

LEAVES OF ABSENCE: HOW TO AVOID TWO OF THE BASIC MISTAKES

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Managing leaves of absence is one of the most challenging tasks faced by supervisors and human resources professionals. Not only does the law authorize employees to take leaves of absence in a wide variety of circumstances, but the rules regarding the various forms of leave change frequently. While mastering the technical rules applicable to each different form of leave is a daunting task, many mistakes that create liability for employers result not from failure to understand the intricacies of a leave statute, but from failure to recognize that employees may be entitled to several forms of leave at the same time.

All too often, employers focus their attention on one particular form of leave and “lose the forest for the trees,” overlooking other leave issues that may be present in a given situation. When an employee is injured at work, for example, an inexperienced employer may focus exclusively on the employee’s right to workers’ compensation leave and fail to consider whether the employee may also hold rights under the Family and Medical Leave Act (FMLA) or California Family Rights Act (CFRA). In such a scenario, the employer may manage the workers’ compensation issues appropriately, but expose itself to liability by neglecting its obligations under the FMLA and CFRA.

The challenge of complying with the technical obligations created by various leave laws also commonly causes employers to overlook their general obligation to provide reasonable accommodation to disabled employees. If an employee exhausts his or her right to leave under the FMLA, CFRA or other law and is unable to return to work at that time, the employer should consider whether an extension of the employee’s leave of absence might constitute a reasonable accommodation. All too frequently, employers assume that they have no further obligation to an employee once the employee has exhausted his or her statutory leave rights, thereby violating their duties to provide reasonable accommodation and to engage in the so-called “interactive process.”

Leave of absence issues can be challenging because many of the rules are highly technical, and because several different leave laws may apply simultaneously to a given employee. Employers seeking to comply with leave laws must be sure that they not only understand the technical requirements of a particular law, but also that they have identified all the laws that could potentially apply in a given situation. If you have any questions regarding leaves of absence or any other employment law issues, we invite you to contact one of our attorneys:

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