

CareWorksUSA

FMLA and Workers' Compensation

Understanding the relationship between these two statutes

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The Family Medical Leave Act (FMLA) statute is a mandatory leave law to protect employees who need to take time away from work to care for family or for their own personal health issues. The law applies to employers with 50 or more employees and can allow an employee to take up to 12 weeks of unpaid job protected leave if they meet certain FMLA eligibility requirements.

Almost every state has a law that guarantees income to employees injured on the job. The indemnity or lost wages can come from an insurance carrier, a self-insured employer, or in our case in Ohio, the Ohio Bureau of Workers' Compensation (BWC). Ohio is one of only a few states that operates with a monopolistic state insurance fund. This fund provides injured workers who have lost eight or more days of work with compensation for their lost wages as a percentage of their actual wages with limitations.

So, how does workers' compensation interact with FMLA, since workers' compensation is not necessarily considered a leave law? Employers must remember that FMLA does not distinguish between an occupational and non-occupational injury. Therefore, any on-the-job injury requiring inpatient or ongoing treatment that is determined to be a "serious health condition" should be considered FMLA.

If an injured employee meets the serious health condition definition, it is imperative the employer determine if the employee is eligible for leave under FMLA. If an employee is eligible for leave, the employer should notify the employee in writing that the leave is covered under FMLA so the leave may be counted toward the employee's 12-week FMLA entitlement. A common mistake employers make is failing to run the workers' compensation and FMLA claim concurrently. Thus, the employee may still have additional days available beyond what is required of the employer under FMLA.

Since most workers' compensation leaves will be covered under FMLA, it is probably wise to count time away from the workplace as FMLA. If not, the employer may lose the opportunity to count the time against the entitled leave resulting in a loss of productivity for the business.

If you have any questions about this article or CareWorks USA's absence management services please visit us online at www.careworksusa.com or contact:

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