

Take It or Leave It: The Rise of Outsourcing Leave Administration

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FMLA. ADA. PTO – the acronyms alone are enough to make your head spin, much less the administration of required leave laws. Employers need accurate and consistent execution of leave policies, sometimes across multiple corporate locations nationwide, and it has become ever more difficult for employers to keep up and comply with changing federal, state and local leave regulations. As a result, the number of employers outsourcing leave management and related functions to third-party administrators (TPAs) is rapidly growing as a cost-effective and efficient alternative to internal management of such benefits. While FMLA is the most common type of leave outsourced by employers today, companies are increasingly outsourcing the administration of other forms of leave, including short- and long-term disability leave, ADA leave as an accommodation, employee assistance programs, group health, workers' compensation time, paid sick and parental leave, and military, personal and bereavement leave.

Benefits and Risks of Outsourcing

Effective outsourcing, when planned and implemented in a thoughtful and deliberate way, can help employers manage the various challenges of leave administration more effectively by streamlining the leave process. Outsourcing can also minimize or remove the personal or emotional aspect of direct discussions between employees and management about sensitive health issues. In addition, it increases privacy by helping to shield employers from the details surrounding an employee's leave and reduces the likelihood of access to confidential employee medical records.

Despite these advantages, outsourcing also involves risk. For example, many employers believe that by using a TPA, they can avoid all liability for potential leave violations. Although steps may be taken to mitigate risk, outsourcing leave

administration generally does not insulate employers from liability. Employers also essentially relinquish control over the decision-making involved in the leave process to the TPA, making it difficult for an employer to maintain control and oversight of the process. As such, frequent and effective communication between employers and TPAs is crucial to ensuring a smooth administration process and compliance with all legal obligations.

Best Practices for Dealing with TPAs

There are several recommended practices for employers outsourcing all or some of their leave management responsibilities that will facilitate their relationship with the TPA and avoid many of the common hazards associated with third-party leave administration.

- Review your company's leave practices and policies with your TPA and confirm which leaves will be outsourced.
- Clearly delineate and document the roles and responsibilities of each party. Hold regular meetings with your vendor to discuss program feedback and concerns, and if warranted, to allow for changes to be implemented immediately.
- Confirm that your TPA's leave management procedures comply with all applicable laws and regulations by obtaining information from the TPA regarding its process for evaluating leave requests. Remember, even with outsourcing, employers may bear the ultimate responsibility for compliance with workplace laws.
- Ensure that there is a process for obtaining and reviewing documents and materials that are submitted by your employees to your TPA. While the TPA should be handling the day-to-day questions and issues as they arise, if you have an employee claim or question arise, you want to be sure that you are

able to quickly communicate with and obtain information from your TPA.

- Integrate FMLA, disability and other leave programs with end-to-end absence management. Since failing to offer all available forms of leave in connection with an absence can lead to significant liability, employers should confirm that the TPA is considering all forms of leave available to each employee and that, whenever a request for leave is denied, there are no other forms of leave available.
- Train all managers and appropriate HR staff to recognize and respond appropriately to FMLA and ADA requests and to understand how employees might invoke their rights under FMLA and ADA to ensure they are gathering the right information and taking the right steps. Managers and HR staff should also be trained on the various communications that occur throughout the life of a leave request.
- Consolidate outsourced leave administration to a single vendor. Retaining responsibility for some types of leave and/or leave management tasks internally while outsourcing others increases the likelihood of errors and miscommunications, which undermines the entire purpose of outsourcing to enhance efficiency and reduce liability. Fully outsourcing leave programs and all related management can reduce cost, minimize information-sharing and lessen the amount of necessary communications between parties.
- Establish and maintain a consistent approach to minimize liability, legal complications and inquiries from the DOL or EEOC. Leave policies should be uniform and applied consistently, whether an employer decides to outsource leave administration or to keep the function in-house.

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While TPAs may be a good resource for managing and administering leave, employers should properly manage their TPAs. Before retaining a TPA, employers should weigh the risks and benefits to decide whether a TPA is right for the company's structure, culture, resources and specific needs.

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