

Take It Or Leave It: Episode 42

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Josh Seidman

Josh, hi everyone, and welcome back for the 42nd episode of Take It Or Leave It, where we discuss the hottest topics in the world of workplace leaves, absence management and accommodations. I'm your host. Josh Seidman. The leave time off and disability law world is constantly changing. I'm sure I've said in episodes past that it is in a regular state of flux, and that hasn't changed. In fact, the patchworks of leaving disability laws continue to evolve and expand, morph and transform, oftentimes in novel, perhaps even unexpected, ways that are always keeping employers and their legal HR benefits, payroll and many other corporate teams on their toes. For today's Take It Or Leave It episode, I am so very lucky and overjoyed to be welcoming back to Take It Or Leave It Jim Jantz, the director of compliance, absence, disability and life at Marsh McLennan Agency for a timely, meaningful discussion on how lawmakers and employers are expanding their leave requirements and offerings to provide more inclusive benefits and meet the needs of today's workforce. Jim, thank you so much for joining me for another round at Take It Or Leave It.

Jim Jantz

Thanks for having me back.

Josh Seidman

My pleasure. No, this is great, and I'm so happy you are not tired of me or tired of my many, many questions. I promise there will not be a basketball puns and Walt Clyde Frazier rhymes in this episode. So don't worry there.

Jim Jantz

I support the Clyde Frazier references. So go for a few rhymes if you have them.

Josh Seidman

I'll see what I can pull out of my hat. But I appreciate that. I think that might be you and maybe one or two of my family members who are tuning in, the only ones that appreciate that. So thanks. It's great. I want to start off today's episode with kind of an overall, broad question, again, zooming in on our topic of meeting the needs of today's workforce through different leave laws, requirements and employer offerings. Creating more inclusive benefits that are in tune with the realities of today's workforce and employees, things like flexibility and easy to understand and comprehend, sort of meeting workers where they are given the different phases of their lives and the challenges that can pop up at those different phases and so forth. Each of those factors and those goals of creating more inclusive, flexible benefits, those can impact leave of absence options in a variety of ways. So at a high level, can you just give us some initial thoughts on what some of those different impacts look like?

Jim Jantz

I sure can. I think we're seeing it in the state and local leave laws, whether we're talking about paid family and medical leave, PFML or paid sick leave. We're seeing those laws expanding in a variety of ways. We are seeing more states and locations adding those laws, but we're also seeing broader benefits by those new locations, or even some of the locations that have them expanding the benefits. They're covering more relationships. We often think of FMLA and spouse, parent, child, but we're seeing that now covering these other laws, are now covering extended family household members. We're even seeing a couple of them that cover care for a service animal, so expanded coverage as far as who is covered and what family members, again, thinking more about a broader family than just spouse, parent, child, and we're also seeing these cover more leave reasons. We refer to this as sick leave. That's the common phrase, but most of these laws are now sick leave, care for family member, safe leave when you- when the employee or a family member is the victim of a crime or domestic violence, and even emergency leave when there are weather situations or other types of situations where the office or the building is closed, these sick leaves again, sick leave being brought in to cover all of these other reasons. So I think we're seeing that expansion in the laws, and then we're also seeing the same kind of expansion on the employer side. We're seeing expanded offerings. I know we've all seen and heard the data showing the trend, the increase in paid parental leaves over the past five or 10 years, but we're now seeing more employers adding other types of paid leave, like paid caregiver leave or some version of a combined leave that that looks a bit like PFML from the state where it's a combined bonding, medical or caregiver leave. So in that way, I think all of these laws are expanding because employers are recognizing a diverse workforce that needs more coverage in more varied situations.

Josh Seidman

That's great, Jim and you hit upon so many wonderful points that I want to try to tackle them one at a time here for our listeners. They do have layers and intricacies. So let's maybe start with one of my favorite topics, certainly in the leave and time off law world, which is the paid sick leave law world. So these laws, and you really said this wonderfully a minute ago, they are not just paid sick leave, they are paid sick leave plus a lot of other stuff that falls under the paid sick leave umbrella. So I'll start by asking, what are some recent examples of how statutes and regulations in this paid sick leave and paid time off loss space? How have they evolved to be more inclusive, to be more available for employees in different ways?

Jim Jantz

They've evolved in a variety of ways. Like I said, we're going to continue referring to this as sick leave throughout the podcast here, but it's so much more than sick leave, and I think we're seeing that again as it spreads across the map. We have over 40 locations across the US, whether that's states or cities or counties that require some form of sick leave. And very, very few of those only cover the employees' own condition. They cover again, like we said, the family member or safe leave when it's a victim of some type of crime, those types of things. So we're seeing it, as far as coverage across the map and expanded areas, and other areas that I've started to see sick leave go into is a lot of these newer ones. And again, some of the older laws are adding on new leave reasons, but we're seeing it in bereavement, and that can be bereavement for immediate family, and again, many of those expanded families, grandparents, aunts and uncles, things like that. So bereavement- your policy, whether it's included in an employer's bereavement policy or as a standalone separate thing, we need to make sure

our bereavement laws are aligned with that a lot of states are also- or states or locations- are also adding reproductive loss to their paid sick leave. So we're seeing that, or sometimes a standalone bereavement and reproductive loss policy. So again, watch for those in your paid sick leave, and then we're starting to see some other expanded reasons. I think the one that's worth calling out is Washington is now, or is soon to be adding immigration related absences to their paid sick leave loss. So again, it's expanding in a variety of directions, and as each of these laws kind of expand, or new laws come on the books, we're seeing those newer laws take what's already there and expand it a bit more. So I think this will continue to be a trend we see as far as expanded benefits.

Josh Seidman

Yeah, I want to piggyback on a few of your points, because I think they're also wonderful, Jim. My first comment to reiterate a point that you made, which is, the landscape isn't stagnant. It is always going to be changing, regardless of whether a company just got everything lined up, their policies are drafted, their systems are programmed, folks are trained, and then poof, a law that you thought you had your arms wrapped around has now been flipped on its head, maybe something like what happened in Michigan recently or Connecticut recently. But then you can also have these tinkering around the edges, like you said in Washington. Say, I think there's a huge expansion to cover immigration related absences, starting in a handful of weeks from now,. That's a first of its kind, reason for use in the paid sick leave law world. California did something similar at the beginning of this year, not in the immigration context for sick leave, but expanding their paid sick leave law, which included safe time absences, but sort of a narrower safe time covered reason than a lot of the other laws. They broadened the safe time component for it to cover the full scope of family members and their potential victim status for safe time related absences, but then added qualifying acts of violence. And that always that jumped out to me, because, you know, we think of these laws as you've said, as paid sick leave laws, or paid sick and safe leave laws, perhaps, and there are a lot of standalone unpaid safe time laws at various state levels, but there's also a lot of crime victim leave laws at the state level as well. And California seems to be dipping its toes in the water of hey, maybe we start expanding the paid sick leave laws beyond just paid sick and safe time- the paid sick and crime victim leave right? So I thought that was, was kind of an interesting development in California too. The broader family members, yeah, I think we were so far beyond where the FMLA kicked off things in the paid sick leave space- the designated person concept, right? This popped up in California and Minnesota. I think that's one that I think really echoes what we're talking about in today's episode, this concept of how these laws have evolved to be more available and meet workers where they're at. So paid sick leave is a perfect example of all of these, these points.

Jim Jantz

The only thing I would add there is designated person is sort of the foot in the door for that concept. And some states or locations have taken it further to someone you have a blood or affinity relationship with, and some have taken it as far as someone who lives in your household. So it's not necessarily a domestic partner or someone you have a relationship with, but someone that just lives under the same roof. So when we think about that, we're thinking family members, but that might be a roommate or someone you just happen to live with, where you can take leave for again, what feels like almost anyone, because the relationships have expanded so far.

Josh Seidman

Yeah, absolutely. It's such a good point. It's funny I had this is going back a few years now, because this concept of the equivalent to family member by blood or close association affinity, that's been around in the paid sick leave context for a bit now. I remember counseling a company a few years back where they had an employee who had been working with one of their coworkers for a number of years. That coworker became ill, or at least had a covered sick leave need, and the employee who was ill took their sick leave, but the employee, the coworker who was also their friend, also said, 'Hey, we working together for a long time. So and so is like a brother to me. I'm going to also use my sick time to take care of them.' And the company felt like there were some games being played, but couldn't push the envelope to really explore it, because the law had this very broad definition of family member that once they sort of called out equivalency, close association, close enough to being a family member, their hands were tied.

Jim Jantz

Interesting. I have not heard that in the coworker scenario, but, but it makes sense, and I think it does fit within the requirements.

Josh Seidman

Yeah, yeah, no, it's fascinating. Well, great, great stuff. And I want to pivot us to the very related and important world of paid family leave laws. So similar to my question to you on the paid sick leave front in the paid family leave law context, can you think of any examples or share with folks how considerations like flexibility and inclusion have been incorporated into some of the statutes and regulations in the Paid Family Leave space.

Jim Jantz

I think this will feel or sound a bit similar to the paid sick leave conversation, but, but the same sort of ideas apply, right? Each state that goes live, we currently have about 12 or 13, and we have another three or four in the next couple of years. But as each state goes live, it seems like they are taking the principles that exist in the other states and kind of extending that a bit further. So as we see new states go live, or again, states with existing laws that just modify or expand their existing laws, I think the area where we're seeing it most is in that expanded family member you said we, we kind of blew the doors off the FMLA, spouse, parent, child, that being the family relationship we're talking about. But I think now we're seeing so many of these PFML laws extending to relationships like siblings- which, again, are typically not going to be covered under the FMLA, unless there's that in loco parentis scenario. But sibling is not covered there. Sibling is covered in a lot of these PFML laws. And again, we're seeing the grandparents, grandchildren. So that, I think, is the biggest area we're seeing. It is just that expanded family member. And what that can also do is create these scenarios where employees can take 12 weeks of leave to care for their grandchild under this law and then still have FMLA available, because FMLA did not run concurrently. So when these expand and change, the variation across states can also create these, these other scenarios, or these, these other effects that are maybe unintended but, but eventually result in an employee getting more leave, or maybe more paid leave over the course of time.

Josh Seidman

Thanks for that, Jim, those are really important points again. And I think what's always stood out to me in the Paid Family Leave space with this expansion, as you were talking through that is there is certainly overlap on the on the points that we're making compared to the paid sick leave law world and that patchwork, but paid family leave is so inherently different. And I think to a lot of outsiders, if you hear paid sick you hear paid family leave, it sounds like they should be very comparable, and they are, in some ways. But because paid family leave is really following in the footsteps of the FMLA and meant to be these longer term, more major life event related absences. The fact that these paid family leave laws have expanded in such a broad way. I mean, some of them cover bereavement leave, some of them cover safe time related absences, bone marrow and organ donation, public health emergency. So the fact that we have these broader covered reasons when we're talking about not just hours and days of time off, like we are with paid sick leave, but we're talking weeks, months of time off in these Paid Family Leave Law contexts, and then to also expand the definition of family member in a lot of the same ways that the paid sick leave laws have done. That can really result in, as you mentioned, this stacking of leaves, this greater absenteeism, and yes, it does meet workers where they are and help reflect the needs of today's workers in certain contexts, but it also creates an equally big sort of burden on the employer, right and having to understand the differences and then understand how these laws and policies will intersect with one another.

Jim Jantz

Yeah, it's a complex web, and I think employers need to navigate it. But again, also understand that these laws, each of them, are separate and independent, and they are all employee friendly, so when employers don't want to see this ability to stack or take multiple leaves at different times for different reasons. That's just the nature of the world we live in. So yes, it's hard to navigate, and yes, it might not be ideal, but it's just something we need to understand and navigate, and frankly, be prepared for continued expansion as more states add these or more states expand to the covered reasons.

Josh Seidman

Yeah, most definitely. I want to ask now about another related topic. How can goals of inclusion and staying current with today's workforce and its expectations and needs also trigger statutory activity involving special use leaves? These laws can pop up in so many different shapes and sizes, pregnancy related accommodations, bereavement leave, prenatal leave and so forth. Can you just spend a minute or so talking through this topic and any of the related activity that you've seen in the last year or so?

Jim Jantz

Yeah, I think if we can refer back to last episode, the PWFA comes to mind right away as an expansion of the ADA.

Josh Seidman

Jim, I always love cross referencing other episodes, so have at it. That's perfect. Yes, please, please.

Jim Jantz

Yeah, go back and listen if you haven't already. So I think PWFA, we expands the ADA in a way, right? The ADA requires employers to provide accommodations for employees with disabilities, and the PWFA does not require it to rise to the level of a disability. Instead, it's just a no limitation related to

pregnancy. So that's a very specific reason for accommodation, which can be leave as an accommodation, but it's an expanded or an expansion of the ADA, because it potentially covers more employees. And I think you, you hit on the one that that, I think is the secondary thing that comes to mind is that prenatal leave, we know New York specifically added a prenatal leave. So New York already had a sick leave that was pretty expansive already, and they've now added this prenatal leave that's just extra sick time specifically for prenatal. You can't use it for any other reason. It doesn't really exist. You're not required to give employees the extra time until they are pregnant and they need it for prenatal purposes. So so that one, I think New York, not surprisingly, is sort of on the front edge of that. And I think we may see other states add more paid sick leave laws, or expansions of paid sick leave laws like that, where it's for a specific reason or to meet the needs of a specific group of employees.

Josh Seidman

Yeah, that's wonderful, Jim, great examples. And there are so many in this space, right? I think you mentioned one a bit earlier on states that have bereavement leave laws, right? Sort of taking a step further in subsequent legislative cycles and expanding those to include, you know, pregnancy loss or related, failed adoption, failed surrogacy and the like. So there's so many examples of how these special use leaves have been popping up. You also mentioned this a minute ago, but I do want to zoom in on the PWFA for just another second. This law has been very well publicized for the last two plus years since it went into effect. Here at Take It Or Leave It, we certainly have focused on it in several episodes, including episodes 24 and 37 for folks who are keeping score at home. Can you talk about the pwfa in the context of inclusion? Just another minute or so on this topic, and how this law, and it's sort of its whole kind of essence and being has derived from meeting the needs of today's workforce?

Jim Jantz

I think we're seeing an expansion of the ADA. I know I've said that a couple of times, but in theory, right, the PWFA does expand that that group of potentially covered employees, because under the ADA pregnancy- a normal, straightforward pregnancy is not necessarily going to be covered under the ADA because there's not a related disability, whereas the PWFA again, covers employees with known limitations related to pregnancy, so it's put a spotlight on the issue, and sort of made sure that employees who are pregnant - again without rising to the level of disability - are covered and have those protections to be provided with an accommodation, whether that's a workplace accommodation, or in some circumstances, leave as an accommodation. So I think when we're talking about these being more inclusive or expanding who might be covered, the PWFA as an expansion of the ADA is kind of a prime example.

Josh Seidman

That's great, absolutely. I want to pivot away from our discussion on statutes and regulations, because you did mention this. I think that first back and forth that we had at the start of today's episode, and turn to the employer side of the aisle for a minute. How are employers reacting to the continued growth and expansion of leave and accommodation laws in the context of their own company provided benefits and leave package offerings?

Jim Jantz

Sure. So I think it very much depends on the employer. There are many considerations that employers have to think about, whether it's cost productivity, but also thinking about the demographics of their employee population. Employers can often, if they're adding benefits sort of in a vacuum, the benefits might not be all that applicable to their specific employees. So I think employers need to think about their employee population and what they actually need. We can think about it in terms of the differences between white collar, blue collar types of employers or a hospital system that might look very different than a manufacturing facility just because of the types or the demographics of their employees. So employers should think about what types of benefits or leave offerings make sense for their employees, and we can think about that through the lens of, again, that trend of the past few years where many employers are adding paid parental leave, but now we're seeing a more recent trend where employers are starting to provide paid caregiver leave, and that's kind of considering the needs of your employees. Do we have a population that is having more children and more in need of a paid parental leave, versus a population that's taking care of their parents and needs time off for that. So certainly there are employees who fall into both of those buckets. So both leaves may be beneficial to some employees, but I think making sure you understand your employee population and thinking about what leaves or other benefits make sense for those employees is critical from the employer perspective.

Josh Seidman

Yeah, that's great stuff, Jim. I think there's a lot of really important benchmarking opportunities that are out there. I know MMA has done some good studies and explorations into some of these topics about different packages and offerings in the leave space that companies are providing. We talked about similar sort of studies back in episode 40, where we looked at the SHRM 2024 Employee Benefits report. And one of the topics that came up, and I just want to echo your point, is the caregiving right paid leave to care for immediate family, to care for extended family. These are benefits that are on the rise over the last three to five years, and where a lot of companies, not, not all, but, but a greater number of them, I think, have gotten used to offering paid parental leave at the bonding part of these, these programs, and that is certainly covered by the FMLA and the paid family leave laws, a lot of the state unpaid FML laws, that are all in play Today, but now companies are starting to turn their attention to this caregiver leave. So I think that was a really important point that you mentioned there. So that's great, Jim, and I want to maybe round off today's discussion with a final question, from a practical standpoint, what are some steps for employers to consider if they're interested in determining the current impact of their leave disability policies and offerings, and what impact those offerings have on inclusion in their workforce and flexibility for their employees, and whether to make potential adjustments to those offerings.

Jim Jantz

So you mentioned it a couple of minutes ago about the employer surveys and what employers are doing across the board, but I think the same concept can apply within an employer, right? Ask your employer, ask your employees, you know, take a survey, what benefits are you using, or what benefits are you considering using, and you might get an understanding that maybe you think your paid parental leave is, is all you need to offer, but you don't have a lot of employees who have used or plan to use that leave. So I think surveying your employees, and then the other place that that I think makes sense to look at is data. Use your leave data to understand what your employees are doing and are they using leaves of absence? If they are which types? What's the most common? You know, obviously we're

going to see employees own condition. But if you have those other more optional types of leave, or leaves like care for a family member, personal leave, if you have a personal leave, that's sort of a blanket catch all leave that might not cover statutory leave reasons, see if you can dive into that and see if that leave is being used often. And if you have any data on the leave reasons, maybe that will help you uncover that oh, a paid caregiver leave does make sense. We're having a lot of employees take time off under unpaid personal leave. So I would say, look at the data, or ask your employees, and that will give you a great insight into what's important or what's actually happening with your workforce.

Josh Seidman

Wonderful. Jim, that's so great. Great wrap-up. Thank you so much for doing double duty with me here on Take It Or Leave It. I had so much fun talking with you today. You were shrewd, clever, slick, dare I say, bounding and astounding. I promise I'd give you one more if I could come up with it really wonderful. So thank you so much for talking through how lawmakers and employers are expanding their leave requirements and offerings to provide more inclusive benefits meet the needs of their workforces in 2025 I thought today was really wonderful. So thank you for that.

Jim Jantz

Thanks again for having me, Josh. I appreciate it.

Josh Seidman

Absolutely, and thank you to our listeners for joining us today. We will see you next time.