

Any downsides to a no-fault attendance policy?

Q. We are thinking about implementing a no-fault attendance policy. We hope it will provide clearer absenteeism rules and make it easier for managers to enforce. Are there any downsides?

A. So-called no-fault attendance policies create a system through which employees accrue points for each unplanned absence, regardless of the reason for the absence. When an employee's absences exceed certain thresholds, the employee is often subject to progressive levels of discipline, which can eventually lead to termination.

Such policies are attractive to certain employers because of their simplicity and perceived deterrent effect for employee absences. However, you should also consider two potential problems with no-fault policies.

First, it's unclear if no-fault policies actually deter absences. Some employers have found that, because the policy sets specific absence thresholds, employees may take advantage of the program. Employees know when their absence count is reset and just how many times they can skip work before they face serious penalties.

Second, no-fault policies can create significant legal risks. Employees may not be disciplined or terminated for absences that are protected by law—such as protected FMLA leave or when an absence is a required accommodation under the ADA. If you are not careful to exempt these absences or if your policy is not clear on this point, it could create significant legal risk. Inflexible leave and absence policies have been an enforcement priority of the EEOC over the past several years.

Ultimately, it may be most helpful to have managers focus on policing problem absences without the problems and risk of a no-fault policy. While that may seem more difficult than drafting a new policy, it could ultimately prove more effective.

If you do move ahead with a no-fault attendance policy, run it by your lawyer to help minimize your legal risks.