Extended Medical/Disability Leaves of Absence (non-work related)

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Extended Medical/Disability Leaves of Absence

• For example:
  – Employee with serious back/neck injury
  – Employee diagnosed with cancer
  – Employee suffers heart attack with long recover period
  – Employee with life-threatening tetanus

• What lies ahead for city or county?
What lies ahead?

- FMLA leave notification
- Possible ADA accommodation
- Termination of group health insurance coverage & COBRA
- Short & long-term disability benefit coverage, if purchased
- Confidentiality of medical information
- Utah Retirement System contribution/service credit determination
- Accrued leaves and leave banks
- All employee benefits (life insurance, EAP, day care, dental, others)
- Return to work or release from employment
Family Medical Leave Act

- Is employee eligible?
  - Employment for 12 months with at least 1,250 hours
    - Be aware of cross over between USERRA and FMLA
  - Serious medical condition

- What is benefit?
  - 12 weeks unpaid leave
  - Job protection

- City or county must give FMLA notice
  - Employee’s health care provider completes form
  - City or county may not inquire of employee regarding medical condition
Group Health Insurance

• Group health plans typically require “termination” of employee after 12-week FMLA period
  – Termination here means termination of benefits, not termination of employment

• Upon termination of coverage employee receives COBRA notice
  – Employee is now responsible for premiums
  – Can (or should) city or county pay premiums?
Other Employee Benefits

• Short & Long Term Disability policies (employer-funded)
  – Employer may not have right to employee’s application for benefits
  – Question: Does city or county consider this insurance a “wage or income replacement” benefit?
• Employee Assistance Program (EAP)
• Day care
• Dental Insurance
• Leave accrual and leave banks
• Other benefits (401k match, etc)
Utah Retirement System

- Affirmative obligation of city or county to report changes in employee status to URS

- Any FMLA period which is unpaid must be reported, with no contribution made or service credit earned

- If city or county has employer-funded short & long term disability insurance program:
  - City or County should have pre-qualified that program with the URS; and
  - If the disability insurance program was qualified with URS, employee may receive service credit (and city/county continues contributions)

- Best practice: talk, talk confirm each case with URS
Confidential Employee Medical Information

- Employee medical information classified at “protected” under GRAMA
  - Sanctions for improper disclosure of protected information

- ADA medical information requirements
  - Employers must keep employee medical information in separate files from regular personnel records
  - Learn what ADA provides regarding who may have access (“need to know”) information in an employee’s medical file

- HIPAA requirements
  - Employee medical records held by an employer are excluded from the definition of Protected Health Information (PHI) under HIPAA
  - However, enrollment, treatment, payment and related records of an employer-sponsored health plan are deemed to be PHI under HIPAA, if individually identifiable
ADA Accommodation

• May arise after FMLA 12 weeks
  – If employee requests more time beyond 12 weeks to recover, that request is considered a request for ADA reasonable accommodation
    • Employees are not required to specifically ask for ADA accommodation

• What are the employee’s essential functions?
  – An employee’s “essential functions” are key

• Understand “interactive” process
• What accommodation is reasonable?
  – Accommodation cannot create “undue hardship” on employer
    • But, stress on budget is not “undue hardship”
  – Some additional time beyond 12 weeks may be reasonable – unless it creates serious impacts on service delivery – but
    • If additional budget may resolve the operational issue, likely not undue hardship
  – Indefinite leave of absence would not be a reasonable accommodation
  – What about limited/light/part-time duty?
    • Not a good idea
Possible return to work

• Fitness for duty evaluation
  – Issue here is: Can employee return to work safely – not can the employee perform essential functions of job
    • OSHA standard – employer is required to assure workplace is safe

  – Fitness for duty evaluation is responsibility of employer
    • Employee should be on paid administrative leave
    • Find and use a qualified occupational health physician, if possible
    • City or county covers cost of fitness for duty evaluation
    • Employer receives results of evaluation
      – Still consider medical privacy issues

  – How about monitoring or evaluation after return to work
    • Probably a good practice- for a limited time
Termination of Employment

• Should be based on employer’s written policy
  – If policy states that employee must be available for work (regardless of reason) – that is the best basis for release from employment
  – Other bases?
    • Not fit for duty (safety concerns)
    • Cannot perform essential functions of job
      – Probably only a basis for termination after ADA interactive process

• Due process
  – Adequate fact finding by employer
    • Note: restrictions imposed by medical privacy (if termination relates to being medically unable to perform essential functions)
  – Pre-determination notice and opportunity to respond
  – Post-deprivation hearing
What should we do now?

• Look at essential functions in your employee job descriptions

• Review all insurance policies and employee benefits – in light of possible extended medical leave of an employee

• Understand impacts of extended employee leave on URS contributions – focus on your city or county pension program and practice

• Review your medical privacy confidentiality procedures

• Review your termination of employment due process procedures (making sure they apply to terminations relating to extended medical/disability leaves of absence)
Questions?