Post-Conference Special Session

FMLA JEOPARDY!

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EMPLOYER CHECKLIST FOR FMLA

PRELIMINARY STUFF
✓ Poster at each worksite
✓ FMLA Policy in handbook if one exists, or distributed to each employee loose-leaf if not
✓ Call-out policy that tells employees who to call, to do so promptly (ASAP), and to explain reason
✓ Train those receiving call-outs to spot qualifying conditions
  • Bonding leaves for birth, adoption, or foster care
  • Employee's own serious health condition
  • Spouse, son or daughter, or parent's serious health condition
  • Qualifying exigencies
  • Military caregiver leave

NOW THE EMPLOYEE HAS THE OBLIGATION TO PROVIDE NOTICE
✓ Upon notice from a call-out turn over to group handling FMLA

GROUP HANDLING FMLA HAS THE FOLLOWING OBLIGATIONS
✓ Did the employee seek FMLA or give notice of a qualifying reason?
✓ Did the employee provide prompt notice? (ASAP)
  • If not, then make a note of that, explain to the employee it could cause a delay in what gets covered. Late notice delays what is covered under the FMLA
✓ Have employee complete any preliminary paperwork (such as a LOA Request)
✓ Determine eligibility and within 5 business days
  • If not eligible, advise employee orally or in writing that not eligible, explain what defect (12 months work, 1250 hours, or too few people near worksite) and document file
  • If eligible, provide:
    o Written notice of eligibility
    o Written Rights and Responsibilities (you can use DOL form WH-381)
    o If you seek proof, the applicable certification paperwork
✓ If you DID NOT seek proof, then issue a Designation Notice (you can use DOL form WH-382).
  If you sought proof, see below

IF YOU SOUGHT PROOF/CERTIFICATION
✓ Provide at least 15 days from receipt to return (best to confirm); provide extensions when needed
✓ If certification is late (including extensions) notify employee that you will begin counting absences, moving forward in time from the due date, until the certification is returned.
✓ Once returned, assess for completeness and sufficiency.
  • E.g., If for own serious health condition, needs to show what functions can't perform
  • E.g., If for intermittent leave for flare-ups, we need an estimated frequency and duration
  If incomplete or insufficient, notify employee of defects and provide 7 days to cure. (WH-382)
  • If employee doesn't cure, begin counting absences (forward). If attempted, but still insufficient, have employee sign HIPAA release and get the clarification from provider
✓ If complete/sufficient assess separately: block, intermittent (treatment) and intermittent (flare-ups)
✓ Issue designation notice (Approved, Not approved, Approved in Part, Denied in Part (WH-382)
✓ Document any conversations you have with employee about whether covered under FMLA

IF APPROVED
✓ Do not count absences against employee
✓ Track using weeks and fractions of weeks; know which year you are using (e.g., rolling year)
✓ Do not remove functions and mandate return or forcing employee to "make up time.
✓ Do not count as FMLA any time the employee works

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