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## Top 11 Reasons to Review Your Family Medical Leave Administration

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One of the greatest fears employers have is to end up in litigation as a result of a Family Medical Leave (FML) administrative mistake. To get a better understanding, we asked a labor and employment attorney to share with us some common mistakes or oversights employers make when managing their FML program.

Kirk Wall, Attorney at Law with Dinsmore & Shohl LLP, provided us some of his experiences with employers who either failed to meet their obligations under the Family Medical Leave Act (FMLA) or mismanaged their program in general

### **Direct Excerpts From a Recent Conversation Between CareWorks USA and Attorney Kirk Wall.**

*"Employers need to take time to review applications for leave under the FMLA and not be in a rush to grant leave just because an employee has requested FML. Employers need to have a checklist to go through for every application and make sure that the employee has satisfied each requirement to be entitled to leave. Each time we see this, it's usually because an employer rushed in making a decision without thoroughly reviewing the paperwork. Leaves are frequently granted that can be denied. At the other end of the spectrum, employers must be careful not to overlook a request for leave assuming that an employee must specifically use some magic words or check a box on a form to get protected family or medical leave."*

**Kirk M. Wall**  
Attorney at Law  
Dinsmore & Shohl LLP

### **Mr. Wall provided us his Top 11 biggest mistakes in FML Administration.**

1. Failure to run FMLA leave concurrently with workers' compensation leave.
2. To grant leave to ineligible employees (checking the initial eligibility requirements - 12 months and 1,250 hours) before moving on to the question of whether or not there is a serious health condition, etc.
3. Failure to notify an employee of their rights.

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(continued)

4. Failure to recognize an employee may be entitled to FML when an employee does not specifically request it, yet provides information of a serious condition.
5. Failure to verify an employee has a serious health condition.
6. Failure to train managers/supervisors on FMLA requirements.
7. Failure to provide a job description with the designation notice if fitness for duty (to address the employee’s ability to perform essential job functions) is required.
8. Failure to follow up on insufficiencies/inconsistencies in certification.
9. Failure to consider ADA and Ohio pregnancy/maternity leave law issues at expiration of FML.
10. Failure to define the applicable 12-month period.
11. Failure to follow up with the submission of paperwork in a timely manner and failure to ensure employees have submitted completed paperwork. Employers sometimes will fail to deny a leave based on an employee not meeting deadlines to submit certification.

**Take a moment to review your FML program to see if you are vulnerable to any of these mistakes.**

### **Contact Mr. Wall**

Kirk M. Wall is a Partner in the Labor and Employment Law Department of Dinsmore & Shohl LLP. Mr. Wall practices general litigation and labor and employment law. He also represents clients before the National Labor Relations Board, the Equal Employment Opportunity Commission (EEOC), the Ohio Civil Rights Commission and the State Employment Relations Board for Ohio. **If you would like to contact Mr. Wall about common mistakes in FML administration, he can be reached at (614) 628-6905.**

### **Contact CareWorks USA**

If you have questions about CareWorks USA’s Family Medical Leave administration services or any information in this update, please contact CareWorks USA’s Disability Management Solutions.

#### **■ CareWorks USA**

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