Trends in Disability and Leaves of Absence—New Solutions to Old Problems

by **Rich Fuerstenberg** | *Mercer*

Disability and paid leave of absence have always been messy business for employers. But it seems like the landscape is getting more and more complicated every day. Family Medical Leave Act (FMLA) and Americans with Disabilities Act Amendments Act (ADAAA) compliance requirements continue to frustrate employers. Plus, states and other jurisdictions are adding or changing statutory requirements with which employers must comply. As if that weren't enough, employees and company leadership read about new and expansive paid time off policies at other employers and ask why they can't have the same. What can be done? Fortunately, employers have more and better tools to respond to the challenge.

Three key areas of development should give employers hope:

- **Administration options.** Employers have more and better administration options than ever before.
- **Enabling technology.** As complex as the leave landscape is getting, new technology is helping to change some of the rules of the road.
- **New types of leave.** Employers are experimenting with new and innovative types of leave that can have a real impact on the lives of their employees.

In order to respond to the rapidly changing disability and leave landscape, employers need to understand how administration options, enabling technology and new types of leaves can help them achieve their own specific goals.

Administration Options

Historically, employers had two basic options for disability and leave administration—do it themselves or outsource. Those that handle leave administration internally may feel overwhelmed with the compliance and customer service requirements, leading them to outsource. Then again, employers that have outsourced sometimes find that the grass is not always greener on the outsourcing side of the fence. Coordinating internal functions like time and attendance and human resource information systems with the systems of the outside vendor can be as challenging as doing it themselves. Fortunately, employers have more, better and different options than ever before in making this decision.

A number of new vendors have entered the marketplace to support employers that want to administer leaves in-house. Most of these are software-as-a-service vendors that can provide an online system that employers can buy or lease to centrally track leaves instead of relying upon ad hoc local reporting. In addition, these systems are updated regularly as new laws and regulations are passed, helping to keep do-it-yourself employers compliant.

The range of vendors continues to grow. Options include the following:

- **Disability vendors:** Packaging disability and leave administration with the employer's long-term disability (LTD) insurer continues to be common. What is changing is the quality of those solutions (which is improving), the range of employer size they will support (which is expanding to include smaller employers) and the price (which continues to fall). The range of services offered also continues to expand beyond short-term disability (STD) and FMLA administration to include state paid and unpaid leave requirements as well as support with ADAAA accommodation requests.

- **Third-party administrators** (TPAs): Increasingly, employers of varying sizes are outsourcing disability and leave administration to a TPA, separate and apart from their disability insurer. As a general rule, TPAs tend to be more flexible for employers with complex processes and communication requirements, as well as for those focused on customizing the employee experience. While TPAs were once used only by very large employers, these vendors also are expanding their services to smaller employers at attractive prices.
- **Cosourced solutions:** Employers no longer have to choose between doing it all themselves or outsourcing all functions. Disability vendors and TPAs can make their services available on an à la carte basis for employers that want to keep some leave administration functions in-house while relying upon a third party for some functions such as clinical management of complex claims.

With the range of leave administration options expanding and evolving, employers of all sizes should reassess their current approach and weigh their options. Mercer's *2018 Absence and Disability Management Survey* shows employers are increasingly looking for help. In comparison with the 2015 survey, the percentage of survey participants that report they are outsourcing FMLA administration increased from 40% to 44%, and the percentage outsourcing STD administration increased from 61% to 67%. In particular, as more states expand statutory paid leave requirements, the number of employers looking to outsource will grow. For example, when New York implemented statutory paid family leave effective January 1, 2018, a number of employers with large New York-based employee populations outsourced leave for the first time, citing the New York law as the proverbial straw that broke the camel's back. As Washington state, the District of Columbia and Massachusetts implement their own statutory leave laws over the next couple of years, other currently insourced employers in those jurisdictions are expected to follow a similar path or at least consider software solutions to improve their internal effectiveness.

Enabling Technology

Major advancements in technology are part of what has made leave administration more manageable than in the past. One of the main challenges is always keeping multiple computer systems in sync. When an employee reports a leave, it touches many different employer systems, including payroll, time and attendance, and human resources information systems. Employers that outsource their leave can use reverse file feeds, by which the outsourced vendor sends a file that can be imported into the various employer systems, to keep systems aligned. But setting up and maintaining those file feeds can be costly and time-consuming, and updates happen only when files are actually sent and loaded.

With more employers moving to cloud-based, open-source systems, some leave vendors are modifying their reverse file feed process to support application program interface (API) connectivity. Compared with traditional reverse file feeds, API connections are not just easier to set up, but the vendor and employer systems are always connected so updates happen in real time. For some employers, API connectivity can be a real game changer to support staffing by eliminating manual

AT A GLANCE

- The growing number of state and local laws mandating paid leave is making the already complicated business of leave administration even more challenging.
- Options available for helping employers administer paid leaves include disability vendors, third-party administrators and cosourced solutions.
- Technological advancements including cloud-based technology and artificial intelligence may improve employers' ability to manage leave.
- Employers are offering new and expanded types of leave to provide paid time off for specific life events such as childbirth or the death of a family member.

system entry and reliance on multiple reports from their disability and leave vendor. It's even helping some employers reevaluate the ability to integrate occupational and nonoccupational leave management.

Disability and leave vendors also are embracing artificial intelligence technology to enhance the administrative process. Some are deploying the technology to review claim notes, looking for clinical intervention opportunities that claim managers miss. Some are using it during claimant telephone calls to "listen" for tonality, cueing the intake specialist or claim manager to slow down or show more empathy. Mobile responsive websites are overtaking vendor-specific apps, supporting claim reporting and uploading of documents from smartphones (improving claim decision timeliness, benefit payment and elimination of information requests). Two-way texting technology is being used to update claimants on status. The basic availability of this technology, as well as whether it's included in core services or as a buy-up, varies from vendor to vendor.

For employers focused on enhancing the employee experience, some vendors are investing in technology that makes the leave process understandable for average employees. For any one leave event, an employee may be eligible for multiple paid and unpaid leaves that are provided by the employer or required by federal or state law. Vendors are deploying a range of solutions in easy-to-use, one-stop shopping tools that explain to an employee when each leave starts and ends. This technology doesn't replace the required legal communications but complements it.

New Types of Leave

It seems almost quaint to think of the days when employers provided paid time off (PTO) mainly in the form of vacation, sick days and STD. It seems that almost every day, employers are offering new and expanded types of leave that provide PTO for specific life events. These new and expanded leaves include the following.

- **Paid parental leave.** According to Mercer's *2015 Absence and Disability Management Survey,* about 25% of employers offered paid parental leave for employees to bond with a new child. In 2018, that number has increased to 40%. For a variety of reasons, especially to ensure compliance with various applicable regulations, more employers are offering parental leave on a completely gender-neutral basis and separate and distinct from STD benefits. The median number of weeks employers offer to birth parents in their paid parental leave policies—six weeks—remained unchanged between the 2015 and 2018 surveys. It appears that while some employers have expanded paid parental leave to between 12 and 20 weeks, more recent adopters are taking a more cautious approach and are offering two to four weeks, leaving the median unchanged.
- **Paid caregiver leave.** Of course, bonding with a new child is not the only life event for which employees take time off from work. There has been a steady increase in employers offering PTO policies that enable employees to care for sick family members. In addition to responding to the demands of a diverse workforce, many employers are adding paid caregiver leave because the costs are lower than in the past due to reimbursements or offsets from employee-paid statutory paid family leave mandates. In fact, the Mercer *2018 Absence and Disability Management Survey* asked about employer prevalence of such leaves for the first time, reporting that 19% of employers already have such policies in place. The typical paid caregiver leave benefit is in the two- to six-week range.
- **Unlimited vacation/PTO.** Unlimited vacation or PTO has generated a lot of questions, but there appears to be more smoke than fire. The percentage of employers offering or considering unlimited vacation/PTO was essentially unchanged when comparing the results from the 2015 and 2018 Mercer *Absence and Disability Management* surveys. Under an unlimited vacation or PTO policy, the employer has no fixed or formal vacation accrual schedule. Rather, employees take time off when they need it, with manager approval. Some of the benefits of such a policy may be obvious. It frees the employer

from fixed vacation schedules, which can be critical in industries with tight labor markets like high tech. Because vacation doesn't accrue, employers don't have to make a payout upon termination. Administration may also be simpler. But even unlimited vacation has limits. If sick days are included in the policy, the employer may still need to identify some days to comply with state and local paid sick leave mandates. Employers that have large accrued vacation balances must have a transition plan. There's also a question of how to manage staffing requirements under such a policy. Unlimited PTO may work in the C-suite, but can it work for a manufacturing company or retailer? Many employers look at such policies, but few implement for their entire workforce.

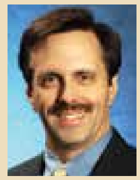
- **Bereavement leave.** Historically, employers have offered three to five days for bereavement leave. But, led in part by Sheryl Sandberg's personal experience, many employers are revisiting their bereavement leave policies, recognizing that three to five days is not enough time for an employee to mourn the loss of an immediate family member. Updated bereavement leave policies of two to four weeks are becoming more common.

Beyond that, there's a myriad of policies on the horizon, ranging from PTO to bond with a new pet (or when that pet dies) to climate change leave. The only certainty is that paid leave policies are increasing. As employers review their approaches to leave administration, the ability to administer these new leaves, including coordination with statutory requirements, is critical. A leave that no one uses because the design is poor or the execution is confusing isn't worth the paper it's printed on.

Summary

As the demand for leaves—those that are employer-sponsored and those required by law—increases, employers need to continuously review the tools at their disposal. Leave administration may never be a pleasant experience but, as discussed, there are new and improved technology-driven options employers can use to ensure compliance, enhance the employee experience and perhaps even grab the elusive gold ring of absence management. For the employers willing to invest time and money in the right solutions, the payoff can be significant. BQ

AUTHOR



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