

Intersection of Employee Leave, Wage Replacement Benefits, and Healthcare Coverage

Primer on the Coordination of Benefits for Nonprofits

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Agenda

- Potential Benefits
- Benefit Coordination and Benefit Continuation
- Apply to Real-Life Scenarios
- Best Practices Approach—Key Questions
- Q&A

Potential Benefits

An employee is absent for family or medical reasons. What are the potential benefits?

- **Unpaid Leave**—leave entitlement only, no cash
- **Wage Replacement**—cash only, no leave entitlement
- **Paid Leave**—leave entitlement and cash

Unpaid Leave

- **Federal Family and Medical Leave Act (“Federal FMLA”)**
 - Applies to employers with 50 or more employees
 - Up to 12 weeks of job-protected unpaid leave to eligible employees for family and medical reasons
- **State family and medical leave laws (“State FMLA”)**
 - Definition of covered employer varies by state
 - Amount of unpaid leave varies by state
 - Some state laws combine family and medical leave into a single entitlement, while other state laws provide a separate family leave entitlement and a separate medical leave entitlement.

Unpaid Leave (continued)

- State FMLA must be provided (where applicable), even if employee is entitled to Federal FMLA.
- Employer may generally require State FMLA and Federal FMLA to run concurrently to avoid “stacking” of leave.
- **Americans with Disabilities Act (ADA) Accommodation**
- **Employer Policy or Practice**

NOTE: To avoid loss of income, an employee may be able to received Wage Replacement benefits during Unpaid Leave, or may be able to have Paid Leave may run concurrently with Unpaid Leave.

Wage Replacement

- **Occupational Injury or Illness**
 - Workers' Compensation
 - Driven solely by state law
- **Non-Occupational Injury or Illness**
 - Short-Term Disability
 - Mandated in: CA, HI, NJ, NY, RI
 - Employer-Provided STD may be self-funded (sometimes called “salary continuation”) or fully-insured
 - Long-Term Disability

Paid Leave

- **State-Managed Paid Family Leave and/or Paid Medical Leave**
 - Funded through payroll taxes on the employer and/or employee
 - Paid leave claim is submitted to the relevant state agency
 - If claim is approved, employer provides job-protected leave and state provides wage replacement benefits directly to the employee by the state, and employer provides corresponding unpaid leave
- **State/Local (Mandated) Paid Leave**
 - Generally accrued on an hours-worked basis and, depending on the state, can be used for a variety of reasons, including care for a family member.
- **Employer-Provided (Voluntary) Paid Leave**
 - Paid Time Off, Vacation, Sick Leave, Parental Leave, etc.

Benefit Coordination Issues

- **Generally**, the total paid benefits from all sources cannot exceed the employee's regular pay.
- **But do not assume** that Employer-Provided Paid Leave can be used to make up the difference between regular pay and Wage Replacement benefits or Mandated Paid Leave.
 - Generally, an employee is not allowed to “top up” workers’ compensation benefits.
 - Generally, an employee is allowed to “top up” mandated paid family leave and mandated paid sick leave.
 - There is no “generally” when it comes to short-term disability. Each state and each policy will have its own rules about what forms of income reduce the disability benefit.

Benefit Continuation Issues

- **Benefits in General** – Do not necessarily continue during all forms of leave.
 - Health benefits (medical, dental, vision, EAP, health FSA) typically continue during Federal FMLA, State FMLA, and other forms of state-mandated leave.
 - Disability and life benefits are all over the map
 - You must check the insurance policies!
 - If the employer keeps covering someone who is not really eligible
 - That's arguably insurance fraud.
 - The insurance company could deny coverage. If that happens, there is a decent chance that the employer will be required to pay the benefit itself.

Benefit Continuation Issues (continued)

- **Major Medical Coverage in Particular** – Often says that an employee is eligible if s/he is “regularly scheduled to work at least 30 hours per week.”
 - When is employee no longer eligible?
 - When must Federal COBRA or State mini-COBRA be offered?

SCENARIO #1

DC Employee Gives Birth to a Child

- **Unpaid Leave**
 - Federal FMLA –12 weeks family and medical leave **combined**
 - DC FMLA –16 weeks family leave **plus** 16 weeks medical leave
- **Wage Replacement**
 - Employer Short-Term Disability – 26 weeks at 100% (standard is 6 weeks for vaginal birth, 8 weeks for c-section)
- **Paid Leave**
 - DC Paid Family Leave – 8 weeks
 - Employer-Provided Parental Leave – 8 weeks (begins at child’s birth, adoption, or placement for adoption, or after STD ends)
 - Employer-Provided Paid Time Off – 4 weeks

SCENARIO #1

DC Employee Gives Birth to a Child

Dates	Unpaid Leave DC FMLA	Unpaid Leave FMLA	Wage Replacement	Paid Leave Employer	Paid Leave DC PFL
August 6 - 12	1/16 Medical	1/12	STD 1/6		1/8
August 15 - 19	2/16 Medical	2/12	STD 2/6		2/8
August 22 - 26	3/16 Medical	3/12	STD 3/6		3/6
August 29 - Sep 2	4/16 Medical	4/12	STD 4/6		4/8
September 5 - 9	5/16 Medical	5/12	STD 5/6		5/8
September 12 -16	6/16 Medical	6/12	STD 6/6		6/8
September 19 - 23	1/16 Family	7/12		Parental Leave 1/8	7/8
September 26 - 30	2/16 Family	8/12		Parental Leave 2/8	8/8
October 3 - 7	3/16 Family	9/12		Parental Leave 3/8	
October 10 -14	4/16 Family	10/12		Parental Leave 4/8	
October 17 - 21	5/16 Family	11/12		Parental Leave 5/8	
October 24 - 28	6/16 Family	12/12		Parental Leave 6/8	
November 14 - 18	7/16 Family			Parental Leave 7/8	
November 21 - 25	8/16 Family			Parental Leave 8/8	
November 28 - Dec 2	9/16 Family			Paid Time Off 1/2	
December 5 - 9	10/16 Family			Paid Time Off 2/2	

SCENARIO #2

NE Employee is Totally Disabled

- **Unpaid Leave**
 - Federal FMLA –12 weeks family and medical leave **combined**
- **Wage Replacement**
 - Employer Short-Term Disability – 26 weeks at 60%
- **Paid Leave**
 - Employer-Provided Medical Leave – 6 weeks
 - Employer-Provided Vacation – 4 weeks

SCENARIO #2

NE Employee is Totally Disabled

Dates	Unpaid Leave FMLA	Wage Replacement	Paid Leave Employer
August 6 - 12	1/12	STD 1/26	Medical 1/6
August 15 - 19	2/12	STD 2/26	Medical 2/6
August 22 - 26	3/12	STD 3/26	Medical 3/6
August 29 - Sep 2	4/12	STD 4/26	Medical 4/6
September 5 - 9	5/12	STD 5/26	Medical 5/6
September 12 -16	6/12	STD 6/26	Medical 6/6
September 19 - 23	7/12	STD 7/26	Vacation 1/4
September 26 - 30	8/12	STD 8/26	Vacation 2/4
October 3 - 7	9/12	STD 9/26	Vacation 3/4
October 10 -14	10/12	STD 10/26	Vacation 4/4
October 17 - 21	11/12	STD 11/26	
October 24 - 28	12/12	STD 12/26	
November 14 - 18		STD 13/26	
November 21 - 25		STD 14/26	
November 28 - Dec 2		STD 15/26	
December 5 - 9		STD 16/26	

Key Questions

1. For what reason does the employee need leave?
2. For how long is the leave needed?
3. Is there legally-mandated unpaid leave available?
 - a. Federal
 - b. State
4. Is there legally-mandated paid leave available?
 - a. State-Managed paid leave
 - b. State or local mandates for employers to provide paid leave
5. Does the organization provide short-term and/or long-term disability?
 - a. Was the employee covered on the date of disability?
 - b. What is the elimination period?
6. What forms of non-mandated paid leave does the organization provide?
7. When will the employee lose eligibility for benefits?

Employer Leave Policies—Final Random Thoughts

- Specify which leaves run concurrently with which other leaves
- Specify which benefits continue during which leaves and when those benefits will end
- Specify that paid leave and wage replacement cannot exceed employee's regular pay
- Consider adopting a “Leave-to-Term” policy

QUESTIONS

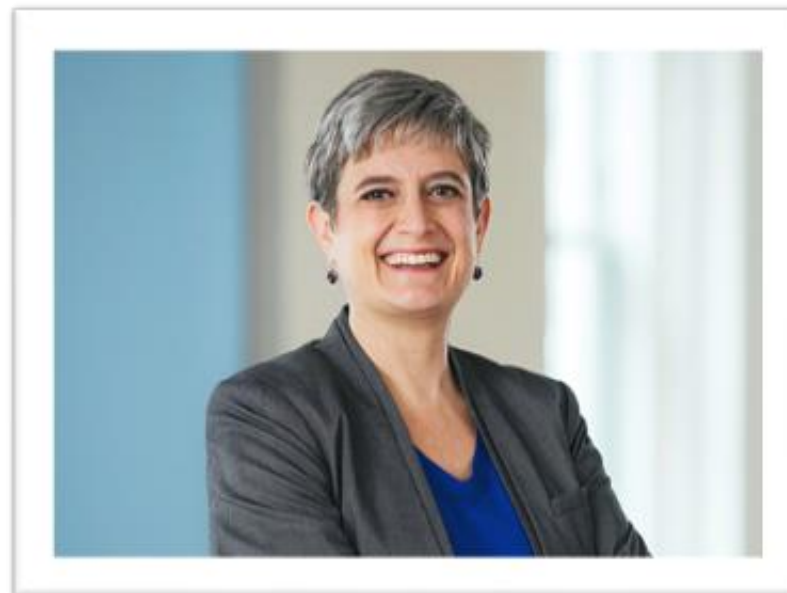


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