



# Employee Benefits Report



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## New Benefits

# Controversial Bills Target Employer Obligations

A series of high-profile bills recently cleared a key Senate committee which could substantially impact employers' obligations regarding unions, pay equity, and paid leave.

The Senate Health, Education, Labor and Pensions (HELP) committee on June 21 advanced three bills — the Richard L. Trumka Protecting the Right to Organize (PRO) Act, the Paycheck Fairness Act and the Healthy Families Act. All three have companion legislation in the House.

## PRO Act Seeks Sweeping Changes to Labor Law

The PRO Act aims to strengthen the rights of unions and workers trying to organize. Specifically, it would overhaul the decades-old labor law in several ways:

- Allow "card check" union elections, replacing secret ballot votes. This would allow unions to be certified if most workers sign cards expressing support.



*continued on next page - 2*

## This Just In ...

### Are Your Posters Up to Date?

The June 27 deadline has passed, and employers should now have updated workplace posters reflecting the expanded rights of employees under certain federal Acts.

### New Poster Requirements

The Pregnant Workers Fairness Act (PWFA), enacted at the end of June, and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), enacted last December, grant additional protections that must appear on mandatory postings.

The new posters reflect greater rights for pregnant employees and pumping breaks for all employees, even exempt salaried workers.

The Department of Labor (DOL) has updated its posters explaining rights under the Family and Medical Leave Act (FMLA) and Fair Labor Standards Act (FLSA). The U.S. Equal Employment Opportunity Commission (EEOC) also updated its poster on discrimination.

### Considerations for Small Businesses

While the PWFA covers employers with at least fifteen workers, the PUMP Act applies to those with 50 or more. Qualifying



- Prohibit employers from holding mandatory meetings with workers to present views against unionizing. Supporters argue that this prevents intimidation, but critics say it limits speech.
- Invalidate state-level right-to-work laws which allow workers to opt out of union membership. This would require workers to pay dues or fees to unions at unionized workplaces.
- Require employers to share workers' personal contact information with union organizers, including cell numbers, email addresses and home addresses. Unions say this facilitates organizing, while business groups argue it exposes workers to unwanted harassment.

In addition, the bill would alter legal standards for independent contractors and joint employers while permitting unions to encourage boycotts against an employer's customers or suppliers during labor disputes.

Supporters argue that these changes would empower workers to freely exercise their right to collective bargaining without undue obstacles or influence from management.

However, business organizations strongly oppose the legislation, saying it would undermine worker privacy and choice regarding union membership. Critics say the bill infringes on the rights of individual employees who may not want to join a union or pay dues.

### Paycheck Fairness Act Seeks to Close Gender Pay Gap

The Paycheck Fairness Act claims to strengthen remedies for pay discrimination and close the gender pay gap.

Women in the U.S. in 2021 earned approximately 77 cents for every dollar earned by men. Even when looking only at those in full-time, year-round jobs, women in 2021 were typically paid 84 cents for every dollar paid to a man (although critics say this statistic does not account for disparities in the distribution of occupations).

To tackle this, the bill would:

- Prohibit employers from asking job applicants

about their salary history. Supporters say this prevents past discrimination from following workers and perpetuating lower pay.

- Require employers to demonstrate that any pay disparity is based on legitimate, job-related reasons rather than gender. This raises the bar for justifying pay gaps.
- Make it easier for employees to bring class-action lawsuits against systemic pay discrimination. Individual cases are hard to prove, advocates argue.
- Protect workers from retaliation for discussing salaries with coworkers. Fostering pay transparency helps surface disparities, proponents say.

Supporters argue that these steps are long overdue to ensure women receive fair, equitable compensation, free of longstanding biases.

However, critics counter that pay discrimination based on gender is already prohibited under current equal pay laws, so the bill is unnecessary. One lawmaker called it redundant and warned it would primarily benefit trial lawyers rather than help resolve pay disparities.

### Paid Leave Bill Mandates Sick Days for Workers

Finally, the Healthy Families Act would require most employers to provide full-time workers with seven job-protected paid sick days per year. Employers could mandate qualifying periods before leave can be used.

Small businesses with fewer than fifteen employees would be exempt from the paid leave requirement but would have to offer unpaid sick time. Employers that already provide ample paid time off policies could continue those plans.

Supporters characterize paid sick leave as a basic worker right and a matter of health and equity. Nearly a quarter of U.S. workers currently lack access to any paid sick days. Backers argue the bill would establish a national paid leave standard.

But critics counter that the mandate is unnecessary since most employers already offer some form of paid sick leave. They contend that the market is already shifting on its own toward broader paid leave policies without the need for federal intervention.

Small businesses may claim undue hardship exemptions from certain pumping requirements.

### Consequences for Non-Compliance

Employers who fail to post the new iterations could face fines of \$569 per violation. Experts say each instance of non-compliance per location could warrant a separate fine.

### Updating Workplace Posters

To avoid penalties, experts advise employers to print the revised DOL and EEOC posters for free from the agencies' websites. Although there is no mandated size, the posters must be conspicuous and readable.

Ideally, employers should physically post the updated signs at all company locations. Remote or telecommuting employees may require digital distribution.

One lawmaker said that since many companies are voluntarily adopting sick day programs, the market should be allowed to work rather than imposing rigid requirements.

The fate of the bills remains uncertain, but their passage would substantially change how companies handle unions, compensation and benefits. Employers will want to stay informed as the legislation advances. ■



# Is Your In-House Medical Program Exposing You to OSHA Citations?

**T**he Occupational Safety and Health Administration (OSHA) is devoting more attention to scrutinizing employers' in-house medical programs for general duty clause violations related to alleged medical mismanagement of injured workers. With medical mismanagement claims on the rise, now is the time for employers to thoroughly evaluate their on-site treatment programs and make changes to reduce the risk of citations.

## What is Medical Mismanagement?

Medical mismanagement involves failure to properly and promptly evaluate, treat, accommodate and track work-related injuries and illnesses. Examples include delaying beyond a reasonable timeframe referrals to outside physicians, providing insufficient treatment, and prematurely returning injured employees to their regular jobs before they are medically ready.

According to experts, specific issues that have drawn OSHA criticism of in-house medical programs include:

- Inadequate opportunity for injured workers to become conditioned for duties;
- Providing minimal information to on-site providers about injuries;
- Incomplete medical records which lack details of diagnoses, treatments and referrals;





- Lack of follow-up with employees returning to work;
- Failure to appropriately refer workers to outside specialists when needed;
- Poor accommodation and tracking of injuries upon return to work;
- Overly conservative treatment approaches that minimize care;
- Vague medical protocols.

Recent situations where OSHA has alleged medical mismanagement violations include employees with musculoskeletal disorders such as repetitive motion injuries, COVID-19, and heat-related illnesses.

### Important Considerations

In building medical mismanagement cases, OSHA must consider employees' pre-existing conditions and activities outside work that may contribute to injuries. Employers should also assess provisions made for on-site evaluation and care, provider qualifications, timeline protocols for referral to outside physicians, and workers' compensation statute guidance on medical treatment.

### Building a Strong Defense

Experts advise that well-designed medical management programs provide employers with their best defense against general duty clause citations for medical mismanagement. Key elements of a strong program include:

- Training workers on properly recognizing and reporting workplace injuries;
- Administering on-site care strictly per written physician's orders;
- Setting reasonable limits on the duration of site treatment before requiring review by an outside doctor;
- Relying on in-house medical staff's professional expertise and licensing;
- Maintaining detailed injury records.

For any general duty clause violation, OSHA must prove four elements:

1. Exposure to a recognized hazard;
2. The relevant industry recognizes the hazard;
3. The hazard was likely causing or could cause death or serious physical harm;
4. A feasible method exists to correct the hazard.

Employers can argue that no clear standards for medical mismanagement have been established nationally.

### Action Items

To reduce the risk of OSHA scrutiny and citations, experts recommend employers take these key steps:

- Thoroughly evaluate on-site injury treatment programs and allow timely referrals to outside specialists.
- Align in-house medical protocols with national industry standards.
- Have an independent doctor review the on-site program for gaps.
- Remind in-house medical staff to rely on their professional expertise, training and licensing when treating injured workers.
- Maintain detailed injury reports with information on diagnoses, treatments, referrals and return to work status.

With OSHA's increasing attention on potential medical mismanagement of workplace injuries and illnesses, now is the prudent time for employers to take action. Ensuring your program properly cares for injured workers can help reduce citations and legal issues down the road. Being proactive with your in-house medical program is wise risk management. ■

# Bridging the Gap Between Working and Pumping: Keys to Supporting New Moms

The passage of the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP) represents a major step forward for breastfeeding moms in the workplace. However, simply complying with the new requirements with dedicated lactation spaces and break times is just the starting point. To truly support working mothers, organizations must go further to bridge the gap between pumping and performing job duties.

### The Challenges and Pain Points

According to the CDC, in 2019, 83.2% of mothers breastfed their newborns, but after one month, the figure dropped to 78.6%. At six months, 55.8% of mothers gave their babies breast milk and formula, and only 24.9% exclusively breastfed. Research suggests that inadequate lactation support in the workplace is a major reason for this decline.

Pumping moms face many challenges, from unsuitable pumping areas to negative comments from coworkers to feelings of isolation. Sur-



veys reveal that 4 in 10 mothers rate their employer's lactation support as only fair or worse.

Meanwhile, pumping and nursing require upwards of 35 hours per week — nearly equivalent to a full-time job. This demanding dual burden places immense stress and anxiety on new moms. It's no wonder that half of breastfeeding employees have considered changing jobs.

### Elements of a Comprehensive Program

Experts agree that truly supportive workplaces provide lactation programs that go far beyond just the minimum accommodations required for basic compliance. Key components include:

- Dedicated, private lactation rooms with refrigeration for milk storage;
- A policy ensuring adequate break time to pump, which is counted as paid work hours;

- Easy access to lactation consultants for questions and guidance;
- Training for managers on best practices for supporting pumping staff;
- Community of peers to reduce isolation and boost morale.

This more holistic approach focuses on culture change, not just facilities. Normalizing breastfeeding and creating a judgment-free environment is critical.

### The Business Case

Investing in a robust lactation support program provides measurable benefits that directly impact the bottom line. Research shows that effective programs improve retention, recruitment, engagement and productivity.

Supporting new parents is also linked to reductions in healthcare costs and absenteeism. Employees who feel

cared for and valued are more loyal, focused and dedicated to their work. In today's ultra-competitive hiring market, comprehensive lactation support can be a crucial workforce strategy that gives your company an edge.

### Keys to Success

To truly bridge the gap for pumping moms, experts emphasize several best practices:

- Appoint a dedicated lactation program leader or team. Consolidated oversight is far more effective than siloed or fragmented responsibility spread across HR, facilities management, and other departments.
- Create anonymous channels for candid employee feedback. Surveys, focus groups and other means identify where support is falling short or could be improved.
- Promote the program proactively before pregnancy. Don't wait until an employee's time of need. Normalize early and reinforce often.
- Establish formal peer groups and mentorship. Connecting pumping moms alleviates isolation and fosters community.
- Require training for all managers. Build skills for having supportive conversations and addressing concerns.
- Partner with lactation consultants. Certified experts can review policies, facilities and culture to optimize.

The PUMP Act provides a federal mandate on baseline accommodations that all employers must meet. But truly family-friendly cultures require organizations to take a more holistic and human-centered approach focused on the entire experience.

When companies invest in supporting parents during this vital phase of life, they invest in their workforce and future. Employees will remember how their organization treated them when it mattered most. ■





# Unlimited PTO Gaining Traction: Is Now the Time?

In recent years, a growing number of employers have been experimenting with unlimited paid time off policies. But is now the right time for your organization to make the switch?

## The State of PTO Today

Paid time off policies have come a long way from their inception, transitioning from set vacation days to paid personal days and floating holidays. Unlimited PTO takes this evolution a step further by removing a set number of days entirely. Still a relatively new concept, only 8 percent of employers currently offer unlimited vacation, according to a 2023 SHRM survey.

## Why Some Companies Are Embracing Unlimited PTO

Proponents of unlimited vacation cite both employee and employer benefits as

driving factors. Unlimited PTO can improve work-life balance, reduce burnout and increase satisfaction for employees. Employers may see enhanced recruitment and retention, elimination of “use it or lose it” PTO crunches, and higher engagement.

With unlimited vacation, employees can take time as needed without worrying about accruing days. Experts say this leads to better rest, productivity and morale when compared to scrambling to use PTO at year-end. The policy also gives employees greater ownership over their schedules.

## Considerations Before Making the Leap

Despite potential upsides, unlimited PTO comes with risks. Without accrual caps, some employees may take less time off than with set PTO days. Tracking absence can prove challenging without balances. Some guardrails and oversight are still needed to prevent misuse.

State and local paid sick leave laws may still apply under unlimited PTO, meaning additional administration. And with unpredictable absences, maintaining workflows and fairness takes effort.

## Best Practices for Making Unlimited PTO Work

For unlimited PTO to succeed, strategic implementation is key. Clear communication ensures alignment on expectations and prevents misunderstandings. Set guidelines for minimum and maximum time off should be implemented to help normalize vacation usage.

Manager training is critical to teach overseers how to evaluate requests fairly while delivering on business objectives. Track PTO usage carefully to spot potential gaps or abuse issues promptly. Remind managers to suggest employees take time off when they seem stressed or overworked.

Leaders should model work-life balance behaviors to build a culture that values rest and relaxation. Consider occasional companywide refresh days where the entire team takes off together. Maintain flexible policies allowing reversal if unlimited PTO does not fit over time.

While unlimited PTO is gaining traction as an employee benefit, it requires an investment in change management to pay dividends. With strategic rollout and ongoing tweaks, unlimited vacation could be a win-win for your organization and its people. ■

