

Modernizing Leave Programs in Health Care

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A business of Marsh McLennan

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Presenters



Steve Cherok

Senior Vice President– Charlotte, North Carolina, and has consulted with MMA and its predecessor companies since inception in 1999. Steve consulting and business activities are dedicated to the development of our Health Care/Hospital System client growth and solution development. Steve is a member of several healthcare human resources associations, including; ASHHRA, and The Children’s Hospital Association.

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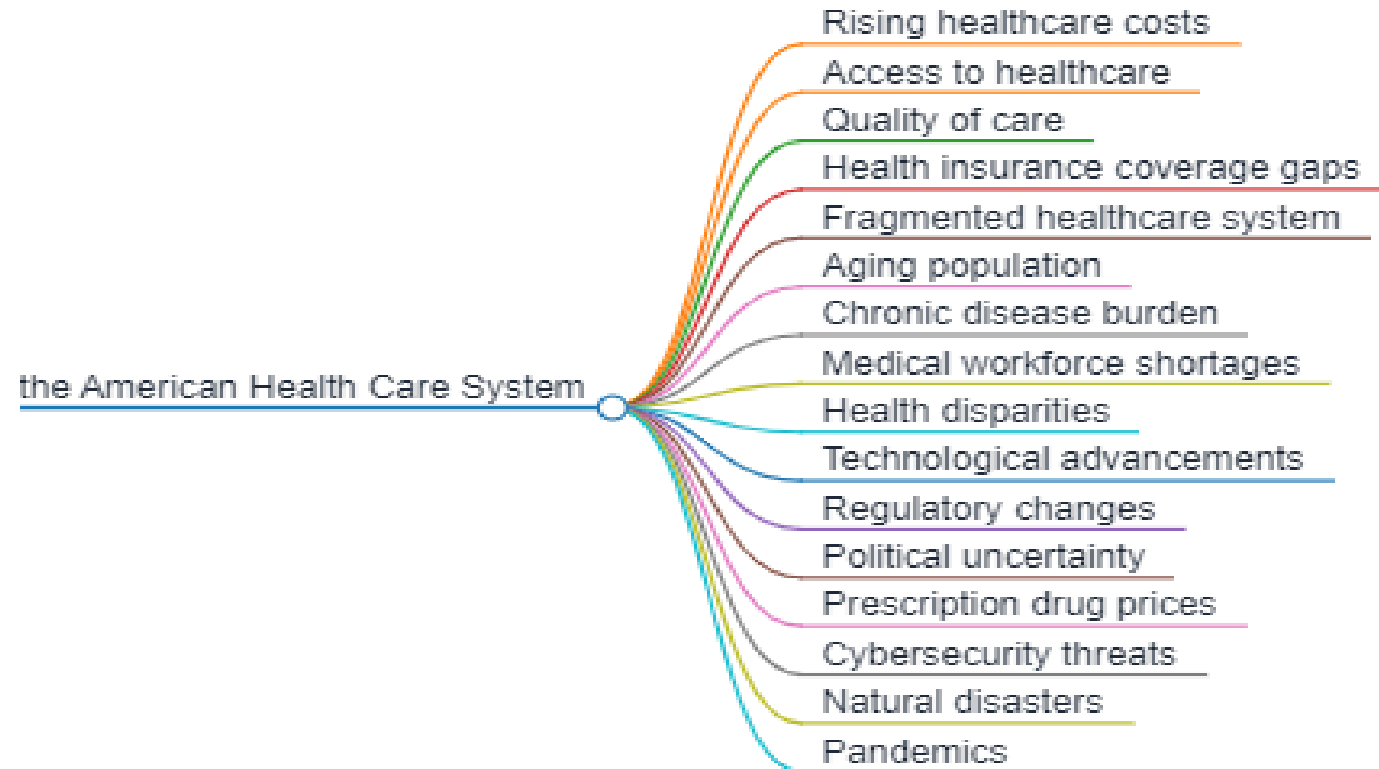
Jim Jantz

Director of Compliance – Absence, Disability, and Life (ADL) at Marsh McLennan Agency, and an attorney with a dedicated focus on compliance within the ADL space. Jim is responsible for keeping the practice up to date with all federal, state, and local statutory disability and leave laws/regulations; while serving as the subject-matter expert on all regulatory issues faced by clients. Jim's wealth of experience and expertise is rooted in his roles with two large and complex employers. In one position, he concentrated on compliance within the LOA and accommodations realm. In his next role, Jim managed LOA, short- and long-term disability, PTO/vacation, and other related programs, demonstrating his versatility in managing various aspects of employee benefits. With a proven track record in navigating the complexities of ADL compliance, Jim brings a unique perspective and experience to compliance consultation.

Jim.Jantz@marshmma.com

A Detailed look into modernizing leave programs in health care

Challenges to The American Health Care System



Why modernize time off programs?

Employee Retention

Competitive Advantage

Cost Management

Work-Life Balance

Employee Well-being

Employee Engagement

Compliance

Efficiency

Patient Safety

MMA's Healthcare Vertical

We understand the uniqueness of hospitals and health systems

Hospital Leverage



- **#1** Vertical segment
- **1M+** Covered employees
- Hospital specific benchmarking
- Unique specialty hospital knowledge
- Hospital aggregation purchasing
- Clients in all 50 states

MMA Understands Healthcare's Challenges

- Mental Health / Burnout
- Complex Patient Care
- Workforce Wellbeing & Optimization
- Labor pressures & Turnover
- Reimbursement
- Career / Market Competition
- Staffing Shortages
- Emerging remote workers

Knowledge Exchange



- ASHHRA
- CHA
- HFMA
- IBI
- DMEC
- NBGH
- HCHR
- Oliver Wyman HIC
- Aetna Advisory Board
- Various insurance vendor and TPA Advisory Boards

MMA Hospital System Clients – Pictures worth 1000 words



2025 Leaves of Absence and Time Away from Work Survey



We want to hear from you. Help us shape our 2025 LOA survey!

We are excited to announce that, following the success of MMA ADL's 2023 Leaves of Absence and Time Away from Work Survey, we will be conducting the survey once again this year. To ensure we cover the most relevant topics for large employers, we are seeking your input on the leave of absence and time off work benefits that you are interested in learning more about in this upcoming year.

Your valuable feedback will help us tailor the survey to address the specific areas of interest within the industry. We appreciate your participation and look forward to gathering insights and furthering our benchmark capabilities.

2023 Highlights include:

- The most recent trends in absence and time off prevalence and policy design
- 217 employers with an average size of 25,000 employees
- A large representation of national employers (73%) and industries (16)

Topics included: bonding leave, family/caregiver leave, pregnancy support, paid time off, vacation, sick time, holiday schedules, bereavement time, sabbatical leave, volunteer time off, emergency leave, and short-term disability plan design.

Jim Jantz, JD

Director of Compliance - ADL

ADL Center of Excellence (COE)

Industry Leading Resources

60+ MarshMMA colleagues dedicated solely to supporting large employers' needs specific to leave, disability and time off programs.



Audit

- Manage current client audits
- Support new business opportunities
- Strategy and content to drive our audit practice forward
- Output updates



Compliance

- Department managed by ADL dedicated in-house attorney
- Manages statutory updates
- Responsible for statutory tools in partnership with data group
- White-papers/blogs



Actuarial/Data Analytics

- Develop and maintain ADL tools
- Trends analysis
- Technology
- UW support
- Benchmarking



Market Intelligence/Best Practices

- Manage RFI process
- Repository of content with best practices and general knowledge
- Complex project support



Mid-Market

- Support EH&B current clients and colleagues
- Liaison with compliance team for mid-market specific communication/education

Challenging Compliance Liability

Family and Medical Leave Act (FMLA)

It's important for employers to be aware of the **compliance risks** and take proactive measures to ensure **compliance with FMLA regulations**. This may include implementing robust policies and procedures, providing training to relevant personnel, maintaining accurate records, and consistently applying FMLA provisions to avoid potential legal and financial consequences.

Family and medical leave (FML) management continues to be particularly challenging: Total new FML claims per 100 eligible employees as claim counts more than **doubled** in 2020 compared to 2019, from nearly 1.4 million to more than **2.8 million**.¹

- In 2022, there were 780 Family and Medical Leave Act complaint cases submitted to the DOL, resulting in \$870,077 in back wages for 339 workers.²
- **Imposing fines**, which can range from hundreds to thousands of dollars — and even smaller fines, such as \$204 per willful violation of FMLA notices requirements, can add up quickly.³

If a claim becomes a **lawsuit**, fines, legal costs and business resources may need to be allocated to the investigation and resolution of the complaint, as well as the impact to the overall work environment and employment relationships.

- Managers and supervisors may potentially be **sued individually** and held personally liable for paying damages.
- Lawsuits can be lengthy and time-consuming to resolve, and even if the employee loses, there are costs involved for legal defense. The **average cost** to defend an FMLA lawsuit is \$80,000.⁴

¹ [Integrated Benefits Institute, FML reports: Health and Productivity Benchmarking data for calendar years 2019 and 2020, page 2](#)

² [Family and Medical Leave Act | U.S. Department of Labor \(dol.gov\), 2022](#)

³ [Civil Money Penalty Inflation Adjustments | U.S. Department of Labor \(dol.gov\), 2023](#)

⁴ [The Cost of Noncompliance \(esis.com\), 2020](#)

Cost of FMLA Mismanagement

- **Who are the risks?**

- Fines and penalties
- Legal fees
- Lost time
- Negative impact to employees and the work environment
- Potential for individual managers to be held individually liable

In the case of *Schultz v. Advocate Health and Hospitals Corp.* (U.S. District Court, N.D. Ill., Eastern Division, No. 01 C 702, 6/4/02), a long-time employee alleged his former employer terminated him in retaliation for using intermittent FMLA to care for his two ill parents. While the employee was taking his approved leave, his employer established performance standards he was unable to meet due to the time he was out on leave.

The problem escalated until the employee was terminated. A federal jury awarded \$11.65M to the employee. The award consisted of \$750K for compensatory damages and an additional \$10M in punitive damages levied against the employer, **and \$450,000 levied against each of the two supervisors involved.**⁽¹⁾

The cost of mismanagement can be high:

Average cost to defend FMLA ⁽¹⁾	\$80,000
Average damages awarded ⁽²⁾	\$87,500 - \$450,000
What is the top complaint?	Wrongful Termination

⁽¹⁾ Society of Human Resource Management (SHRM)

⁽²⁾ Figure based on range of settlements from \$87,500 to \$450,000 for wrongful termination related to FMLA absence (EEOC), plus \$78,000 average FMLA litigation defense costs regardless of outcome (Department of Labor). Figures are dated, and likely to have increased into 2023.

Costs of Non-Compliance (continued)

Rodriguez v. SE Penn. Transportation Authority

- EE migraines + many absences
- EE terminated 2018
- \$20,000 awarded to EE then later **reversed** because no SHC established
- **Employer win!** *Minus the time (2018-2023) and costs (legal fees, etc.)*

Mooney v. Roller Bearing Company of America

- EE indicated that stress from work caused stress and depression
- 5 weeks of leave followed by 2-week delay in RTW
- RTW and role was eliminated, while other sales employees were furloughed
- **Wages + damages + costs = \$733,737**

Meigs v. Care Providers Insurance Services

- EE informed manager she was pregnant
- Received mid-year review (Below Expectations), while no one else got a review
- EE's role was eliminated, and she was terminated
- Offer of judgment: **\$75,000 + costs of \$438,245**

Paid Leave Laws

PFML & Accrued Paid Leave

Upcoming Paid Family and Medical Leave (PFML) effective dates:

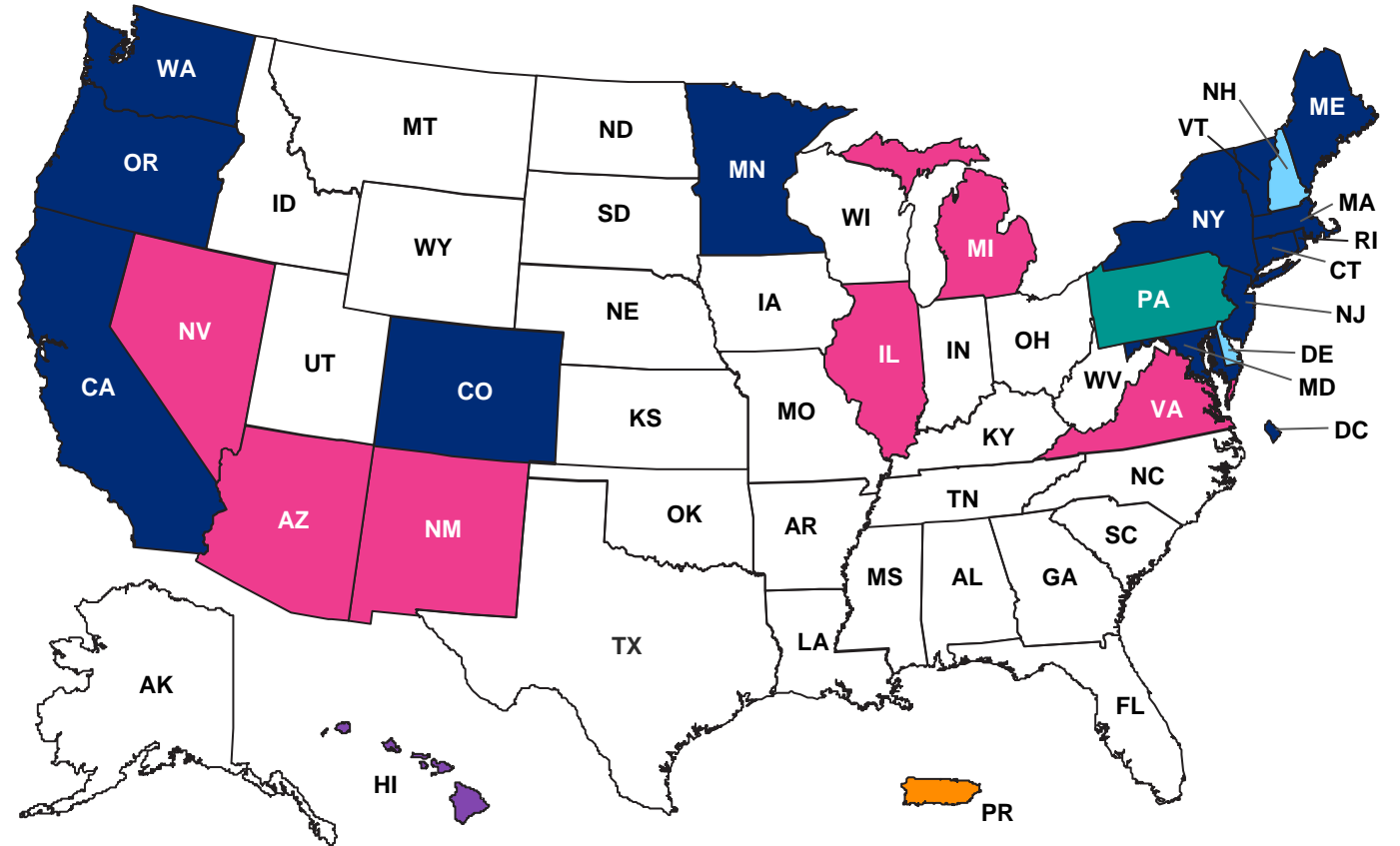
	Contributions	Benefits
Delaware	January 1, 2025	January 1, 2026
Maine	January 1, 2025	May 1, 2026
Minnesota	January 1, 2026	January 1, 2026
Maryland	July 1, 2025	July 1, 2026*

The Accrued Paid Leave laws reflected here apply to private sector companies.

- Illinois' and Minnesota's statewide laws became effective January 1, 2024.
- Illinois', Chicago IL's, Cook County IL's, Maine's, Nevada's, Bernalillo County NM's, and West Hollywood CA's laws provide time to use for any reason. Virginia's law provides time for home health workers only.
- Localities in the following states have enacted accrued paid leave ordinances in addition to the statewide laws: CA, IL, MD, MN, NM, NY, WA. Local ordinances passed in Austin, San Antonio and Dallas, TX, have been barred from going into effect.

States such as GA, HI, and TX may not currently require an employer to establish paid sick time policies, but do require that if the employer provides paid time off for an employee's illness or injury, eligible reasons for use must include care for a family member ("Kin Care").

January 2024



Key	
SDI, PFL & Accrued Paid Leave	Dark Blue
SDI Only	Purple
PFML Only	Orange
SDI & Accrued Paid Leave	Dark Blue
Accrued Paid Leave Only	Pink
Local Accrued Paid Leave Only	Light Blue

Upcoming Additions to the PFML Landscape

Maryland	Delaware	Maine	Minnesota
<p>Paid Family and Medical Leave Insurance (PFMLI)</p> <p>Key Dates:</p> <ul style="list-style-type: none"> • Contributions begin 7/1/2025 • Benefits begin 7/1/2026 <p>Duration:</p> <ul style="list-style-type: none"> • Up to 12 weeks of paid leave (up to 24 weeks in limited circumstances) <p>Benefit Amount:</p> <ul style="list-style-type: none"> • Complex formula resulting in up to 90% and approx. 75% for higher earners, up to maximum benefit of \$1000/week <p>Leave Reasons:</p> <ul style="list-style-type: none"> • Mirror FMLA (and covers more family relationships) 	<p>Family and Medical Leave Insurance (FMLI)</p> <p>Key Dates:</p> <ul style="list-style-type: none"> • Contributions begin 1/1/2025 • Benefits begin 1/1/2026 <p>Duration:</p> <ul style="list-style-type: none"> • Up to 12 weeks of paid leave (12 weeks for bonding, 6 weeks per 24-months for other leave reasons) <p>Benefit Amount:</p> <ul style="list-style-type: none"> • 80%, up to a maximum benefit of \$900/week <p>Leave Reasons:</p> <ul style="list-style-type: none"> • Mirror FMLA 	<p>Paid Family and Medical Leave (PFML)</p> <p>Key Dates:</p> <ul style="list-style-type: none"> • Contributions begin 1/1/2025 • Benefits begin 5/1/2026 <p>Duration:</p> <ul style="list-style-type: none"> • Up to 12 weeks of paid leave <p>Benefit Amount:</p> <ul style="list-style-type: none"> • Complex formula resulting in up to 90% and approx. 75% for higher earners, up to maximum benefit of SAWW <p>Leave Reasons:</p> <ul style="list-style-type: none"> • Mirror FMLA + safe leave and organ donation (and covers more family relationships) 	<p>Paid Family and Medical Leave (PFML)</p> <p>Key Dates:</p> <ul style="list-style-type: none"> • Contributions begin 1/1/2026 • Benefits begin 1/1/2026 <p>Duration:</p> <ul style="list-style-type: none"> • Up to 12 weeks of paid leave <p>Benefit Amount:</p> <ul style="list-style-type: none"> • Complex formula resulting in up to 90% and approx. 80% for higher earners, up to maximum benefit of SAWW <p>Leave Reasons:</p> <ul style="list-style-type: none"> • Mirror FMLA + safe leave (and covers more family relationships)

State and Local Accrued Leave

Similarities and differences depending on location

Common Characteristics

- Covered employees include **anyone who works in that location**, assuming they meet the applicable eligibility requirements and regardless of whether they work in an office or remote.
- All locations **require accruals of paid leave based on hours worked** (e.g., accrue 1 hour of paid leave per 30 hours worked).
- Most locations **allow some form of frontloading** (e.g., granting all required hours at the start of the year) rather than tracking hours worked to provide accruals.
- Most locations **require carryover** (e.g., employee does not forfeit unused hours).

Complexities

- Covered leave reasons vary significantly by location.
 - Typically includes: employee's own medical absence, care for family
 - Variations may also cover: bereavement, safe leave, office closures, prenatal, or ability to use the time for any reason
- When care for family is a covered leave reasons, the relationships that are covered can vary. Typically covered: spouse, parent, child. May be covered: parent, grandparent, grandchild, aunt/uncle, same household, any relationship that is similar to family, designated individual.
- Payout at termination.
- PTO substitution (e.g., employer provides PTO rather than separate sick leave).
- Employer notice requirements, including: workplace posters, annual notice, paystub requirements.

Paid Sick Leave – Checklist for Employers



Develop a sick leave policy that outlines the standardized rules and requirements, and any exceptions



Identify state/local requirements that exceed the standard policy and ensure policy + process meets those requirements



Track and understand state and local sick leave laws



Ensure coordination with other groups (HRIS, Payroll) and ensure coordination of benefits (LOA, STD, etc.)



Track each employee's work location (for in office and remote employees) and hours worked



Maintain adequate records related to hours worked, accruals, balances, etc.



Ensure proper notices are provided to employees (posters, paystubs, etc.)



Monitor for new laws and/or changes to existing laws

Pregnant Workers Fairness Act (PWFA)

New federal law that makes reasonable accommodations more accessible to pregnant and post-partum workers.

Key Dates

- PWFA took effect on June 27, 2023.
- Final rules released April 19, 2024, and effective 60 days later (June 18, 2024).

Who Is Covered?

- Any employee or applicant who works for a covered employer (any employer with 15+ employees).
- No waiting period or hours worked requirement.
- Employees who have known limitations related to pregnancy, childbirth, or related medical conditions during all stages of employment.

Protections

- Requires reasonable accommodation absent undue hardship.
- Covers many conditions specific to pregnancy, but also many that are not unique to (but may be caused by) pregnancy.
- Requires the removal of essential functions in limited situations.

Other Laws

- Similar to the ADA in many ways, requiring reasonable accommodation absent undue hardship. Key difference: disability vs. pregnancy-related.
- State laws that require accommodation for pregnant employees may overlap PWFA, or provide greater protections.

Bereavement Leave – growing compliance requirements

Bereavement leave is typically provided at the employer's discretion, but a growing number of locations are beginning to mandate some level of bereavement benefit – sometimes as a standalone bereavement leave and other times embedded within a broader law that covers other types of leaves.

Whether you have an established company-provided bereavement leave benefit, or are considering adding this type of benefit, here are some steps to consider:

1. Establish (or review and update) your bereavement leave policy.
2. Review any compliance requirements in locations where you have employees to ensure your policy is aligned, including: the number of days provided, whether the time off is paid or unpaid, and what relationships are covered.
3. Ensure that you are tracking when and how it is being used by employees. This level of data and information will better allow you to understand the potential impacts of future expansion.

It's Complicated ... So What?

Expertise is Critical – Internal or External (or both!)

Creating and maintaining a best-in-class LOA program is not “set it and forget it,” but instead requires ongoing maintenance and support. Ensuring you have a subject-matter expert is critical for:

- **Training**
 - HR and Managers – avoid noncompliance and litigation
 - Upward training – to gain support for headcount, spending, etc.
- **Compliance**
 - Standardized processes, SOPs and policies
 - Tracking new and updated requirements
 - Updates to process
- **“Non-operational” support work**
 - Compliance, escalations, audits, process improvements, etc.

THANK YOU!



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