

The Best of FMLA from 2011 and What's In Store for Employers in 2012

Posted by Jeff Nowak January 06, 2012

First, a heartfelt THANK YOU for following our FMLA Insights blog in 2011.

In 2011, our most popular blog entries involved two general topics: 1) employers' best practices for FMLA administration; and 2) leave as a reasonable accommodation under the ADA when FMLA leave ends. We share these posts again below, since we believe the guidance is valuable as we enter a new year.

The Best of 2011

In 2011, two blog posts highlighted practical steps employers should take to maximize the efficiency of their FMLA leave administration. Updating your FMLA policy and forms, using the medical certification process to your advantage, enforcing call-in policies...and much more below.

Policies, Practices and More: An FMLA "To Do" List for 2011

Play Ball! An FMLA Lineup That Keeps You in the Pennant Race

In August and September 2011, about 900 attendees attended my webinar with the EEOC Regional Attorney John Hendrickson regarding "Leave" as a reasonable accommodation under the ADA. My takeaways from that webinar proved to be popular as well, and employers kept the questions coming.

What's in Store for FMLA in 2012?

The DOL has been relatively quiet on the FMLA front. Some time ago, it intimated that it would conduct a survey in 2011 to "provide insight into how families use leave," but we heard nothing further. Some (including me) wondered at the time whether this survey would signal even more regulatory change for the FMLA. At this point, however, we are left guessing as to whether the DOL will even update its FMLA forms to include recommended changes such as the GINA disclaimer and the amended definition of "exigency leave" for military family leave. Days ago, though, the DOL did publish this handy dandy guidance on FMLA retaliation, which told us what we should already know -- Don't retaliate against employees who take FMLA leave.

As we move into 2012, the EEOC (as opposed to DOL) seems to be grabbing the headlines on employee leave of absence issues, as it continues its war on automatic termination provisions and the use of leave as a reasonable accommodation under the ADA. (See my post later this month on



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this topic.) This year, we are likely to witness even more EEOC settlements in this area. More importantly, the employer community eagerly awaits whether the EEOC will issue further guidance on "leave" as a reasonable accommodation, as it forecasted at its June 2011 [hearing](#) on this subject. Will it give us the guidance we need to reduce liability and bring some predictability on this subject?

In the meantime, we soldier on. We update FMLA policies and forms. We change our FMLA leave year so it is the most advantageous for our operations. We update and communicate our call-in policies so all employees understand their responsibilities. We clean up job descriptions so they are useful in the context of both the FMLA and ADA. We create call-in questionnaires and effective medical certification procedures so we can better combat FMLA abuse. (Click [here](#) for one of our more popular articles in 2011 on fighting FMLA abuse.) We try to avoid an ever-growing list of FMLA [class actions](#). We train our supervisors and HR professionals so they are in the best position to administer the FMLA.

May your 2012 be an FMLA worry-free year.

Finally...a Thank You, Again!

As we start out 2012, we give thanks to you! Because of our readers and your votes, we were voted the No. 3 Labor and Employment blog in 2011 by the [ABA Journal](#) and the No. 2 L&E blog of 2011 by [LexisNexis](#). We look forward to communicating with you about all things FMLA in the year ahead. Keep the questions coming!

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