SEPTEMBER 2017 | VOL 9 NO 5

@work

Official Publication of Disability Management Employer Coalition

Americans with Disabilities Act

Inside This Issue:

- The ADA Is an Integration Driver and Partner
- Reducing Opioid Risks Through Management & Alternatives

DMEC
Disability Management Employer Coalition

Contents

SEPTEMBER 2017 | VOL 9 NO 5

Departments

SPOTLIGHT Articles

Features

Columns

@work

Editorial Policy

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Navigating life together

Terri Rhodes
MBA, CPDM, CCMP
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The ADA Revisited

Do you find the Americans with Disabilities Act (ADA) constantly climbing higher on your "to do yesterday" list? You are not alone. Employers continue to ask for ADA guidance and insight because even after more than 25 years, ADA compliance continues to confound and confuse.

As employers, we try to do the right thing and get an employee back to gainful employment as quickly as possible. The good news is that most accommodation requests continue to be easy to make and cost less than $500. But those requests are not the ones that keep us up at night, and pile up on the "to do" stack.

"Leave is a reasonable accommodation, and it does not automatically end at a certain point in time."

It is the 20% of cases that take 80% of your time. These are the ones where you need help and guidance, and employers especially struggle in determining how much leave is enough leave.

Case in point: Illinois Action for Children, a nonprofit organization, fired an employee who was on leave receiving treatment for breast cancer rather than granting her request for additional leave for more treatment. The Equal Employment Opportunity Commission brought a suit against them (*EEOC v. Illinois Action for Children*, Civil Action No. 17-cv-6224) in U.S. District Court for the Northern District of Illinois, Eastern Division on Aug. 28, 2017.

EEOC Chicago District Regional Attorney Greg Gochanour pointed out that employers have a duty to provide reasonable accommodations to people with disabilities that enable them to perform the essential functions of their job. Courts have repeatedly found that in certain circumstances, a leave of absence may constitute a reasonable accommodation under the ADA.

In another lawsuit from that same district, the EEOC sued Macy's, and Gochanour gave the same message as the one above. In the court's opinion, Macy's acted unreasonably — and unlawfully — when it denied Ms. Moore a single day's absence to address her disability-related health complications. Macy's refusal to allow Moore's absence prevented her from continuing to do the job she had done well for many years.

This serves as a reminder that leave is a reasonable accommodation, and it does not automatically end at a certain point in time. Each accommodation request requires a separate evaluation and a process for determining if leave should be an accommodation. You cannot assume that what worked for one employee will necessarily work for another. Nor should you expect that because you make a reasonable accommodation for one employee, it will meet the need of every other similar request.

As we enter the fall season, it might be time to review your policies and practices again to ensure that you are reviewing every accommodation request independently, and that your process is well documented.

Here are just a few things to look for:

- Inconsistent policy language for occupational and non-occupational injury management
- Policies that have automatic separation
- Return-to-work policy for on-the-job injuries only
- No documented process for managing workplace accommodations.

A wise IAM professional will also ensure that policies require HR to seek legal guidance before taking adverse employment actions. And finally, don't forget to train your supervisors!

Terri L. Rhodes
DMEC CEO

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CM #16 California Employers Prepare for Higher SDI Benefits

California employers may want to adjust their non-occupational disability insurance to better align with increased California state disability insurance (SDI) benefits in 2018.

First, return-to-work programs will become more important than ever because employees earning about $20,000 or less may have less incentive to return to work. After Jan. 1, 2018, the benefit for these low-earning employees jumps to 70% of pay from the current 55%. Employees with higher earnings will receive 60% of pay. Second, employers offering short-term disability (STD) benefits should assess whether STD is still necessary, since California SDI often equals standard STD payment levels.

Third, employers offering long-term disability (LTD) benefits should bring their California LTD program up to a full one-year elimination period before benefits are paid, to gain the full advantage of California SDI benefits being paid for up to 52 weeks. Most LTD plans have an offset provision reducing the LTD benefit by the amount of other benefits, such as SDI. Employers may want to have a shorter LTD elimination period for employees in other states. For details, visit http://dmec.org/2017/07/17/california-employers-need-prepare-higher-sdi-benefits/.

CM #17 State and Local Leave Law Updates

Arizona employers with 15 or more employees can limit carry-over of unused earned paid sick time to 40 hours from one year to the next. To learn more, visit http://tinyurl.com/AZ-paid-leave. *New unpaid leave categories* were added by: Florida – for Civil Air Patrol service (available now); Hawaii – to care for siblings with a serious health condition (available now); and Nevada – up to 160 hours for employees who are victims of domestic violence (effective Jan. 1, 2018).

Paid sick leave final or updated regulations have been issued by: Chicago and Cook County, IL; Emeryville, CA; and Oregon. *Paid family leave law*s have been passed by New York state (effective Jan. 1, 2018) and Washington state (effective Jan. 1, 2020). In New York, employers must maintain existing health benefits for the duration of leave, and the definition of wages includes tips. *Pregnancy accommodations* now have the protection of state law in Washington, and will in Nevada on Oct. 1, 2017 (including childbirth and related medical conditions).

Posters. California has updated posters for its Family Rights Act and Pregnancy Disability Leave. Five jurisdictions have new or updated Paid Sick Leave posters: Cook County, IL; Emeryville, CA; Minneapolis, MN; Montgomery County, MD; and Saint Paul, MN. For details about laws summarized here, visit http://dmec.org/2017/09/05/september-2017-state-and-local-law-update/.

CM #18 Trump Healthcare Process Clatters Forward

The Trump administration's war on the Affordable Care Act (ACA) is continuing. The administration has threatened to end the cost-sharing reduction (CSR) subsidy payments to insurers, which might put insurance markets at risk. In a mid-August report, the Congressional Budget Office (CBO) stated that if CSR payments to carriers were ended, this would trigger much larger direct subsidies to consumers by the ACA.

Larger direct subsidies to consumers would increase the federal deficit by $194 billion from 2017 through 2026, compared to continuing CSRs, the CBO estimates. This might bankrupt the ACA, forcing Congress to provide an alternative. Presidential vacillation on whether to end CSR subsidies might create enough uncertainty to cause insurers to retreat from markets, making the ACA implode. For more details on complex healthcare politics, visit http://dmec.org/2017/08/16/cbo-estimates-impact-ending-cost-sharing-reduction-payments/.

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The ADA Is Your Organization's **Integration Driver** *and Partner*

Once considered an "ignored step-child," the Americans with Disabilities Act (ADA) has risen to star status as integrated absence management (IAM) has evolved.

Whether your organization has a vision of employee inclusion, or holds a tighter focus on compliance, the ADA has acquired importance since Congress passed the ADA Amendments Act in 2008. Employers are motivated to increase integration among their IAM-based programs to identify accommodation needs and meet them successfully. And in most organizations, it does not matter if inclusion or compliance is the primary focus; both are developed on parallel tracks to meet corporate needs.

"As demand grew, and we noticed a continuum from disability to accommodation, we began to think that leave management was a more appropriate area for accommodations."

Employer Example: EY

The experience of EY (formerly Ernst and Young) is a case in point. As a professional services organization providing skilled personnel to clients, "our product is our people," notes Susan Morrison, Associate Director, Total Rewards/Benefits. EY's global workforce of 231,000 includes 45,000 U.S. employees with an average age of approximately 27 years, she said.

EY U.S. is driven by a vision of employee inclusion and success, which affects its benefit policies in numerous ways. Unlike many employers, EY provides salary continuation before a short-term disability (STD) claim is approved, and EY manages the use of salary continuation in-house. Historically, this model was the norm. But during the development of integrated disability management, some employers rejected that model to contain costs, and to give employees a financial motivation to return to work (RTW) as early as possible.

EY's predominantly young employees don't need any help with motivation, said Selvi Springer, CRC, Assistant Director of Medical Accommodations. "This population is used to putting out 150% at all times. If they're not able to go in to the office, they insist on working from their beds," she said. Salary continuation

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until an STD claim is approved is an employee-centric approach that reduces financial hardships for employees, helping motivated employees stay motivated. And rather than uniformly treating STD as an expense to reduce by denying claims, EY often uses STD as part of the solution process for employees having difficulties.

EY's Integration Evolution

In recent years, employee accommodation has played a growing role in the way EY integrates benefits. The most dramatic example was the creation of the new position held by Springer in August 2016, with the accommodation and ergonomic request functions joining the leave management team, both under Morrison's direction.

About 14 years ago, EY began to centralize its leave of absence management function in a small call center. Over the years, other functions were added to this team, including dependent certification. During this period, accommodations and ergonomics were located in the employee assistance program called EY Assist. This program already interacted with partners or staff and their healthcare providers concerning behavioral health conditions, so it was a logical choice to handle all types of accommodation.

"As demand grew, and we noticed a continuum from disability to accommodation, we began to think that leave management was a more appropriate area for accommodations; that this would simplify the process," Morrison explained. FMLA or other leave could be a precursor for disability, and the leave management team could work more closely with disability vendors for earlier intervention. "The addition of a staff member with specialized experience in accommodations could add even greater quality and efficiency," Morrison said.

This program cluster was fairly similar to the way other employers integrate around the leave management function. But EY had a larger number of programs in the integration cluster, and unlike some employers, EY was driven by employee inclusion and success. "We do ask for medical information so we can provide services to ensure employees can still do their job; that's how it evolved with the leave team," said Morrison.

The unit became the new location for accommodations and ergonomic requests in August 2016, when it was re-located from its former position in EY Assist. It includes three leave specialists, an accommodations manager, and an ergonomic analyst who coordinates both accommodations and ergonomic requests. Locating both functions in the same unit helps in securing integrated medical information from physicians, since physicians provide medical information for FMLA and other leaves.

EY has an ADA compliance effort operating on a parallel track to accommodations. EY's U.S. legal department provides in-house consulting on accommodation processes in general, and on cases that rise to the level of a formal ADA claim. EY offers employees the ability to obtain some common accommodations simply by requesting them. For example, any EY employee can download voice-activated software from the internal App store or request an ergonomic laptop stand. "Flexible work arrangements and the ability to work from home for many positions allows us to have a more diverse work force and has the added benefit of preventing some more serious claims," says Springer.

That is one of the reasons that EY encourages employee participation in benefits or services, such as EY Assist or the behavioral health services available through the health plan. These services can help reduce the incidence of more serious claims. Behavioral health care is about 5% of EY's total medical expense, said Dr. Sandra Turner, Director of EY Assist. "We would like to see that increase," she said. "If we have more people getting help early, we're going to retain more people, and retain our brand through them."

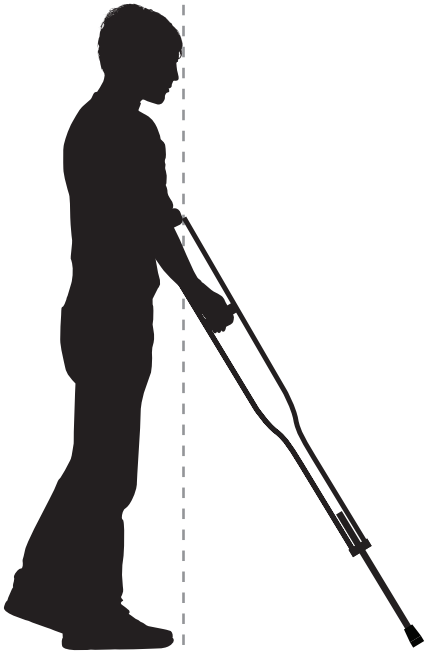
"With a campaign of this scope and depth, not only did utilization of EY Assist (EAP) increase, so did accommodation activity."

Program Synergies

For the same reason, Turner also wants to see increased use of EY Assist, which already has a high utilization of 5% to 7% in recent years. A new initiative called "r u ok?" has increased EAP utilization about 30%, bringing it up to 8% in 2017; all of the increase came in the area of mental health or related EAP services.

"R u ok?" was developed by a broad group of EY stakeholders, driven by strong interest and support from corporate leaders. "We want everyone to bring all of who they are to work," said Turner. "Mental health and addictions are part of life. We have the resources to address these conditions. So we

A.



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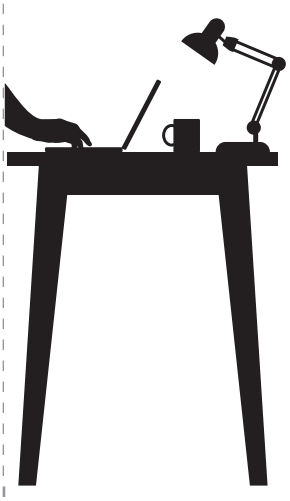

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encourage colleagues to volunteer for training about the signs and symptoms of these conditions, how to ask 'r u ok?' and become familiar with the appropriate resources at the firm and/or in the community."

To explain "r u ok?" Turner put it in the larger context of EY's many behavioral health initiatives and corporate culture. "We believe that 'r u ok?' can only work in a culture of caring," she said. "Without such an organizational culture, employees are not likely to acknowledge their personal or family struggles, or accept the offer of help."

EY launched "r u ok?" with a one-year communications and online training initiative starting with Mental Illness Awareness Week in October 2016, including local events in five major EY offices. A second round of 18 local events was planned for 2017 and is nearly complete now. Local office managing partners presented their experience with mental illness, either personally or through a family member or colleague. This was just one aspect of a comprehensive communications campaign.

With a campaign of this scope and depth, not only did utilization of EY Assist increase, so did accommodation activity. Accommodations were trending up in 2016 prior to the launch of "r u ok?" but the activity has continued, and has increased roughly 20% compared to years earlier, said Turner.

Another synergistic program that facilitates increased utilization of accommodations is EY's AccessAbilities professional network group. This group is not a formal party during the interactive process, but employees often contact AccessAbilities for peer support during the process. Given the voluntary and informal nature of this link, it is not possible to measure the impact of AccessAbilities, but anecdotally the program has been a significant contributor.

ADA Points of Contact

The ADA and accommodations are deeply embedded in EY's highly integrated "culture of caring." Other organizations may have less history with accommodation, yet still may feel substantial impact from the ADA in different ways.

Intermountain Health, a Utah hospital organization, saved an estimated $1 million in the first year of an initiative that reduced the average duration of mental health claims from 72 days to 60. Early intervention initiatives like this thrive on integration that builds new links to identify higher-risk claims. Supervisors and line managers played an important role in this process at Intermountain Health. Securing the cooperation of these busy people was a make-or-break component for

the initiative.

"These line managers were aware of the need to comply with the ADA, and this provided leverage to win their support and involvement," said Kimberly Mashburn, National Accounts Practice Lead at The Hartford. "Because they were more aware of the ADA, they had already begun to have earlier conversations with employees when problem signs cropped up." This reversed the historic learning curve, where line managers first gained skills in other programs that equipped them to play a role in ADA compliance.

And some organizations with less ADA experience still follow that progression, learning about the ADA in the process of managing short-term disability (STD) claims. Often new resources are injected into an organization through an external vendor, whether a third-party administrator or a disability insurance carrier. Standard Insurance Co. (The Standard) has a program for developing accommodations and RTW or stay-at-work plans for its clients' employees with STD and long-term disability (LTD) claims. "Employers often begin by seeking accommodations for complex disability claims, and then request resources and coaching to develop their own internal accommodations program," said Brian Kost, Senior Director, Workplace Possibilities at The Standard. In this development process, integration with STD, LTD, and other programs is baked in.

Conclusion

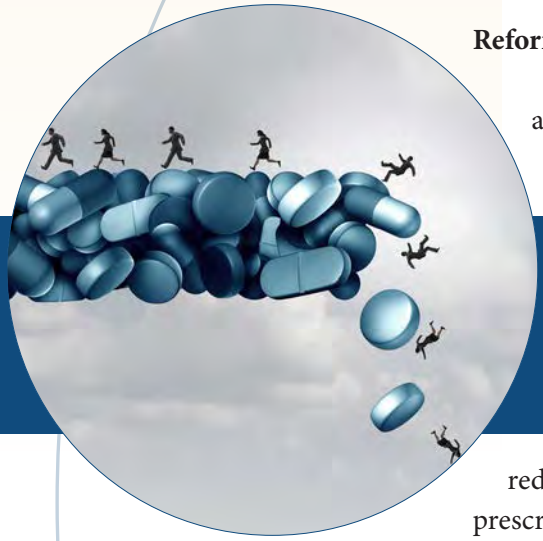
"Accommodation" is becoming part of the corporate language around integrated absence management. In an IAM initiative, employers integrate benefits to give employees a more efficient return to work following a leave or disability event. Some initiatives have early intervention programs to reduce disability duration.

Sophisticated integration initiatives like the one at EY use accommodations as a tool at every stage of a potential claim, helping employees stay at work through early intervention or RTW from disability. These extensive employee services require the integration of multiple specialties such as accommodation, leave management, and ergonomics. Even if an EAP is not formally integrated, EAP initiatives like "r u ok?" may have a significant impact on accommodation requests and utilization. Increasing awareness of the ADA may foster greater attention and adherence among line managers, another crucial need for successful program integration.

In short, regardless of the focus of a particular employer IAM initiative, competent program efforts link the ADA, accommodations, and integration.

The Problem of Pain:
Reducing Opioid Risks Through Management and Alternatives

While employers are making progress in their efforts to end America's opioid epidemic, the death toll is still rising due to other factors. Using opioids for management of pain during recovery from injuries is a high-risk practice, and replacing opioids with alternatives is a best practice that is slowly taking hold, in the face of many challenges.



Reform in Progress

A national campaign against opioid mismanagement is beginning to reduce the number of new prescriptions for opioids. If management strategies are also applied to monitor, adjust, and end existing opioid use appropriately during treatment, opioid addiction risks can be reduced.[1] These practices also can reduce the number of cases of hyperalgesia, where extended opioid use results in higher pain sensitivity and reduced function. All of this is great news for people seeking treatment for painful injuries or illnesses, and for their employers.

Most states have updated guidelines around prescribing opioids, including their use in managing chronic pain. The Centers for Disease Control (CDC) has also published guidelines,[2] notes Michael Coupland, CPsych, CRC, developer of the COPE with Pain program. Guidelines often include risk mitigation strategies such as only one provider prescribing opioids to a patient, urine drug screening during treatment, and behavioral support for patients with aberrant behavior.

Reforms still in process involve physician training on the guidelines which will help prescribing practice become more uniform, reduce error, and provide patients with more supervision and support while opioids are part of the treatment program. The first medical specialists targeted for training were on the front line of the opioid epidemic: pain specialists, occupational physicians, and orthopedists. Training may be slower to reach physicians in some other fields, such as primary care physicians or family doctors.

"Most states have updated guidelines around prescribing opioids, including their use in managing chronic pain."

Opioid Litigation Trends

So far, Coupland notes, "the plaintiff bar has not been aggressively litigating anyone — treating provider, insurance, or employer — as being at fault when their claimant became addicted."

"Introducing opioid alternatives into pain management may require bringing a third-party specialist in to negotiate with an employer's health plan, WC carrier, or TPA."

But now most states and the federal government have clear standards in place to prevent inappropriate opioid prescribing. If any party fails to follow those new standards and an employee is harmed as a result, are the risks of litigation higher than in the past?

So far, litigation suggests that employers may not be likely targets for litigation. A class-action lawsuit by former professional football players against the National Football League (NFL)[3] asserts that "they suffer long-term organ and joint damage… as a result of improper and deceptive drug distribution practices by NFL teams," according to the *Washington Post*. In this case, trainers directly employed by the teams are accused of practices that violate particular federal laws that may not apply to other employers that don't directly prescribe opioids.

"I think it is extremely unlikely that the claimant bar will sue doctors whose injured worker patients have become addicted," said workers' compensation (WC) journalist and expert Peter Rousmaniere. "This would be a negligence law suit which the claimant bar is unversed in." Also, "There may be problems with what is, in effect, a medical malpractice suit affected by exclusive remedy," a legal doctrine that applies to WC cases.

While the claimant bar may be unlikely to litigate against employers, other parties suffering losses due to the opioid epidemic have begun to litigate.

More than 25 cities, counties, and states are suing opioid makers and distributors, according to a July 4 *Washington Post* report.[4]

More lawsuits have been announced since then, including a suit by Multnomah County, Oregon, seeking $250 million in damages from major opioid

makers and distributors, and several Oregon doctors. Some reports compare these lawsuits to the wave of litigation that resulted in a $200 billion settlement by tobacco companies in 1998.

Some employers, not waiting for the healthcare system to finish implementing reforms, have established their own guidelines to reduce opioid risks in prescribing and treatment. Some guidelines may limit opioid use to the acute phase for some injuries, often around six weeks, Coupland said, and suggest opioid alternatives to manage pain later in a claim. He listed several alternatives to opioids: cognitive behavioral therapy (CBT), acupuncture, and manual therapies such as physical therapy and massage therapy.

Introducing Opioid Alternatives

Most state and federal reforms focus on ending inappropriate use of opioids. Replacing this pain management tool with other more appropriate and effective tools requires another round of reform that will be implemented primarily by the private sector, especially health plans.

Employers need support from the market to provide opioid alternatives for pain management. "When selecting a carrier, employers have to work on their benefit design so that it provides these alternatives," said Coupland.

Most employers, however, are already locked into a contract with a health plan. They may have little room to negotiate changes, especially if opioid alternatives appear more expensive than pills. Pain management may be a secondary concern for health plans, as pain is often considered a symptom rather than a diagnosis to be treated.

As a result, introducing opioid alternatives into pain management may require bringing a third-party specialist in to negotiate with an employer's health plan, WC carrier, or third-party administrator (TPA).

Coupland described the process as follows. Where an employer initiates this discussion, the specialist meets with the health plan team or WC medical network, which may include a claims examiner, nurse case manager, and physician. The specialist describes the pain management plan for a patient in question, and its justification. The health plan or WC medical team agrees to over-ride their usual authorization limit, allowing more visits to a CBT therapist, physical therapist, or other modality, as needed.

For some employers, the TPA may initiate the discussion with a proposal to the employer, then bring a specialist to meet with the health plan or WC medical network to over-ride the usual authorization limits.

ADA Considerations

Although pain management and addiction are both closely related to opioids, they are separate subjects for purposes of the Americans with Disabilities Act (ADA).

Addicts. The Equal Employment Opportunity Commission (EEOC) website states that "individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a 'qualified individual with a disability' protected by the ADA when the employer takes action on the basis of their drug use."[5] This gives employers the leverage to require employees to submit to extensive inpatient rehabilitation programs as part of a "last-chance agreement."

The EEOC further states, "a test for the illegal use of drugs is not considered a medical examination under the ADA," which allows employers to do follow-up testing to ensure the employee has sustained rehabilitation.

Pain Management. For employees recovering from an injury or illness and in a pain management program, the diagnosed condition is the core issue for ADA purposes. "They would not meet the diagnostic criteria for a substance abuse disorder, since they are not using any maladaptive behaviors to get the drugs, they are actually comply-

ing with medical care," said Coupland. But due to the diagnosed condition, they may request the ADA interactive process to accommodate work restrictions related to chronic pain to stay at work or return to work.

When the Safety Net Fails

Ther professionalism of integrated absence management (IAM) practitioners is motivation enough to work toward a comprehensive safety net against opioid misuse. It is still valuable, however, to understand what can happen for some people when this safety net fails.

The CDC estimates that nearly two million Americans abused or were dependent on opioids in 2014.[2] The opioid prescribing practices that created this at-risk population were not largely ended until that year or even later. As a result, some at-risk people are still employed today, whether in the workplace, or out on disability leave but not yet separated from their employers. When employers cut off inappropriate opioid prescriptions, these employees are at risk of going out to black markets on the streets to buy opioids.

These markets are more dangerous than ever, due to potent synthetic opioids by illegal manufacturers being sold to American black markets. Fentanyl is up to 100 times stronger than morphine, and carfentanyl is up to 10,000 times stronger than morphine. These powerful, yet relatively inexpensive, black market drugs are often added to morphine or heroin to increase their potency. They may also be used in attempts to make cheap counterfeit oxycodone.

Addicts or dependents often do not know that the opioids they bought in black markets are counterfeit and laced with these dangerous synthetic opioids. Overdose deaths have been increasing for several years. The final official count of drug overdose deaths in 2016 will not be released until December. The *NY Times* conducted a research project to estimate the number of 2016 deaths based on preliminary data from hundreds of state health departments and county coroners and medical examiners from areas that accounted for 76% of overdose deaths in 2015.[6] Some findings from this study:

- In 2016, overdose deaths for all drug types, including opioids, were estimated at 62,497 and very likely exceeded 59,000.
- This would be the largest annual jump ever recorded in the United States, up from 52,404 deaths in 2015, with the increase largely driven by fentanyl and carfentanyl.

Some of the people who are dying of overdoses may be former co-workers.

The one ray of hope in this bleak picture is that law enforcement may begin constricting the black markets.

In China, manufacture of fentanyl and carfentanyl became illegal on Mar. 1, 2017, after months of talks between the Chinese and U.S. governments. If these controls become effective they could reduce the availability of these dangerous substances in American black markets. The federal Drug Enforcement Agency (DEA) called this "a potential game-changer."

Federal and state law enforcement agencies are also increasing their efforts. In July, Ohio state and federal law enforcement agencies collaborated in the nation's first arrest of an alleged wholesale distributor. In Massachusetts, in May, authorities seized enough chemicals to make nearly half a billion dollars of counterfeit fentanyl to sell on black markets.

Lives are hanging in the balance as the new "war on drugs" unfolds. IAM professionals have a role to play by building and maintaining safety nets to prevent opioid misuse through the close scrutiny and management of employee benefits.

Conclusion

The alarming increase in death by opioid overdose should drive wall-to-wall reform in use of opioids for pain management. Despite challenges, many areas of reform are being implemented, but provision of opioid alternatives for pain management is lagging. Aggressive, comprehensive reforms in this area may save lives.

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Convenient Mobile Accommodation: There's an App for That!

A Mobile Accommodation Solution (MAS) application, developed by the Center for Disability Inclusion (CDI) in partnership with IBM and the Job Accommodation Network (JAN), will be released for iOS by the end of 2017 and for Android in the first quarter of 2018.

Other proprietary, enterprise-level accommodation case management and tracking software programs exist, but this will be the only mobile accommodation case management application available for broader use by professionals. The application has also been designed to be accessible and interoperable with technologies for people with disabilities. It will work on iOS and Android smartphones and tablets.

While many leave management functions can be performed from the office, accommodation perhaps more than any other function requires "boots on the ground" in the work environment of the employee being supported. In addition, accommodation requests sometimes pop up unannounced, unscheduled, and outside the leave manager's office. Documentation of the interactive accommodation process is very important for the employer and the individual to manage and track the process, and defend against complaints. For all these reasons and more, a mobile app like the MAS is needed to facilitate and document all the details that a leave manager may encounter at a moment's notice.

The MAS application recently had a favorable review by information technology accessibility executives at the M-Enabling Conference held by the G3ICT Group, an organization promoting accessible technologies for people with disabilities, said said Lou Orslene, MAS Project Manager and JAN Co-director. "No one questioned the premise of a case management tool," he said, and no one knew of a similar app. Most of the discussion touched on how to enhance current features, such as the capability to output reports — a feature that CDI is now discussing with IBM, Orslene said.

Internal testing of MAS is being conducted in July, with external testing in August and September. The app will provide users with a suite of fillable, accessible forms and the capability to store, print, and export records.

"It has considerable functionality for a mobile application; we really pushed IBM on this product," said Orslene. "It incorporates many of the best accommodation practices developed over the years." After the very thorough and positive review by IT executives in the M-Enabling session, "our IBM partners were saying, 'it really hit the mark,'" said Orslene.

IBM already has an enterprise-level "Workplace Accommodation Connections" tool for large organizations. The MAS app targets professionals in all size companies but is particularly relevant for small to mid-size organizations, with federal contracts required by Section 503 of the Rehabilitation Act of 1973 to create workplaces inclusive of people with disabilities. "This was grassroots-driven by listening to the people who provide accommodations," said Orslene. The addition of exporting functions will help expand its usefulness for professionals in very diverse organizations and environments.

The MAS app is being designed to help increase employment opportunities for people with disabilities and streamline the disability accommodation process at various phases of the employment cycle. Potential users include corporate talent recruiters, absence managers, or employees themselves. Examples for use include:

- For a new hire, recruiters can use the app to document and forward an accommodation request to the appropriate program.
- A current employee can use the forms built into the app to initiate a

request for an accommodation.

• Absence management staff can provide case management and tracking capabilities, while guiding an accommodation specialist through best practices for providing a specific accommodation.

JAN's guidance is built into the MAS app to provide resources helping ensure the most inclusive accommodation process, while also providing the case management capability to capture any accommodation efforts being made. In addition, the app will provide functionality to contact JAN for coaching on the accommodation process or a specific accommodation solution.

Funding for MAS was provided by the National Institute on Disability, Independent Living, and Rehabilitation Research. The MAS development process was informed by members of DMEC, the US Business Leadership Network, the National Business and Disability Council at the Viscardi Center, American Association of People with Disabilities, and the Council of State Administrators of Vocational Rehabilitation.

Changing Expectations for the Expectant Workforce

Pregnancy is one of the top reasons for leave time, whether through the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), sick leave, paid time off (PTO), or short-term disability (STD). According to 2016 benchmarking data from the Integrated Benefits Institute, pregnancies generate 28% of all new STD claims. While the actual level varies widely by industry, that average makes pregnancy as big a driver of leave and disability as musculoskeletal or behavioral health claims in many industries.

While the incidence rate for normal pregnancies has inched up nearly 10% from 2012 to 2016, the rate of complicated pregnancies has remained flat. In addition, disability durations for complicated pregnancies have decreased by nearly 10% during that period (based on Unum's book of large employers with 2,000+ lives covered) These positive trends are driven by improved employer accommodations, said Michelle Jackson, AVP of Unum Workforce Solutions. "We have seen a marked increase in our customers' willingness to accommodate earlier with expectant mothers to mitigate the challenges faced as a pregnancy proceeds," she said.

Expanding Expectations

The Equal Employment Opportunity Commission (EEOC) has made discrimination against pregnant employees an enforcement priority beginning in 2013, emphasizing the Pregnancy Discrimination Act (PDA) and the ADA. The EEOC has interpreted the PDA and issued guidance that employers should treat pregnant employees as they treat other employees with non-pregnancy related temporary disabilities.

Developments like this are not hidden from employees. News outlets such as the Parents magazine and website are actively educating employees about their rights during and after pregnancy. Headlines include "what to do if you think your rights are being violated" and "where to go if you need help."

This trend parallels the growing employee demand for paid family leave (PFL) benefits, which has historically been dominated by pregnancy, birth, and bonding leaves. Progressive corporations are adding or increasing PFL benefits to enhance their position as best places to work. Taken together, these converging trends are more than media sound bites, and may be reaching the level of a cultural tipping point.

Litigation

Although EEOC guidance is not legally binding, courts often defer to it, and high-profile litigation has at least partially upheld the EEOC's position. In *Young v. United Parcel Service* (March 2015), the U.S. Supreme Court held that UPS's accommodation policy imposed a "significant burden" on pregnant employees because the company granted accommodations to a large percentage of employees but not to pregnant employees. The court did not provide a convenient bright-line test that could identify when an employer has "sufficiently strong" reasons to justify that burden. But it did state that cost or convenience in themselves are not sufficiently strong reasons to justify disparate treatment.

"Many employers were caught off-guard by the Young decision," said Ellen McCann, AVP and Special Counsel at Unum, in her 2017 DMEC Annual Conference presentation. Many employer accommodation policies are too narrow to comply with broader PDA mandates, she said. The reason? They grew out of siloed programs in a particular setting or type of injury, allowing disability or leave absences only for work-related injuries, for instance.

In information provided in the Young case, it was noted that UPS accommodated similarly-affected employees with a workers' compensation (WC) injury, an ADA-qualifying disability, or those who had lost their Department of Transportation certifications — but not pregnant employees. UPS was not the only employer that limited accommoda-

tions to employees involved with particular programs such as the ones UPS selected.

This problem of selective accommodation can be solved by focusing on job descriptions as a core element in the accommodation process. This shifts attention away from particular settings or injury types, and establishes a broader context based on the match between the employee and the job. Robust job descriptions include essential job functions and physical capacity requirements. This approach supports consistent accommodations in relation to lifting requirements.

A comprehensive job description database helps an accommodation program deliver consistency and reliability. Lacking that, employers should be quick to gather job descriptions on a case-by-case basis as needed. Unfortunately, McCann sees employers moving away from detailed job descriptions toward more generic descriptions or global grading.

Initiating an Accommodation

An effective process to initiate a pregnancy accommodation helps an employer avoid issues or misunderstandings that could alienate employees, violate the ADA, and increase litigation risks.

Michelle Jackson, AVP of Workforce Solutions at Unum, provided several useful employer practices in the same conference presentation. Many of the practices involve advance preparation to ensure readiness for when an employee enters your office and discloses that she is pregnant.

"Be excited for your employee; celebrate and be supportive!" Jackson said. "Your first reaction is a key to setting a positive tone." And examine yourself for any unconscious bias that "pregnancy = inability to work." Your positive response confirms to the employee her value as a team member. "And then remember to listen to your employee," said Jackson. This will kickoff the interactive process of accommodation to a healthy start.

And recognize that often, an employee believes the disclosure of a pregnancy is an accommodation request in itself. Therefore, a manager should have several communications practices in place:

- Be ready to share information specific to the available leave and benefits for a pregnancy.
- At the appropriate time, work with the employee to develop a transition and coverage plan. "Start early," Jackson says.
- Ensure that the essential duties are clearly outlined and documented

Compliance Makeover cont. on p. 34

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ADA, Mandatory Overtime, and Essential Functions: Do These Three Ever Meet?

Many employment positions have mandatory overtime, whether by regular weekly scheduling or when the press of business requires extra hours. In these situations, is mandatory overtime an essential function of the position?[1] What if an employee has a disability, and there is no reasonable accommodation to enable the employee to perform the mandatory overtime? As with most ADA issues, this determination requires an individualized, case-by-case (job-by-job) assessment. However, courts have recognized mandatory overtime as an essential function depending on specific facts of the case.

For example, in *Agee v. Mercedes Benz* (11th Cir. 2016), the court upheld summary judgment for the employer because it established that overtime was an essential function of the employee's position. A team member in an automobile assembly plant, Agee brought in a doctor's note stating that due to her medical conditions she could not work more than 40 hours per week. The employer asserted it could not accommodate this restriction permanently, arguing that overtime was an essential function of the position. The court agreed, based on these facts:

- The job description required (1) flexibility in moving between different job assignments and work schedules, and (2) being assigned different work situations as production or other needs require. Interestingly, mandatory overtime was not specifically listed in the job description!
- The job application form completed by Agee stated business needs may require overtime.
- Each team member (Agee's position) worked an average of three hours of overtime per week, or 156 hours per year.
- The need to maintain production on multiple assembly lines required employees to work overtime even if their own line had no difficulties. (The unpredictable need for overtime could occur when a new assembly line started production, a line fell behind or broke down, or simply due to production demands.)

In analyzing whether mandatory overtime is an essential function for a particular position, considerations include:

- Does the position's application and/or job description identify overtime or scheduling flexibility as an essential function? The employer's judgment as to which functions are essential is accorded substantial weight.
- How regularly does the employee's position require overtime?
- Does the position serve fluctuating production or customer service requirements that make overtime a necessity?
- What is the experience of employees who actually hold that position — historically, how much overtime does each employee on the team or in the position work?
- How significant is the overtime compared to the position's regular schedule (e.g., four hours of mandatory overtime per month is not very significant; four hours per week may be)?
- What work is performed during those overtime hours, and how will the lack of that performance affect the employer's business (i.e., if all the required tasks of the position are not completed)?
- What other considerations specific to the position may impact overtime?

If mandatory overtime is an essential function of a position, the employer must initiate the interactive process with the employee to attempt to identify a reasonable accommodation or, failing that, develop the facts to support an undue hardship argument.[2] If mandatory overtime is not an essential function, the employer likely will need to honor the employee's work restriction.

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1. Voluntary overtime cannot be an essential function because, by its nature, it is not required of a worker.

2. Remember, the employer also will have to consider transferring the employee to an open position for which the employee is qualified, with or without a reasonable accommodation.

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RTW: Focus on the Absence, Not the Cause, to Better Manage the Associated Costs

Employee absence creates a $225 billion annual burden for employers, according to the federal Centers for Disease Control and Prevention.

These costs hit employers regardless of why an employee is away from work — a weekend accident, a workplace injury, sick time, military service, or any other reason. It is the absence, not the cause, that drives these significant costs.

Recognizing this — and the importance of return-to-work (RTW) programs in managing those costs — many employers are working across their organizations to develop and apply consistent RTW best practices. These practices aim to provide easier administration, process efficiencies, consistent management, and safe RTW while improving the ability to track and improve RTW program performance.

These employers are not dismantling the historic silos that manage specific programs, such as workers' compensation, disability, and absence. Rather, each employer partners across its organization to develop a consistent approach to RTW, regardless of the underlying cause of the absence.

Beyond better controlling costs, containing lost productivity, and engaging employees, a unified RTW program offers another key benefit: compliance with the federal Americans with Disabilities Act. That act, and its amendments, requires employers to take a consistent approach to making reasonable accommodations for work and non-work related disabilities.

Is this hard work? Sure, but it is well worth the effort. Particularly since employers can follow a four-step process to build an effective RTW program that can be implemented across an organization.

First, make a commitment. The easiest way to unite independent areas of a company is to look across silos to quantify how much employee absence costs the company.

Seeing the big picture uncovers the potential value of a unified RTW program in managing this impact. Showing this impact is key to securing both an executive-level champion and company-wide commitment to this effort.

Second, construct a solution. Bring everyone involved in absence-related issues together as a team to develop a comprehensive set of RTW policies. Start by documenting existing procedures. Understand what works, and locate opportunities for improvement.

For example, areas of a company may have different approaches on when they welcome back an injured employee to work. Some may wait until the employee is fully recovered and ready to perform prior responsibilities, while others are willing to assign employees to light or transitional duty as soon as they have sufficiently recovered. Look across the current approaches to select the one that will have the greatest benefit for the company and recovering employee.

Third, communicate. Introduce the new RTW program to all employees. Train managers, supervisors, and front-line individuals on the program's policies and the company's expectations. Regularly remind everyone about the program. In all communication, stress both the benefits to the company and employees of having a coordinated RTW process, rather than a range of workflows.

Fourth, control the program. In the second step, the team created the infrastructure for a unified RTW program. In the final step, the team tracks the program against key metrics and benchmarks. It then recommends updates to the program based on that performance. Data will tell the story, pointing to success and new opportunities.

While developing a single RTW program can be challenging, it can also better protect a company's finances and its employees' health. This four-step approach may help employers look across the organization, understand the company-wide impact, and work towards a common solution.

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Outsourcing Leave Programs: Is This Right for Your Organization?

While many organizations can manage their leave requests and documentation using their own internal resources, others find that leave administration is too cumbersome. With the recent introduction of paid family leave in new jurisdictions, the complexity continues to grow.

The basic elements of leave management for an organization include:

1. Eligibility: Consistently approving or denying a leave request by accurately determining employee eligibility
2. Records: Maintaining accurate, complete records for all employees on leave.
3. Tracking: Monitoring intermittent leave usage, and time taken and remaining
4. Notification: The Federal Family and Medical Leave Act (FMLA) requires employees be notified of eligibility for leave within five days of the request
5. Regulatory: Keeping current on federal, state, and local leave laws while dealing with the complexities of complying with and interpreting laws across multiple states

Outsourcing Decision Factors

How can you determine if outsourcing your leave program is the right decision? There are a number of questions to consider when making the choice for your organization.

How do you currently administer FML and other leaves? Smaller organizations often lack the resources to handle leave administration in addition to other human resource (HR) duties. Larger organizations can feel overwhelmed by the volume of paperwork and recordkeeping to track leaves. Add to that maintaining an up-to-date understanding of all the laws, and the list of duties becomes daunting.

Are you keeping accurate time records? Can you smoothly coordinate recordkeeping and team decision-making? Self-administration of leave requests requires collaboration among the employee, the manager, HR, and payroll to determine if the employee qualifies based on time worked and the reason for the request. Accurate leave approval decisions are crucial, and must be consistent across all requests. HR must correctly track the leave time approved. If not approved, the organization must be prepared to defend the decision.

Would your employees be receptive to making the switch from self-administration to outsourced leave administration? It can be a big adjustment for the organization and the individuals requesting leave. Self-administration gives employees the opportunity to speak directly with an HR representative, which may support employee satisfaction and fit better with your current organizational culture.

Outsourcing Advantages

Outsourcing leave administration can relieve organizations of many of the administrative burdens of complying with the complicated and sometimes costly leave rules and regulations, such as:

- Determining employee eligibility based on both attendance records and reason for requesting leave
- Reviewing healthcare provider certifications or medical documentation
- Approving or denying FML requests
- Managing paperwork and communicating with employees about their leave
- Tracking leave usage and monitoring time taken/time remaining
- Administering leave consistently for all qualifying employees
- Integrating the short-term disability approval process with leave tracking when both are with the same administrator

The time your HR department spends on all these activities could be spent on other projects and responsibilities. Take an unbiased look at your current processes to determine the ultimate benefits and drawbacks of transferring your leave administration to an outside vendor.

Ultimately, the decision to outsource leave administration should be based on what is best for your organization, including administrative and leave costs.

COLUMN

Ask the
Accomodation Experts

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The Downside of Overly Generous Accommodations

A human resources manager from a sales organization asked this accommodation question.

"Our organization is very supportive of employees. Our policy allows line managers a fair amount of latitude in accommodating employees under the Americans with Disabilities Act Amendments Act (ADAAA). In some cases, we believe managers have probably exceeded legal requirements. So far, we're not aware that this has harmed the organization, but we're beginning to wonder if it could. What are the negative consequences of being too generous in an accommodation or allowing too much time for an accommodation?"

Accommodation experts Jenny Haykin and Tom Sproger explain how to assess when an accommodation request is unreasonable, and therefore, can be rejected or modified.

An accommodation is too generous when it results in work not getting done over an extended period of time, provides special treatment for one employee that would not be replicated for others with the same need, or is not legitimately needed.

Removing essential job functions is not required under the ADAAA, provided that the functions are indeed necessary to perform the job. It may be beneficial to excuse an employee from a job requirement while they are recovering, but there is no legal obligation to do so and it is not advisable to do so for an extended period of time. An employee who must perform field work to get their job done but is given only the desk work portion of the job for example, will not be fulfilling the requirements of the position.

An accommodation compromises the business if it renders the company unable to meet its obligations to safety, collective bargaining agreements, or to other parties such as customers, the general public, creditors, and other employees. The ADAAA does not require an employer to provide an accommodation that creates an "undue hardship" or a "direct threat."

An example may be an employee who needs to take breaks at a frequency that results in missed customer contacts and an increased workload on colleagues. Imagine that this employee is a 911 dispatcher. This situation is a hardship to the organization that must cover all incoming calls immediately, and it puts callers at risk during crisis events, potentially creating a direct threat.

Granting an accommodation for a duration that is not feasible for the business to support and would not be offered to another employee in the same circumstances creates not only business risk but legal risk. If another employee comes forward requesting the same accommodation and is denied, the employer may have to create a legal defense justifying why it was allowable for one employee and not another.

An example is providing an extended leave of an unsustainable duration. Of particular concern is granting accommodations to the so-called "FBI" employees (friends, brothers, and in-laws of management) without medical justification as this can result in disparate treatment. For example, a company granting an extended leave to a tax accountant during tax season should be prepared to grant a comparable leave requested as a disability accommodation to avoid favoring the employee who had no legal right to the leave over the employee who is in a protected class.

In general, following the ADAAA and providing job modifications when they are needed, are reasonable, and do not create undue hardships or direct threats on the business will help employers avoid providing overly generous accommodations.

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Managing the Interactive Process Under the Americans with Disabilities Act

Today, employers must comply with federal, state, city, and county laws that govern employee leave of absence and accommodations. The challenges of these multi-layered regulatory complexities are compounded by common organizational structures and program management approaches. Many organizations still maintain departmental silos, making it difficult to consistently comply with legal mandates as well as the organization's own internal policies and procedures. Despite these challenges, an employer can take certain steps to implement a more consistent and effective approach to the Americans with Disabilities Act (ADA) interactive accommodation process.

The ADA interactive process helps an employer and employee work together to identify and accommodate a disabling condition that prevents the employee from performing essential functions of the job. This typically consists of an interactive dialogue between the employee, supervisor, and a human resource representative or ADA coordinator. Employers are further advised to include the employee's healthcare provider as an additional source of information related to the impairment, potential restrictions or limitations, and guidance as to whether or not an accommodation will likely be successful.

An employer's obligation to engage in the interactive process is triggered when the employer becomes aware that the individual has a disability and has requested an accommodation. There may also be an obligation if the employer knows or should know the employee has problems with work that may be related to a disability. Additionally, when employees have exhausted their leave, whether related to an occupational or non-occupational occurrence, employers are obligated to start the interactive process.

According to the Job Accommodation Network (JAN), a service of the U.S. Department of Labor, an employer should take six steps during the interactive process. These are:

1. Recognize an accommodation request or a duty to start the interactive process. Employees may request an accommodation or indicate they are having a problem performing work activities and that the problem is related to a medical condition.

2. Gather information. Employers need to determine what information is needed to assess the employee's situation. In some cases, no additional information is needed; in others, the employee may need to talk with a healthcare provider to determine the impairment and restrictions. The employer should have or obtain a job description that outlines the job tasks and essential job functions.

3. Explore potential accommodations including leave of absence and environmental modifications that could be made. Ask the employee what kind of accommodation would be helpful to complete job-related tasks.

4. Choose the accommodation. If you have three or four acceptable options, JAN recommends asking the employee which option is preferred. The employer is not obligated to provide the employee's preferred accommodation if it is not "reasonable," or if a less costly accommodation is effective.

5. Implement the accommodation. Ensure the selected option works as intended and offer assistance throughout implementation as needed.

6. Monitor the accommodation to ensure it continues to be effective. Business processes, existing technology, and employee conditions change, and those may impact the effectiveness of the accommodation.

Leave of absence and accommodations will continue to be complex and challenge even the most experienced professionals. It is important to remain informed on current laws and proposed regulations while maintaining a thorough understanding of organizational policies and procedures. Consistency is key.

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Best Practice #4: Hardwiring the Interactive Process Through Transitional RTW

Most front-line supervisors lack the level of experience with the Americans with Disabilities Act (ADA) that is expected of human resource (HR) leaders, lawyers, and disability management professionals.

Yet front-line leaders play a critical role in managing the ADA, including the interactive process. They play a key role in identifying potential accommodations, as they know the operations and productivity requirements best. And often they are charged with ensuring that an accommodation is executed.

As ADA claims continue to rise, employers are seeking ways to hardwire ADA compliance and the interactive process into their organization.[1] Many employers are giving front-line supervisors an important role in accommodations so they need training and education. But training can be sporadic and may lack relevance to front-line leaders who are focused on daily production.

Smart programs equip supervisors for their role in ADA compliance, but move some of the heavy lifting to specialists who manage a formal transitional return-to-work (RTW) program for individuals who miss work due to a disability. Under these programs, the supervisors play a critical role of proactively identifying potential accommodations, an area that can significantly affect their daily production. Meanwhile, the specialists manage and facilitate the program infrastructure, including most of the interactive process especially on disability cases that can be more complex.

In addition to the ADA compliance reality, the changing demographics of the workplace is also driving demand for transitional RTW programs.[2] The aging workforce has an increased need for workplace accommodations, and thus, for more structured accommodation management as well.[3] And Boomers aren't alone in this. Nearly one in four Millennials (now the largest population in the workforce) have made an accommodation request due to a health condition. Requests from Millennials have far outpaced requests from Generation X and Baby Boomers.[2]

Transitional RTW and Its Benefits

Transitional RTW is different than light duty, and a better ADA compliance tool. It is directed at transitioning an employee from a no-work status to being fully able to resume job duties. It emphasizes a return to one's own position on a gradual basis, and proactively identifies job modifications to help employees perform productive tasks and ultimately RTW. The transitional arrangement will incrementally progress as the individual continues to gain functional capacity. Importantly, transitional RTW is time-limited, and the time limit of the transitions are pre-arranged with the front-line leaders and others in accordance with what is reasonable.

Transitional RTW programs help employers:

- Reduce disability leave costs
- Maintain and promote productivity
- Minimize overtime expenses
- Reduce need to hire temporary help
- Comply with state and federal disability laws
- Improve the financial and overall wellness of their employees[2]

A formal transitional RTW program has many health and productivity benefits. It also hardwires the ADA interactive process into managers through the tools and practices to identify accommodations that help employees perform the essential functions of their job.

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Improve the Employee Leave Experience by Training Your Managers

More employers are using family-friendly benefits such as paid family leave to improve their success with talent retention. But these benefits do not operate in a vacuum; their impact on retention may be nominal without supportive supervisors.

Management is on the frontline when it comes to family leave requests and are an important first step in the process. How the manager responds to this request and the employee's situation can have significant implications for your organization, legally and otherwise. In this column, we will look at the challenges managers face and the considerations for effective manager training programs.

According to the *Job Satisfaction and Engagement* research report, the relationship with the supervisor is a very important factor affecting employee job satisfaction.[1] Research shows this relationship is dependent on the levels of mutual trust, respect, and affinity between supervisor and employee, and that family-supportive supervision leads to higher-quality relationships.[2]

For a manager, it can be difficult to find the time and resources needed to appropriately address the employee leave experience. Additionally, family leave laws and company benefits are changing rapidly, making a once-a-year or even a once-a-quarter training session inadequate. Even well-intentioned managers may do or say the wrong thing when an employee requests a leave of absence. It is important to empower the manager with the resources needed to support their employees and accurately represent the values of the company.

As Jeff Nowak advises in his employment law blog, *FMLA Insights*:[3]

"Do yourself a huge favor as you prepare your budgets this year: include a line item for manager FMLA/ADA training. If you spend the $2K now to train your managers, you'll likely save $1.2 million."

The changing regulatory environment surrounding leave regulation and the increasing complexity of benefit utilization is fueling the need to educate managers more frequently. By providing small bursts of information asynchronously and on-demand, content is easily digested at the manager's convenience and easily accessible to managers when their employees disclose medical or disability-related information. This type of training can help prevent or mitigate manager violations and ensure compliance with Family and Medical Leave Act (FMLA) laws, regulations, and policies.

When I established LeaveLogic, I knew that one of the key obstacles to a successful leave of absence program is often the challenge of implementing frequent and mandatory training programs. It's not enough simply to inform managers about the leave management process. It's necessary to address the conscious or unconscious bias among managers about family leave and flexible work that can lead to discriminatory behavior.

The obligation to train managers effectively and provide best practices for responding to leaves of absence is not an easy task, but it is critical to ensuring a consistently positive employee leave experience. In our next column, we will look at manager training best practices and what a just-in-time training program looks like.

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Case Study: How the ADA Reminds Us to Do the Right Thing

The Americans with Disability Act (ADA) is a law that, as employers, we love to hate.

We all know the reasons. Its complexity makes compliance difficult, and it involves medical information which triggers the constraints of the Health Insurance Portability and Accountability Act. And let's be honest, the ADA is so ambiguous that, in some cases, you're not confident that your decision was "compliant," even if you did the right thing.

However, if you take a minute to review an ADA case in which you successfully helped an employee retain employment and feel like a valued part of your organization, you can remember why this law is such a needed reminder to all employers. Let's take a moment to look at just one example of how we help our employees when we apply the ADA interactive process.

Mary is a 56-year-old clinical nurse who has been with the organization since 1990. She has always been a solid performer, works to provide the best care possible to her patients, and helps her peers by sharing her knowledge and assisting where possible. She takes on the role of a charge nurse when needed, though she prefers to be providing care to patients.

Recently, Mary has shared that she is struggling with multiple sclerosis, and the condition is progressing. She is having trouble walking long distances, and she is concerned about her ability to safely transfer her patients. She expressed concern over her ability to continue working in her role, but wants to continue to work.

A disability management coordinator was brought on the case, and the first step was to clarify Mary's abilities with the medical provider. It was determined that while some temporary modifications could be made to keep Mary in her current role, her concerns over patient safety were indeed a factor in the decision around the best method for accommodating Mary's condition.

As a team, Mary, the disability management coordinator, human resources, and clinical leadership determined that the best accommodation for Mary would be a newly vacant position in care management. This role would allow her to continue utilizing her years of knowledge in the clinical setting to educate patients and their families about the specifics of their medical situation. In this position, Mary could be accommodated if needed with assistive technology such as speech recognition software and a scooter to help traverse the facility should this need arise. Mary was transferred into this position within a month of her restrictions being clarified.

Mary's accommodation request was satisfied very efficiently, but not all cases progress this smoothly through the process. It's important to remember that the ADA interactive process is not an episodic, time-limited, "one-and-done" benefit. Mary has moved into a new role that accommodates her current condition, but given the progressive nature of her condition, she may need additional support in the future.

It is important to maintain an ongoing conversation about the options for accommodation. By keeping the conversation open, the disability management coordinator should be able to help prevent disruptions to Mary's job performance or unnecessary delays in the accommodation process.

Saluting DMEC's 25th Anniversary, and Looking to the Next 25 Years

A record-breaking 723 attendees, including 346 first-time attendees, came from 44 states and five Canadian territories to attend the 2017 DMEC Annual Conference. The goal was to hone their absence management knowledge, gain new insights into big-picture trends and intricate compliance details, and take a look back at the last 25 years as they prepare for what lies ahead in the next 25.

Celebrating 25 Years

DMEC co-founder and former Chairperson Sharon Kaleta described her professional experience 25 years ago when she joined forces with Marcia Carruthers to launch DMEC. Kaleta couldn't attend the conference in person, so Carruthers shared Kaleta's experience:

Marcia Carruthers, DMEC Chairwoman, shares the story of DMEC's start and growth, with notes from co-founder Sharon Kaleta.

"The concept of integration first came to mind when I was administering a self-insured long-term disability (LTD) program for an aerospace company. During that time, my company was self-insured and self-administered for workers' compensation, pension disability, California state disability, healthcare, and LTD.

"Many employees out on disability were collecting from more than one program because there was no coordination between the departments. Once a person was granted benefits, they became lost in the system with no follow up as to the state of their disability or their ability to return to work. No return-to-work program was in place, and there was no impetus by the company to even address that issue.

"After several meetings with upper management, it became apparent that the company would not support an integrated effort unless other similar industries were engaged in the practice."

Through hard work and dedication, Kaleta and Carruthers eventually succeeded in winning the company's attention and support, and kept moving forward.

"I remember thinking this integration concept could spread throughout the U.S. and maybe even internationally," said Kaleta. "In the early days, our week nights and weekends were spent setting up a structure, sending out meeting notices, and spending our own money. Fueled by excitement, we soon realized we would need both financial and industry support. Taking the bull by the horns, I approached Marsh & McLennon and asked for money. They said yes, and we received our first sponsor with a $5,000 donation. I was over the moon, and I knew for sure we were on the right track."

"From the beginning, our passion was to develop a process where injured or ill employees had access to the workplace during their recovery, and employers had a system that would maintain profitability and productivity. Designing an integrated disability management model required assistance from employers, insurance companies, health management systems, and the employee."

Opening keynote speaker Carol Harnett tied together the big picture of integration, challenging the audience to "make the most of our shot."

Conference Recap

Opening keynote speaker Carol Harnett kicked off the conference encapsulating DMEC's 25-year history, and knows most of it personally, having been a DMEC participant for 23 years herself. Harnett found historic trends that are still powerful today. Recent studies by the World Health Organization, she noted, reinforce that the leading cause of disability is depression — validating DMEC's early emphasis on employee mental health, which was also the focus of the 2016 and 2017 preconference workshops at the annual conference.

Harnett also presented several trends that employers will face in the next 25 years, challenging the next generation of IAM professionals to double-down on innovation that will keep IAM relevant. From a social media culture of radical transparency, to an alliance between Bitcoin and BlockChain that might disrupt insurance industries, centralized power is more vulnerable than ever. The balance of power in the employer-employee relationship is shifting, and employers need to adjust and adapt to the changes that brings.

Harnett was not the only "big picture" presenter. Jennifer Christian, MD, has championed IAM concerns to the American Council of Occupational and Environmental Medicine, and promoted healthcare issues to DMEC. Christian identified a conflict between private-sector employers and the federal government. Rather than investing heavily to accommodate employees, employers have an economic incentive to move people onto commercial disability insurance, and ultimately, to Social Security Disability Insurance. She proposed building a deeper federal/employer partnership to help align employer and federal interests, a prospect that may cheer some employers while terrifying others.

As always, many of the 95 presenters focused on compliance tools and procedures.

- The preconference workshop included inspiration and best practices for every stage in the mental health continuum, from healthy to early intervention to full disability.
- A Broadspire panel described how supervisors can identify and manage behavioral health symptoms in the workplace through a rigorous focus on performance issues that protects against discrimination claims.
- Consultant Rachel Shaw showcased a four-step Americans with Disabilities Act (ADA) interactive process that can be applied to manage two disruptive new accommodation requests: re-assigning an employee to end working with a "stressful" supervisor or co-worker, and bringing a "therapy dog" to work.

Absence professionals have come a long way on the integration journey over the last 25 years, and DMEC looks forward to continuing our partnership with those who are driving this industry forward and "making the most of their shot" over the next 25.

Q&A time in all sessions gave participants a chance to share their challenging cases with presenters.

Compliance Makeover cont. from p. 23
in the job description or requirements documentation.

A manager will want to follow up with the employee throughout the pregnancy as appropriate to make adjustments to the accommodation plan, as this is not a "one-and-done" process. "An employee may have challenges mid term with her schedule, the environment, or physical demands. These same challenges could resolve or improve as the pregnancy continues, so frequent check ins and adjustments are needed" advises Jackson. The manager's ability to offer flexibility in scheduling, periodic rest, work-site accommodations, and slight modifications to dress or food policies could make the difference in keeping the expectant mother at work longer.

Conclusion

The need for pregnancy accommodations is virtually assured in most workplaces. Successfully initiating an accommodation can prevent blunders that may greatly increase the downside risks for employers. In the moments after an employee discloses a pregnancy, advance preparation and a positive attitude are the keys to success.

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