting. "Applicable large employers" (ALEs) with 50 or more employees must provide an individual plan year 2017 Form 1095-C to each covered employee by Jan. 31, 2018. ALEs that file 250 or more 1095-C employee reports must electronically transmit their group 1095-C to the IRS by Mar. 31, 2018. ALEs with self-insured health plans must file a 1094-C report to verify they met "affordability" requirements for minimum essential coverage, or make an employer shared responsibility payment to the IRS.

Most employers want simplified shared responsibility reporting. A Mercer survey of nearly 300 health benefit professionals reported on Sept. 28, 2017, that 95% wanted simplification.[1]

The Trump administration must be aware of the employers' desire for this, since regulatory simplification was high on its list of campaign promises. But with the ACA replacement still dominating the agenda, efforts to simplify ACA regulations may be slow.

Safe Harbor. By now, most employers have established the preferred safe harbor that they use to verify their plans meet affordability requirements and avoid the employer shared responsibility excise tax. Intuitively, "rate of pay" and "form W-2" are the two affordability safe harbors that most resemble the approach many employers use to administer their health plans.

Some consultants are reminding employers to consider the third safe harbor, federal poverty line (FPL), which may be administratively simpler than the other two.

The affordability safe harbor calculation is part of the 2017 plan-year ACA 1094-C report that employers file with the IRS. It is too late for most employers to add a new FPL health plan strategy for the 2018 plan year, because a qualifying FPL plan would have to be in place during open enrollment, which is already underway for most employers. For employers who begin their plan year later than Jan. 1, 2018, however, the FPL safe harbor may still be possible if they can quickly implement an FPL-based plan.

To use the FPL affordability safe harbor, the employee contribution for single coverage in the lowest-cost plan must be no higher than 9.56% of the 2018 single FPL rate of $12,060 for mainland employers.[2] The formula for this is .0956 x $12,060 ÷ 12 months = $96.08 per month. If employers offer an individual health plan in 2018 with a monthly premium below $96.08, they would meet the minimum essential coverage requirements and the FPL safe harbor requirements.

That standard can be achieved by increasing the individual deductible to a level such as $3,000 or $4,000 to bring the monthly premium below $96.08. Prudent employers may want to keep premiums well below that figure to ensure that increases, corrections, or other changes don't push monthly premiums above the $96 threshold.

> *"Currently, very few employers send employees to the ACA's state health exchanges. That might change in 2019 due to the Oct. 12 executive order."*

What if employees don't want coverage that has such a high deductible? The safe harbor rules do not require anyone to use the qualifying plan, only that it is offered. One more caveat applies to the FPL safe harbor for employers who are not self-insured. Many insurance carriers require an employer to pay half of the employee's monthly premium, said John Garner, Chief Compliance Officer of Bolton & Company. Depending on the number of employees who use the FPL plan — and in Garner's experience, that number is very low — paying half the employee monthly premiums could be burdensome.

Enhancing High-Deductible Health Plans

Many employers want rule changes that make high-deductible health plans (HDHPs) more rewarding for employees. Several changes have been proposed. Permitting higher contributions to health spending accounts (HSAs) that fund HDHPs was favored by 92% of the Mercer survey participants or respondents.[1] That was followed closely by another proposal, at 87%, to allow HSA contributions up to the level of the out-of-pocket maximum in an HDHP. Currently, these HSA changes are not listed as priorities of the Trump administration.

The administration nearly enacted one HSA change that many employers favor: a safe harbor category for chronic condition medications and treatments that could be paid by employers even before employees pay the deductible. This would make HDHPs more attractive to employees with chronic conditions such as diabetes or asthma. Most people with chronic conditions avoid HDHPs in favor of traditional plans that are more expensive for employers. Employees might find HDHPs more attractive if they had little or no cost for medications and treatments that manage their chronic conditions.

The Trump administration explored this option in June 2017, but stalled short of action. The administration drafted an executive order to create a chronic condition safe harbor in HSAs.

The ACA also contains a safe harbor to cover preventive drugs before

the deductible is met. But this provision was "quite narrowly defined and did not include medications that are used to prevent the progression of disease," said Stacie Dusetzina, Asst. Prof. of Pharmacy and Public Health at the University of North Carolina-Chapel Hill.[3]

As a result, the draft executive order could increase access to preventive care for people with chronic conditions enrolled in HDHPs. Many employers already pay the full cost of insulin and other medications to manage chronic conditions; this proposal would let them do the same for HDHPs .

However, despite its advantages, some analysts believe the draft executive order would rely on the IRS to determine what care and medications are covered. "You're asking the IRS to define something the IRS has never had to define before," said Kim Monk,[3] a pharmaceutical expert at Capital Alpha Partners, which tracks laws and regulations for financial institutions. This raised questions for industry experts, such as: would the safe harbor extend to insulin or expensive drugs that treat rare diseases? Some experts believe this safe harbor would reduce pressure on pharmaceutical manufacturers to contain or decrease prices.

Health Exchange Woes

Currently, very few employers send employees to the ACA's state health exchanges. That might change in 2019 due to the Oct. 12 executive order to open new individual market options that employers could offer employees (see *The CEO's Desk* on page 5). But in 2018, why should employers care about the financial health of exchanges?

If fewer people are insured through state exchanges, the number of uninsured people will increase. Healthcare organizations that are contracted to employer health plans also provide care to the general public. These healthcare organizations will suffer more losses as a result of providing uncompensated or under-compensated care to uninsured people. Analysts assume healthcare organizations will shift part of this loss to employers by increasing 2019 employer health plan rates, but there are fewer options to shift costs to employers in 2018.

As a result, healthcare organization losses in 2018 may cause higher employer health plan costs in 2019. This complex equation has many moving parts that are in play right now, but fast-moving events in Washington D.C. appear to offer some rays of hope.

First, President Trump's Oct. 12 decision to end cost-sharing reduction (CSR) payments to ACA health insurers made headlines, but it was not a surprise to most insurers. Trump began signaling this intent several months ago. Most health insurance providers factored the loss of CSRs into their 2018 plans, which is one reason why rates are up more than 20% in many states.[4] "Plans that are priced for the threat will take a small haircut (loss in 2017), but they can still make money, even without the payments, next year," said one *NY Times* columnist.[5]

Second, a new round of deal-making in Congress may produce legislation that could increase participation in the state health exchanges. Trump's move to end CSR payments put pressure on Congress to authorize the CSRs,[6] which Congress did not do when it originally passed the ACA. According to Oct. 16 news reports, Senate bi-partisan talks might produce a two-year deal to:

- Fund the CSRs
- Fund the extensive communications campaign to support ACA enrollment
- Make it easier for states to obtain waivers to customize ACA rules to their needs
- Continue the popular ACA protection against exclusion of pre-existing conditions
- Make low-cost, high-deductible "copper" plans open to all ACA enrollees (not just those under age 30, as it is now)

In this blizzard of factors affecting health markets, predicting ACA enrollment levels and their impact on employer health plans is virtually impossible. But the Trump administration is supporting a deal in Congress to stabilize the ACA in 2018, with a longer plan to make the ACA unviable economically in 2019 or 2020. That longer plan includes state waivers and expanded ACA copper plans, plus the Oct. 12 initiatives to open new health insurance options that could pull younger low-income and healthier middle-income people out of ACA state exchanges.

Conclusion

Despite the volatile status of the ACA, employers must continue to comply with its provisions. By seeking improvements to high-deductible health plans and continuing to integrate health plans with employee productivity programs, employers can increase the value of their health plans for all stakeholders — regardless of the long-term fate of the ACA.

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Building a Paper Trail: Leave & Disability Administration Correspondence

By
Sheri Pullen
Compliance Analyst
ReedGroup

Employee notifications and correspondence are a critical piece of any successful leave and disability administration program. In addition to apprising an employee of key steps needed to move forward with a leave request, notifications and their content serve a broader purpose — building a paper trail.

When everything goes favorably with a leave of absence, notifications aren't given a second thought. The employee requests a leave, and in a timely manner, submits supporting documentation; the leave is approved, and ultimately, the employee is reinstated to his or her job. In these scenarios, many employees barely read the notifications they receive.

All of that changes if an employer denies a leave request, or worse, terminates the employee. In these cases, most employees apply a greater level of scrutiny when reviewing notifications. If employers don't have their ducks in a row and neglected to send a letter, or even just excluded one required paragraph, that can spell big trouble, especially if the employee files a lawsuit.

Consider *Dusik v. Lutheran Child & Family Servs. of Illinois*, in which a federal district court in Wisconsin rejected the employer's motion to dismiss an employee's claims of FMLA interference and retaliation based largely on the alleged lack of required employee notifications.

Amanda Dusik, a Lutheran Child & Family Services (LCFS) employee, went on medical leave after injuring her leg and undergoing surgery. Although LCFS appropriately notified Dusik that her leave would be designated as FMLA leave, Dusik claims LCFS did not inform her of her FMLA entitlement balance or the amount of leave that would count against her FMLA entitlement, both of which must be included in the FMLA designation notice per 29 C.F.R. § 825.300. Failure to provide this information can be considered interference with an employee's FMLA rights.

Approximately three and a half months into her leave (or about two weeks after her FMLA entitlement exhausted), Dusik was terminated. However, Dusik charged that LCFS never notified her about her FMLA entitlement exhausting, nor did it warn her that her employment would be terminated if she didn't return to work. LCFS's failure to notify the employee of FMLA exhaustion, coupled with the deficient designation notice, led the court to conclude that LCFS "was suspiciously uncommunicative," lending credence to Dusik's claim of FMLA retaliation.

Dusik v. LCFS is just one example of how employers can get into hot water when they neglect to send required notifications. In *Vannoy v. Fed. Reserve Bank of Richmond*, (4th Cir. 2016), John Vannoy prevailed on an FMLA interference claim when the employer neglected to inform him of his reinstatement rights after FMLA leave. In both *Conoshenti v. Pub. Serv. Elec. & Gas Co.*, (3d Cir. 2004) and *Ragsdale v. Wolverine World Wide, Inc.*, (2002), the courts concluded that failure to provide notice of FMLA rights could count as FMLA interference.

On the other hand, the sheer number of notifications, combined with the volume of information employers are required to include in those notifications, can overwhelm employees and employers alike. Thus, it's no surprise that many employers struggle with striking the right balance between providing all legally required information and making their employees' heads spin.

So what are employers to do? To ensure compliant correspondence over the course of an employee's leave of absence, it might make sense to hire an external provider who administers a comprehensive leave and disability program including notifications.

In ReedGroup's experience, when employers are seeking leave and disability management solutions, a couple of common patterns emerge with their notifications. Some employers stuff as much information as they can into notifications, even if the information isn't legally required or relevant to the employee. Conversely, others pare down their notifications to the bare minimum, providing only legally required content and nothing else. As you might suspect, the best solution lies somewhere in the middle.

Both of those extremes make our list of common correspondence pitfalls.

Information Overload: Isn't it a "better safe than sorry" approach to pack as much information as possible into an employee letter? This isn't the best solution because information overload will only confuse and overwhelm the employee. A long letter full of dense legal language will put the employee to sleep before the second page, and the employee might miss critical information.

Legalese or Overly Complicated Content: When including legal content, there's a tendency to quote regulation texts verbatim. Avoid this mistake. Nobody enjoys reading regulations, except (maybe) lawyers, and even fewer people understand legal text as written. While including regulatory language verbatim might technically lead to a compliant paper trail, it's not helpful if the employee doesn't understand it. The average reader has little leave and disability experience, and communications should be written at an eighth-grade reading level.

Irrelevant Content: We've all heard, "when it doubt, leave it out," and likely thought, "well, that doesn't apply to leave and disability correspondence." But it does — for all content that is not legally required! The paper trail should be concise and highlight what the employee needs to know right now. For example, an FMLA eligibility notice doesn't need detailed return-to-work instructions, or pages of policy language an employee can access on the employer's Intranet site.

The Bare Minimum: A short concise letter is great, as long as it includes all legally required language and any other information the employee needs to move forward with the leave. Including only legally required information with little explanatory text can leave employees needing more information, forcing them to call human resources or the administrator for help.

A Better Way

Now that we've examined what to avoid when creating leave and disability correspondence, let's focus on some basic guidelines for crafting effective, compliant notifications that will stand up in court.

Include Relevant Information: In addition to legally required content, include information that helps the employee move forward with the leave. For example, when confirming an employee's short-term disability claim, include certification requirements and elimination period timing, along with the legally required FMLA eligibility language.

Hire Professional Writers: Professional business writers with leave and disability compliance experience can translate legal language into accessible content an employee will understand. Most external administrators have a content or compliance department with this expertise. Employers that use an in-house leave and disability management team should consider contracting a writer to create notifications, or at least, a collection of boilerplate letters and paragraphs.

Consider the Customer Experience: Keep in mind the recipient's point of view when drafting notifications. This is particularly important when explaining consequences for not following the proper procedures. For example, under the FMLA, when an employer requests certification, it must inform the employee, in writing,

Program Showcase continued on p. 21

ADA Interactive Process: How to Get Clear Medical Information

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Managing reasonable accommodation requests is complex. Every employee is different, work environments vary, and medical restrictions come in a wide variety of shapes and sizes.

Mastering the Americans with Disabilities Act (ADA) interactive process includes understanding everything from what triggers the interactive process and how to hold an accommodations meeting, to dealing with challenges including leave management, discipline issues, and mental disabilities. Regardless of the complexity or type of interactive process you enter, one thing is always essential — obtaining clear medical information. The key word here is "clear."

At its core, the goals of any interactive process are to determine:

1. Does the employee have a disability that substantially limits one or more major life activities?

2. If there is a disability, could any accommodations be implemented that would support the employee to successfully and safely perform the essential functions of the job?

I've managed tens of thousands of disability compliance cases and have developed what I call a "hallway approach." It's a metaphorical hallway with four doors, or key process steps, which lead you through the hallway and to a justifiable decision and best possible outcome for an employee who may, or may not, need workplace accommodations. Each door serves as a step along the path of ADA compliance: Door #1, Medical Documentation; Door #2, Exploration of Accommodation Ideas; Door #3, Scheduling and Holding a Reasonable Accommodations Meeting; and Door #4, Closing the Process Properly.

In virtually every case — whether there is performance deficiency, leave issues, or even concern over a fraudulent claim — Door #1, obtaining clear data, will be the most important step. This data will be the basis for all reasonable accommodation decisions. I cannot stress enough how vital clear information is, as it can very well be used to change and/or end someone's career. At this "door," you will gather:

- Medical documentation, including medical clarification on work restrictions and/or leave needs and proposed duration of leave
- Essential job functions analysis (EFJA), which includes the employee's essential job functions and how these functions are optimally performed in a physical, mental, and emotional sense.

Disability-related issues are often emotionally charged; it is not unusual to see workplace accommodation-related misconceptions, concerns, frustrations, and fears arise. Using clarified medical information and a solid EFJA document helps to focus the parties on tangible data sets and documents instead of emotions, which more often than not, translates into better decisions and lower risk for your organization.

At the onset, the employer will need to establish if the employee has a covered disability. Think of it this way: The employee has arrived at the "hallway" with a medical note in hand. At this point, you don't know whether the employee will be provided with reasonable accommodations. Your first task is to determine whether the employee is in the right place: Do they have a covered disability?

To gather this information, you'll need to create a questionnaire for the employee's healthcare provider. The questionnaire should always start with the same two questions:

1. Does [Employee name] have a physical or mental impairment that limits his/her ability to engage in a major life activity such as the ability to work; care for him/herself; perform manual tasks; walk; see, hear, eat or sleep; or engage in social activities?

☐ NO, [Employee name] does not have a physical or mental impairment that limits his/her ability to engage in a major life activity.

☐ YES, [Employee name] has a

☐ PHYSICAL and/or

☐ MENTAL impairment that limits his/her ability to engage in a major life activity.

2. If the answer to question 1 is yes, does the impairment currently affect [Employee name]'s ability to perform all the essential functions of a [position title] (see attached job description)?

☐ NO, [Employee name]'s impairment does not limit his/her ability to perform all the essential functions of his/her position.

☐ YES, [Employee name]'s impairment does affect his/her ability to perform all the essential functions of his/her position.

Next, the questionnaire continues with queries aimed at clarifying work restrictions or leave needs. When two parties are reviewing unclear restrictions, such as "no heavy lifting or prolonged standing," there can be too much ambiguity as to what is defined as "heavy" or "prolonged." This can result in opinions that knowingly, or unknowingly, rely on prejudices or positions. Decision making is easier when data is clear. For example, if restrictions state "no lifting over 10 pounds when lifting with the right hand or left hand, and when lifting with both hands, can lift 20 pounds," lifting is no longer an estimation or guess, it is a clear restriction.

Just as important, when seeking clear and precise work restriction information from healthcare providers, employers should not accept accommodation suggestions. It is the employer's responsibility to determine what, if any, accommodations are reasonable. It is the healthcare provider's responsibility to provide work restrictions, leave needs, and the duration of such. Here's why: healthcare providers don't have a clue as to what may be reasonable to implement in your organization. If they provide accommodation suggestions, they limit the discussion and both parties' ability to find alternatives that could be more helpful and/or reasonable.

Don't be afraid to push healthcare providers to provide the data needed. One way to do this is by creating a questionnaire with short answer blocks and check box options. This makes life easier for healthcare providers to complete and greatly increases the likelihood of getting the specific data to move the process forward in a timely manner. You may need to ask a healthcare provider to clarify limitations more than once. That's okay. Don't be afraid to ask for the data you need. Persistence and commitment in getting clear definitions on work restrictions is required to do this task well.

While employers can and should ask about work restrictions and expected leave duration, they should not ask

healthcare providers about employee diagnosis, condition name, or treatment specifications. You don't need this, the employer is likely not legally entitled to it, and learning the name of a diagnosis is often not helpful. It is not uncommon to see 12 people with the same diagnosis, yet none will share the exact same restrictions or accommodation needs. Stay focused on what is useful and what you are entitled to have — restrictions, leave needs, and the duration of each.

Cost also often comes into play. Know that an employer is not required to pay for the cost of the provider completing the questionnaire, unless the provider is an accepted workers' compensation doctor. Questionnaires can be sent directly to the provider, or you can request an employee take it to the provider directly. Ask a provider to return the questionnaire within 10 calendar days — and then follow up to ensure it has been received. Add a calendar reminder for yourself to continue to follow up until the questionnaire is received back. Diligence in this area is often rewarded, as completing additional paperwork is rarely a priority for a doctor's office.

Once clear medical information is gathered, and with its counterpart the EFJA document, you are equipped to enter the next "door" in the interactive process hallway. All subsequent "doors" you pass through including exploring accommodation ideas, holding an accommodations meeting, and closing the process will all continue to use the data collected.

Program Showcase continued from p. 18

of the consequences of not submitting a complete and sufficient certification (*Wallace v. FedEx Corp.* [6th Cir. 2014]). This notification must be included in a compliant paper trail, but word it carefully. Try not to scare employees or discourage them from taking leave.

Review for Compliance: A lawyer who is well versed in federal, state, and local leave and disability laws should review notifications to ensure compliance. The ideal program has writers who work closely with an attorney to ensure that all notifications are compliant and easy to understand.

As the court cases summarized here illustrate, neglecting to include required notices and information can lead to litigation and headaches for employers. Because notifications ultimately serve as the paper trail for a leave of absence, compliance with leave laws is paramount. If a case goes to court, notifications are evidence, and they should demonstrate a fully compliant leave and disability program.

However, employers shouldn't let the bulk of required information overwhelm them. By following the guidelines above, you can build a paper trail that satisfies all legal requirements *and* facilitates the employee's leave experience.

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Addressing the Request for No Overtime as an ADA Accommodation

How do employers assess an employee's request for no overtime as an accommodation under the Americans with Disabilities Act (ADA)? Here are the steps to follow.

1. *Before a "no overtime" request comes in:*

• Identify employment positions that are prone to overtime regularly or seasonally.

• Assess whether overtime is mandatory or voluntary. If voluntary, it cannot be an essential function. Even mandatory overtime might not be an essential function of the employee's position. Policies should state that overtime is mandatory, and procedures for requiring overtime should include negative consequences under attendance policies for missing overtime.

• Assess whether mandatory overtime is an essential function of the position. See 29 C.F.R. §1630.2(n)(3) and the September 2017 article in this series. Be able to articulate the business needs that make overtime an essential function.

• Review job descriptions and job postings to ensure mandatory overtime is identified as an essential function.

2. *Engage in the interactive process with the employee.* Even if mandatory overtime is an essential function of a position, you must still go through the interactive process. Every employee's disability, and the limitations or restrictions it imposes, are different. Don't make accommodation decisions based on assumptions about the employee's condition or its limitations.

3. *Even if overtime is not an essential function*, analyze whether a no-overtime restriction is a reasonable and effective accommodation. A modified work schedule is generally a reasonable accommodation, but will the no-overtime restriction enable the employee to perform the essential functions of the position?

4. *Obtain medical information if needed.* A medical inquiry is permissible under the ADA when the disability or the need for the accommodation is not known or obvious. When an employee requests no overtime as an accommodation the disability may be known or obvious, but it is unlikely that you the employer will be able to assess the need for and effectiveness of the no-overtime restriction. Get medical information from the employee's own provider and, if appropriate, from a provider you select and pay for.

5. *Consider other accommodations that might enable the employee to work overtime:*

• On-the-job accommodations (e.g., breaks to reduce stress, sound reduction headphones to reduce migraine or distraction factors, etc.).

• Shift the time or manner that essential functions (other than overtime) are performed. Can the essential functions be performed at different times with little or no impact on the operations or the ability of other employees to perform their jobs?

• Assignment to an alternative vacant position with no overtime or where the employee can better perform overtime. Try to keep employees in their own position. Transfer is required only if (1) there are no effective accommodations to enable the employee to perform the essential functions of their position, or (2) all other accommodations would impose an undue hardship.

• Consider a leave if the employee's no-overtime restriction will resolve with time off.

• Contact the Job Accommodation Network for more accommodation ideas.

6. *If accommodation attempts fail and mandatory overtime is not an essential function, determine if excusing the employee from overtime is an undue hardship.*

• Focus on operational difficulties, performance requirements, etc., not cost (except in extreme cases).

• Look at the big picture: the requirements of the position at issue and needs of the business over all, not just the effect of one employee being excused from overtime.

• See the July 2017 article in this series for details about undue hardship, and the EEOC's Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA.

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Onsite Clinics: Centers of Excellence Drive Improved Well-Being and Productivity

Employer onsite and near-site health clinics have steadily gained ground in recent years, increasing employee convenience and productivity, with services at nearly the same cost as typical health plans. Is a clinic in your company's future? Several factors may drive that decision.

The economics of onsite health clinics are strongest for firms with large employee populations on a campus worksite. In a 2017 survey of 148 large employers by the National Business Group on Health (NBGH),[1] 54% of the employers will offer onsite or near-site health centers in 2018 and that number could increase to nearly 66% by 2020.

Even if an employer lacks the conditions to fund an onsite clinic, an alliance with a healthcare organization might make a near-site clinic possible, securing many advantages.

A compelling case for onsite clinics appears in the area of employee lost work days. According to the 2015 EMPAQ Insights Survey,[2] employers offering onsite clinic access to 100% of their employees reported an average of less than five lost workdays per employee in 2014, while employers without clinics reported more than 20 lost days.

Onsite clinics may focus on a single program, or offer multiple programs and medical providers. Unum has several large employer clients with successful onsite clinics. They maintain their historic focus of employee health education, but add new features: integration with wellness programs, monetary incentives to reward employee wellness participation, and telehealth to provide convenient access to medical centers of excellence.

Telehealth involves complex legal issues; not all telehealth functions are available in all situations. Nonetheless, 96% of the large employers in the NBGH survey are planning to offer it in 2018. Employers have a large learning curve with telehealth, since employee utilization of this service has reached or exceeded 8% in just under 20% of employers in the survey. Onsite clinics may provide the best environment to help employees use telehealth to connect with excellent healthcare, and fine-tune the program to produce high employee satisfaction.

Onsite clinics may not produce immediate or easily-identified medical cost savings. In the EMPAQ survey, the average group health cost per covered employee with an onsite clinic was $10,277, and the average cost without an onsite clinic was $10,239.

Yet long-term medical cost savings could result through earlier interventions, improved chronic condition management, or other health strategies. To identify all savings — medical, disability, or others — all vendors would need to align with program metrics so that all data can be combined to build a robust, detailed return on investment model.

In a 2014 survey of 255 employers by the National Association of Workplace Health Clinics (NAWHC),[3] participants reported their clinics helped them at least partially achieve key objectives:

- 94% said their clinics helped to improve employee health.
- 96% found higher employee engagement with onsite health programming.
- 97% said their clinic contributed to increased employee satisfaction.
- 95% said their clinic contributed to their goal of increased productivity.

Large employers are adding new onsite clinics, expanding their wellness functions, and using telehealth to access medical centers of excellence. Consider the advantages for your organization.

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COLUMN

SSDI Application Process

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Social Security Disability Insurance: Are Your Employees Still Waiting?

Less than half of the Social Security Disability Insurance (SSDI) claims submitted this year will be approved, and that number keeps decreasing year over year.[1] With over 1 million claims awaiting an Administrative Law Judge (ALJ) hearing, knowing the basics of the SSDI process can help you and your employees navigate through more effectively.

The SSDI determination process has three basic levels.

1. Initial. Most claims are initially processed in a local office where the staff makes the initial disability determination.

2. Reconsideration. Reconsideration is the first step of the appeals process for a claimant who is dissatisfied with the initial claim determination. This step involves a thorough review of the initial claim along with any new evidence available. A reconsideration determination is made by an entirely new team including an examiner and medical consultant. A request for reconsideration must be filed within 60 days after the date the notice of the initial determination is received by the claimant.

3. Hearing. If the claimant is still not satisfied with the reconsideration determination, the next step is to request a hearing before an ALJ. The claimant generally has 60 days after receiving notice of the decision to request an appeal. It is very important that any additional evidence is submitted as soon as possible for the Administrative Law Judge to consider. After the hearing, the ALJ will issue a written decision to the claimant. If the claimant is still not satisfied with the decision, a request for review with Social Security's Appeals Council may be filed.

In addition, an on-the-record review (OTR) process may be requested. An on-the-record decision is a favorable ruling by an ALJ that is made prior to a hearing by the SSA. It is made if there is sufficient documentation supporting the decision provided before the hearing.

The Long Wait

Wait times at the hearing level continue to increase despite fewer filings entering the system. At the hearing level, the average wait time was projected to be 605 days by October 2017.[2] Additionally, the wait time for providing the notice of decision after a hearing has nearly doubled since 2012 and was up to 48 days in 2016.

The 2016 CARES Plan (Compassionate And Responsive Service) laid out strategies to mitigate the growing Social Security backlog, but it relies on adequate funding to hire Administrative Law Judges and staff. The program goal is to bring down the hearing wait time from the current 605 days to 270 days by fiscal year 2020.

Help Is Available

Many long-term disability (LTD) insurance carriers include Social Security advocacy to help speed up the SSDI process. If customers don't have an LTD program in place, several qualified Social Security advocate services and attorney groups are available to help navigate the SSDI process.

Given recent award volume and rate trends from the Social Security Administration, it is even more important to have expert representation up front. Experts help claimants understand the process and represent claimants at critical hearings.

It is recommended that employees who may meet the criteria for an award discuss their application with a qualified Social Security vendor or attorney group. Disabled employees whose disease or condition meet the criteria of the Social Security Administration's Compassionate Allowances program should also file as soon as possible.

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How to Minimize Leave as an Accommodation

An individual who was new to the Americans with Disabilities Act (ADA) and the associated requirements recently asked our experts the following question about ADA accommodations.

"Some of our employees have heard they have a right to ask for leave as an ADA accommodation. Before everybody comes to me with a request for leave, I need to understand this area and have some procedures and policies in place. Please explain what I need to understand about leave as an ADA accommodation."

Accommodation experts Jenny Haykin and Tom Sproger explain leave as an accommodation, including its limited role in the larger picture of the ADA interactive process and accommodations.

Consult an attorney to develop policies and procedures, but here is an introduction to this complex topic. Leave as a reasonable accommodation provides an employee with time off from work to recover. It is most commonly applied when the employee is not eligible or has exhausted job-protected leave from other laws such as the Family and Medical Leave Act (FMLA).

Before approving a request for this type of leave, you have three important considerations. First, is leave necessary? If reasonable job modifications will enable the employee to work, that will be a more productive option. To determine if this is possible, discuss the advantages of this with the employee and obtain documentation of the employee's restrictions.

If leave is necessary, obtain documentation about the duration of the leave, making it possible to assess whether or not the leave will create an undue hardship. Many factors in addition to leave duration may determine if a leave results in "undue hardship" to the employer, particularly the effect of the increased workload on other workers, and how it affects the flow of work.

Finally, if the leave is long term or indefinite, the employee may no longer be qualified to hold the job in question. A September 2017 court case in the U.S. 7th Circuit Court of Appeals, *Severson v. Heartland Woodcraft, Inc.*, found the employee's need for an unspecific, two-to-three-month leave extension beyond the 12 weeks of FMLA sufficient to render the employee not qualified for his job. Other cases, however, have found longer leave durations to be reasonable.

An important distinction between FMLA leave, and leave as a reasonable accommodation, is the extent of the employer's rights. FMLA does not allow an employer to deny or limit leave if it creates a hardship, or if other accommodations would be more effective, whereas leave as a reasonable accommodation does. It is important to inform employees how these leaves differ if they transition from FMLA to leave as a reasonable accommodation.

Employees who know their company will make a good faith effort to accommodate them are more likely to advocate for themselves at the doctor's office, requesting documentation of their limitations so they can pursue accommodations to stay at work rather than seeking leave. In situations where an employee can attend work with the help of a job modification, looking at reasonable accommodations other than leaves is a positive first step.

Ultimately, you want a company culture that motivates employees to do what they can to be on the job. Employees are more likely to seek other ADA workplace accommodations instead of requesting leave in that type of culture, making it a win for both the employer and the employee. If employees have FMLA leave available, and have a supportive environment to keep working, ADA leaves can be greatly reduced.

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Stamp Out Mental Health Stigma

It's not fun to walk into the employee cafeteria to the sound of deafening whispers or piercing glares. And yet, this is what many employees feel after disclosing mental health challenges.

Whether real or perceived, this feeling of being shunned can deter many individuals from discussing their need and seeking assistance for what can be very treatable conditions. This unconscious discrimination or social bias can arise at the workplace due to ignorance or fear of mental health challenges.

"Stamp Out Stigma" has come to represent employers' initiatives to reduce and eliminate the prejudice and social isolation experienced by those with mental health challenges. While society is comfortable talking about physical impairments such as a broken leg, psoriasis, or diabetes, a lack of understanding has often pushed aside the conversation around mental health challenges.

The Centers for Disease Control (CDC) estimates that 25% of adults have a diagnosable mental illness and 50% will develop at least one mental health challenge during their lifetime.[1] Further, a 2014 national survey on drug use and health identified the top three reasons that adults did not seek mental health services: they could not afford the cost; they thought they could handle the problem without treatment; or they did not know where to get services.[2]

By deterring an individual from discussing or seeking needed treatment for mental health challenges, social prejudice and stigma negatively impact both the employer and employee. Employers can take the following steps to reduce or eliminate stigma in the workplace.

Organizational Culture. Management must understand the scope of the problem and provide necessary resources to all parties with a role to play in organizational mental health initiatives. Moreover, they need to understand the importance of creating a welcoming and supportive environment to those who face mental health challenges. Workplace culture must be driven from the top.

Manager and Supervisor Training. People often reject or ignore things they don't understand, so managers and supervisors need education. As team leaders, they must be trained to recognize potential signs of distress, know the organizational resources to support individuals, and how to connect them with these resources. They must play an active role in creating a supporting environment where people can ask for help.

Peer Support Groups. When individuals realize that their peers in the organization have overcome depression, anxiety, or addiction, they may be more open to discuss their personal needs and reach out for assistance. Those who have succeeded in overcoming mental health challenges can provide invaluable hope to struggling peers, and lessen the feeling of isolation or exclusion.

Employee Assistance Programs (EAPs). Effective EAPs often staff high quality behavioral health specialists who can provide counseling and resources to help individuals overcome mental health challenges. It is important to have the right resources available when people take the difficult first step to resume a full and productive life.

As employers manage their businesses, they are encouraged to take an enlightened approach to every employee's whole physical and mental health. A strong effort to "stamp out stigma" is an excellent place to start.

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Best Practice #5: Develop A Workplace Mental Health Strategy

Increasingly, employers are seeking to understand and develop strategies to help their workforce deal with mental health issues, and for good reason. The CDC estimates that in any given year nearly 1 in 10 adults suffers from a depressive illness in the general population.[1] As our workforce ages, the risks of mental health related absence increases, with some studies estimating that 20% of people age 55 and older suffer from some type of mental health issue.[2] The financial impact of mental health on the workplace is also well documented. Depression alone is estimated to cause 200 million lost workdays each year costing employers between $17 and $44 billion dollars.[2]

Despite these demographic and financial realities, developing a workplace mental health strategy is easier said than done. Most employers are aware of their ADA obligations to provide reasonable accommodations to employees facing mental health challenges. But how can employers take their workplace mental health strategy beyond compliance alone?

It starts with employers understanding that they can play a key role in promoting (or undermining) the mental health of their workforce. Employers are continuously evaluating and adding employee assistance programs and other specialty mental health resources to better equip their workplace to address mental health. However, if employers rely only on programs, they could be missing an opportunity to take their mental health strategy to the next level.

Educating employees, managers, and executives on mental health issues plays a crucial role in elevating a workplace mental health strategy. In educating a workforce, employers can implement a number of steps — that often cost nothing — to better promote and support the mental health of their workforce. Specifically:

- *Stay in Touch*. Keep a connection with employees while they are off work. Missing work, regardless of the reason, can add stress and anxiety. Keeping open the lines of communication with employees who are out of work is one way employers can help mitigate additional stress.
- *Support Return to Work* (RTW). Communicate openly regarding the ability to return to work. Ensuring that employees know they have a supportive pathway back to work can not only help facilitate return-to-work efforts, but also help promote stay-at-work initiatives.
- *Flexibility Matters*. Be flexible to create a safe environment. There is an important balance between flexibility and productivity. Flexibility can often be the friend of productivity, but it is important to set accurate expectations by communicating the value of returning to work. Employees can return at less than 100% in a capacity that best suits them while meeting the employer's expectations, with the expectation that the employer will help them ramp up to full capacity.
- *Actively Eliminate Stigma*. Avoid the pitfall of assumptions. Mental health can carry stigmas that unnecessarily complicate and exacerbate feelings of inadequacy. Employers should have a clear understanding of restrictions and limitations to ensure a healthy and incremental return to work, and not assume anything about what an employee can and cannot do.[3]

Ultimately, having proactive mental health programming in combination with education and best-in-class RTW services can help employers elevate their mental health strategies.

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Improve the Employee Leave Experience with Manager Training: Part 2

Manager training programs can have a particularly significant impact on the employee leave experience. In our final column of this manager training series, we will highlight the top three best practices for building a successful manager training program that supports a company's family-friendly policies and how a just-in-time training program can help streamline current policies for enhanced efficiency and effectiveness.

1. Include Topics Outside the Compliance Box

In addition to essential topics like employee rights, company policies, and procedures, a leave manager training program should also include topics outside the compliance box to help managers focus on employees and their life events. Topics should include:

The Life Event. An event that warrants an employee taking a leave of absence is likely to have a significant impact on the employee. This should be discussed during a manager training program to encourage understanding for the employee, and also to caution managers on making assumptions about what is best for the employee.

Recognizing and Reducing Bias. Many resources are available to help train managers on unconscious bias, gender bias, and flexible work stigmas. Consider, for example, the impact of the manager's opinion of soon-to-be fathers taking the entire duration of leave available to them.

Return-to-Work Considerations. Employees returning to work after a significant leave of absence often need an adjustment period. The manager should be equipped with a reintegration process for their employees, including approved flexible work arrangements or other transition benefits.

2. Provide Quick Access to Resources

Employees are more likely to disclose their life event and need for a leave of absence to their manager than to human resources (HR).[1] This request is often unexpected, and busy frontline managers need easy access to resources and guidance to ensure an appropriate response. This content should be easy to understand (not filled with HR jargon or legalese) and easy to obtain.

Additionally, due to the sporadic nature of leave requests, the ideal training would include reminders of policies, employee rights, and other leave-related considerations shortly before or just after a manager meets with an employee who is requesting a leave. At the very least, companies should schedule manager trainings at least once a year.

3. Seize Learning and Development Opportunities

Whether an employee is dealing with a personal illness or navigating new parenthood, life change brings a natural opportunity for learning and development. It's the right time to engage in leadership and focus on career. Harness this opportunity with an engaged audience to help employees learn what their strengths are, focus on their particular skills and what they add to the team, and get clarity on their contributions. This is another area of opportunity where managers need quick, convenient access to training templates and other resources.

To create a successful manager training program, make training and resources easily accessible and just-in-time for managers, allowing them to seize the opportunities for growth and development for themselves and their teams. Facilitating a smooth leave journey for employees through adequate manager training helps create productive and positive working conditions, improving employee retention and loyalty.

References

1. Cornell University, ILR School, Employment and Disability Institute. Inside the Workplace: Case Studies of Factors Influencing Engagement of People with Disabilities. Page 7. Retrieved from http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1354&context=edicollect

COLUMN

Piecing Together the Integration Puzzle

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The Future of the Affordable Care Act: What to Expect for 2018

The future of healthcare in the United States is generating a great deal of anxiety among individuals and employers. The most recent and prominent Congressional proposals have included repealing and replacing the Affordable Care Act (ACA), repealing without replacing, and a repeal of only select ACA provisions.

Healthcare for the country's 323 million people is an intricate issue, and as such, is an ongoing and highly politicized one. Issues like a possible repeal of the individual mandate and funding cost-sharing reduction payments for lower-income Americans have generated strong debate that crosses party lines. Since early September, a group of U.S. Senators and a bipartisan group of state governors have been working on new proposals to help stabilize and strengthen the ACA's individual market, while their colleagues continue to advocate for repeal and replacement of the Affordable Care Act.

Despite uncertainty, many markets have shown signs that they are stabilizing, and others have overcome difficult challenges to ensure that coverage has been available throughout 2017. Nearly every state that previously expected to have "bare counties" has since been covered by insurers who made new market commitments for 2018.

Marketplace open enrollment for 2018 has begun and in most states will run from Nov. 1 through Dec. 15. Savvy employers should take the following steps to prepare for the upcoming year:

Be Sure to Stay Compliant

On and off exchange, staying compliant with the rules and regulations is as important today as it was in previous years. Employers also want to be sure to have either a staff member or a consultant who is paying attention, has ACA expertise, and can anticipate changes and offer guidance through the next months and years.

File 1095s On Time

It is important for employers to continue filing 1095s as they have since the inception of the ACA's reporting requirements:

- File 1095s accurately and on time.
- Watch for updated 1095 filing instructions from the IRS and review them for any changes from previous years.

Stay on Top of the Basics

Ensure tracking and reporting is accurate, and that you remain aware of upcoming changes:

- Count employees consistently. Ensure that criteria for employees' part-time or full-time classification is documented, and that decisions about counting methodology are recorded.
- Track offers of coverage.
- Keep an audit trail and internal controls.
- Know that Patient-Centered Outcome Research Institute fees (an excise tax filed on IRS Form 720) will sunset after Oct. 1, 2019.

There will be no major changes to the ACA or its employer reporting obligations in 2018, providing companies the time to evaluate and review challenges and lessons learned from prior years. Employers would be wise to test the integrity of their internal reporting systems, identify any gaps through a self-audit, and talk to vendors about new or enhanced solutions that may be available to make compliance and reporting tasks easier, faster, and more reliable.

While clarity on the future of the ACA may seem elusive, it is important for employers to stay focused and meet their compliance obligations — and to keep in mind that, at least for now, the ACA is here to stay.

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R3 Continuum

Why Mental Health Parity Matters

Recently, mental health parity dodged a bullet, along with the Affordable Care Act (ACA). But what happens next remains uncertain. Here's why it matters to the nation, and why employers should care.

In 1996, the Mental Health Parity Act (MHPA) first mandated MHP in group health insurance. The MHPA applied to employer-sponsored group health plans with 50 employees or more. It was a good step toward improving access to mental health care, but it didn't mandate mental health benefits, instead only preventing different fee structures if mental health benefits were offered. In addition, it was relatively easy for employers to argue a financial hardship, and so qualify for an exemption. It made little practical difference, ultimately. For all that it was a bellwether, few additional benefits were actually made available on a federal level.

Nevertheless, from 1991 through 2008, a dozen states introduced state-level versions of parity, with a surprising outcome; in most states, total health expenditures went up, but not nearly as much as was feared. In a few, total costs actually went down. That helped to pass the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008, closing some of the MHPA loopholes, and extending parity to substance abuse treatment. It still didn't require that treatment be offered, and there was a hidden exception that allowed insurers to use non-financial strategies — such as differing standards for utilization review — to put tighter controls on mental health spending.

Finally, the ACA closed those loopholes, too. Mental health benefits are among the 10 essentials in all marketplace plans under the ACA, and with the 2013 final implementation rules, true parity was required in both benefit design and management. Now, insofar as could be legislated, mental health and substance dependence treatment would begin to become available to the most vulnerable parts of the population. Or so it seemed.

All of the repeal attempts of 2017 would have done away with most, or all, of the protections of parity. For now, repeal attempts have failed, and parity remains the law. But nearly everyone acknowledges that the ACA needs repairing in order to stay viable, and it remains to be seen whether there is enough appetite to do the work of fixing it. So the question for employers is: why does parity matter, and why should you care enough to fight for it in a post ACA-as-we-know-it world?

First, it matters because it's the right thing to do. Those with mental illness are suffering, and need help. It also matters because the costs of mental health morbidity are huge. Employees with mental health conditions and comorbidities are less productive when at work, are more likely to be absent from work due to illness, and will be out longer when they are absent. The costs are staggering, when looked at holistically. Even when, as happened in a few studies, initial health costs have gone up with parity, long-term lost productivity costs go down with adequate access to appropriate mental health care.

For employers, ensuring MHP just makes sense, financially. And why stop there? Take it a step further; create a culture that reduces stigma and allows accommodations for mental health conditions. That improves the quality of the work environment for employees and, by raising engagement and reducing turnover, further enhances the bottom line.

New Regional Education Model Will Extend Reach and Enhance Resources for DMEC Members

To extend the reach of our educational events and provide additional resources to more of our members, DMEC will be developing a new regional education model over the next year that will replace the current local chapter structure.

Many dedicated professionals have devoted long hours to serving on local chapter boards, providing a venue for local networking and education. Their efforts have helped DMEC become the premier organization for integrated absence management (IAM) professional development, and provided a meeting ground for the IAM industry in many locations throughout the country.

However, as both the industry and DMEC have grown over the last 25 years, DMEC's current chapter model has not been sufficiently scalable to meet the growing needs of our members and the industry.

To ensure we understood the desires of busy professionals and the options for serving them, DMEC conducted a strategic review of the existing chapter model in 2017. A range of new options became apparent as part of the process, and the DMEC Board of Directors reviewed these and set a course of action aimed at better serving our members.

Over the next year, DMEC will be evaluating and developing this new education model to provide greater access to our diverse membership located throughout the United States and Canada. The vision for a new model will consider premier content, advanced technologies, industry evolution, and membership growth.

We know that chapters offer significant opportunities for face-to-face networking and targeted compliance information in their local areas, and DMEC is committed to providing those educational opportunities through the new model. This restructured model will allow us to more broadly provide innovative and strategic regional education opportunities through various methods including face-to-face events and online education.

As part of this transition, the current chapter boards were given the opportunity to decide whether to close their chapters this year or continue meeting through the end of 2018. The Dallas/Fort Worth (TX), Minnesota, San Jose (CA), Southern California (Long Beach), and Washington (Greater Seattle) chapters will remain open through 2018. The remaining chapters have been holding their final meetings throughout the Fall.

Planning for the new model is underway, and we will be providing regular updates as more details become available.

As a reminder, there are several ways to continue to receive education during this transition period if the chapter in your area is closing:

- Take advantage of over 20+ webinars per year.
- Stay up to date through the *Legislative Updates* blog and articles in *@Work* magazine.
- Download white papers and other resources.
- Mark your calendars for the 2018 Compliance Conference and the 2018 Annual Conference.

We would also like to take this opportunity to thank the many people who have served as chapter volunteers over the years for the time they have dedicated to serving this organization and its members. Setting a new course for our regional education offerings will be a process, and transitioning the current chapter structure was a difficult decision, but we are confident that these new opportunities will provide quality education and networking that more broadly serves our members.

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