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LESSONS LEARNED FROM PARKER, SMITH & FEEK'S FMLA MANUFACTURING ROUNDTABLE

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Recently, Parker, Smith & Feek hosted our first ever manufacturing human resources roundtable to discuss FMLA and state leave laws. **The goal of our roundtable was to give those in an HR or similar role the opportunity to share best practices, concerns, and general questions with an expert in employment advice, as well as their peers.** With all the different laws in place, such as the federal FMLA, Washington Family Leave Act, Washington Maternity Disability Regulation, and the Washington Family Care Act, there can be a lot of confusion to as which law applies and when. The roundtable format gave each person an opportunity to share some of those confusing situations and get clarity from our expert in Employment Practices Liability law. Below are excerpts from the discussion of the interplay between different laws from Gillian Murphy at Davis Wright Tremaine. Gillian was also gracious enough to be our thought leader for the event, which was very fortunate given the number of questions we had.



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One example that illustrates the confusion that may arise from all the different state laws is maternity leave. As of 1993, maternity leave has fallen under FMLA and guarantees the employee 12 weeks of unpaid time off. In fact, the U.S. is one of just two countries in the world that doesn't ensure any paid time off for new moms, according to a report from the International Labor Organization as stated in the Business Insider. With the additional state laws, an employee may be eligible for additional time off that could potentially be paid under the different state laws. Here's an example of that situation that was discussed during the roundtable:

An employer has more than 50 employees. Assume that an employee is eligible under both the FMLA and the Washington State Family Leave Act.

The female employee is considered "disabled" due to typical childbirth for six weeks. Employee wants additional leave to care for newborn after the employee is no longer "disabled." In this example, the employee is entitled to a total of 18 weeks leave:

First six weeks – Washington State Disability Regulation / FMLA (own serious health condition)

*Second six weeks – FMLA (to care for newborn) / Washington Family Leave Act (to care for newborn).***

Third six weeks – Washington Family Leave Act (to care for newborn).

Employee has exhausted both her FMLA and WFLA leave for the 12-month entitlement period.

Because the first 12 weeks is FMLA leave, the employer would be required to pay its portion of the employee's group health insurance premiums. At the end of the first 12 weeks, the employer would not have to continue group health insurance payments, but would have to allow the employee to pay the employer's share under COBRA. During the entire 18 weeks the employee's job would need to be held.

Another common area of confusion deals with the employment of contractors. As manufacturers deal with increasing healthcare costs, managing employees, and increased state and payroll taxes, the hiring of a contract employee becomes more attractive in some situations. A large manufacturer might also have a large project that needs an influx of workers, and even though going the contract employee route might be easier, it comes with additional FMLA requirements that can also be quite confusing. Here's another example that outlines that particular situation:

The one fact I think is particularly interesting for manufacturers is that contractors employed by staffing agencies count when determining if the employer is big enough to be covered by the FMLA. FMLA leave doesn't need to be provided to contractors (the staffing agency handles that), but they still are counted. Likewise, if a contractor is eventually hired by a company, the time the contractor spent at the facility as a contractor counts toward the 12-month eligibility threshold.

***If this same employee decided to return to work after 12 weeks instead of 18 weeks, she would have an additional six weeks of Washington State Family Leave available to care for the child during the balance of the 12 month period after the birth of the child.*

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Along with the examples provided from the manufacturing space, FMLA can also provide complications around abuse of the program and the ability to prove that an employee is in fact abusing the program. Having a sound knowledge base or someone who you can bounce these scenarios off is very important when dealing with all the rules and regulations surrounding FMLA and other Washington State leave laws. At Parker, Smith & Feek, giving our clients and prospects a forum to discuss these ideas definitely helps in their day-to-day handling of these sometimes complicated issues. Here's some feedback on what was valuable from the group that participated in our first manufacturing-specific roundtable for those that work in the HR space. **If you have any immediate concerns about how FMLA may affect your benefits program or HR department, contact an experienced broker today.**



“ As I am new to taking on tasks pertaining to HR, I found the entire discussion valuable. I learned a lot.
 ~ **Nicole Saccoman**
 from *UE Technologies* ”

“ Meeting others in similar roles (networking) and having an expert to bounce questions off of.
 ~ **Vicky Bajwa**
 TRUE Brands ”

“ I liked the open discussion and hearing other attendee's experiences and issues that they are having as well.
 ~ **Rachel Camarillo**
 from *Northstar Ice* ”

“ Asking questions about our particular situation.
 ~ **Barb Miles**
 Mutual Materials ”