

HEALTH EFFECTS SHOW FAULT IN NO-FAULT ATTENDANCE POLICIES

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Millions of Americans are employed by businesses that use “no-fault” attendance policies.¹ Employers often implement no-fault attendance policies, penalizing employees for missing work, as a strategy to address employee absenteeism and the attendant decreased workplace productivity and increased costs.^{1,14,15} However, many employers that use no-fault attendance policies consider almost all absences to be unexcused,^{5,6} some of which may be protected by federal, state, and local laws.^{1,5} Such policies can jeopardize the health of workers and their families, as employees may be inclined to avoid missing work to seek medical care for themselves or family members out of fear of punishment or termination.^{3,7} A number of strategies, including education and advocacy efforts, as well as local, state, and federal legislation can be implemented to reduce the negative health effects created by no-fault attendance policies.

No-Fault Attendance Policies

“No-fault” attendance policies, sometimes referred to as “points-based” attendance policies, are often used in low-wage jobs such as in warehouses, meatpacking, and various service industry jobs to reduce absenteeism.^{1,4} These policies work by penalizing employees for missing work. Each time an employee misses, is late to, or leaves work early that employee is assessed a certain number of points.^{1,4,5,6} If an employee accrues too many points, the employee can face punishment and even termination of employment.^{1,4,5,6}

Excused vs. Unexcused Absences

In many employers’ no-fault attendance policies, absences for health-related reasons are frequently deemed to be unexcused, regardless of the severity of the illness or injury.¹ Even when employees are mandated by their employer to go home due to their health condition, such as experiencing a fever or other overt symptoms, many employers will still assess their employees points for leaving work.¹ Typically, the only explicitly stated excused absences are for reasons such as jury duty, bereavement, and military duty.^{1,4}

Current Legal Protections

There are several laws at the federal, state, and local level that help protect workers’ rights and prevent maltreatment of employees through no-fault attendance policies. At the federal level, the Family and Medical Leave Act (FMLA) exists to ensure that employees can take protected leave of absences without fear of punishment for various approved reasons such as child-birth, a serious health ailment, or providing care for a family member with a serious health ailment.^{16,17} However, absences for less acute health conditions are not covered under FMLA,¹⁶ and employees can receive points from their employer for such absences.¹ At the state and local level, paid sick leave laws can provide employees with paid, protected absences from work which can be used when employees are sick, need to care for someone who is sick, or for preventative medical visits.^{1,8} Although paid sick leave policies help fill in the gaps in FMLA, these laws exist in less than 33% of all states, as well as a select number of localities.⁸ Further, most of these states and localities with paid sick leave laws are in the northeast and west coast,⁸ while no-fault attendance policies tend to be more common in southern states.¹

No Fault Attendance Policies’ Effects on Health

While employers may find no-fault attendance policies to be an effective method to prevent absenteeism, the negative effects of such policies on the health of workers and their families are numerous. A report by the non-profit, legal-aid organization, A Better Balance, details the experiences of employees from all over the country who have been negatively impacted by no-fault attendance policies.¹ One employee included in the report shared that because of absences related to her asthma and diabetes, she was fired by her employer. Another employee shared that he was fired for leaving work early after learning his children were being taken to a hospital. Even employees who were absent for reasons that are covered by FMLA have reported being fired or disciplined for these absences, an action that is impermissible by law.¹ Additionally, for employees working in states or cities with paid sick leave laws, their employers’ absence policies often lack information about such sick leave laws in effect and fail to mention that employees will not be penalized for taking sick leave.¹ Instead, many policies state that employees will be punished for taking sick time, despite the protections of state or local law.¹ The lack of clarity and the misinformation seen in many employers’ attendance policies can leave employees confused and without clear understanding of their rights. In turn, many employees may be inclined to avoid missing work even for health-related reasons out of fear of discipline or termination from their employer.

The effects that no-fault attendance policies have on health have garnered public attention during the recent COVID-19 pandemic. A report authored by the Midwest Center for Investigative Reporting found that at the height of the COVID-19 pandemic, workers in the meatpacking industry were often forced to work even if they had COVID-19 symptoms, as absences for such symptoms would still result in points under their employers' no-fault attendance policy.⁹ The report includes accounts from two workers at two different meatpacking plants who shared that the only way to avoid earning points for absences would be if they tested positive for COVID-19, but workers were still required to work while waiting for their test results.⁹ The toll of no-fault attendance policies is evident, as one of these plants was a Tyson Food Plant, which, as of July 2020, had over 10,000 employees company-wide test positive for COVID-19.¹⁰

The health effects created by no-fault attendance policies extend beyond those related to the pandemic and can affect the health of employees' families. For example, workers without paid sick leave, including those who work under a no-fault attendance policy, are more likely to report having a worse health status⁷ and are more likely to report delaying obtaining healthcare services for both themselves and their families.^{3,7} Moreover, as seen in the workplace, there may be a heightened risk of spreading infectious diseases if parents are forced to leave their children in school because they cannot take off from work without penalty.¹¹

Recommendations

The severe ramifications that no-fault attendance policies have on the health of workers and their families are numerous. Fortunately, there are actions that can be taken to help mitigate these effects. To start, both employers and employee support organizations such as labor unions and legal advocacy groups must increase their efforts to educate workers whose employers use no-fault attendance policies. Employees must be made aware of their rights, specifically, those laid out by FMLA and paid sick leave laws, as well as the resources and organizations in place to assist them if their rights are violated. The importance of this education cannot be understated as there are multiple documented accounts of workers being penalized for absences that are protected by either FMLA or paid sick leave laws.




In addition to expanding awareness of pre-existing laws, various legislative actions can be taken to expand workers' rights and to fill in the gaps that are left by FMLA and other worker protections. One option would be to expand paid sick leave laws. Expanding paid sick leave laws to other states and cities would help ensure that workers can take time off from work to address their own health needs and those of their family members without being penalized, as FMLA does not cover many health-related absences. The COVID-19 pandemic has provided an impetus for states such as New Mexico to pass paid sick leave legislation, which may set an example for other states and localities to replicate.²

There are also national efforts to expand paid sick leave legislation. For example, Representative Rosa DeLauro (D-CT) and Senator Patty Murray (D-WA) introduced The Healthy Families Act (H.R. 2465; S. 1195) in their respective chambers in April 2021.^{12,13} The Act aims to provide workers with seven paid sick days to be used to care for themselves or their families. This proposed legislation, currently in committee in both chambers of Congress, would create a national standard for paid sick leave, prevent workers from being penalized from being absent from work for health-related reasons, and ensure that employees are still paid while absent.^{12,13}

Conclusions

No-fault attendance policies, used by hundreds of U.S. companies that employ millions of Americans,¹ have the ability to negatively affect the health of these employees and their families. By penalizing workers for taking time to obtain healthcare services for themselves or their dependents, no-fault attendance policies threaten the health and safety of employees and their families. Out of fear of penalty, workers may be inclined to delay or forgo care for themselves or their dependents which can lead to worse health outcomes and also allow for the spread of contagious diseases in the workplace and at schools.^{3,7,11} Despite the existence of FMLA and state and local paid sick leave policies, these health-related consequences due to no-fault attendance policies persist. Several actions including advocacy and education, as well as legislation, may be effective means to improving the health of the workers and families affected by no-fault attendance policies. However, without action, workers and their families will continue to deal with the consequences of no-fault attendance policies.

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References

1. Bakst, D., Gedmark, E., & Dinan, C. (2020, June). Mised & misinformed: How some U.S. employers use “no fault” attendance policies to trample on workers’ rights (and get away with it). A Better Balance. https://www.abetterbalance.org/wp-content/uploads/2020/06/Mised_and_Misinformed_A_Better_Balance-1-1.pdf
2. Davis, E. (2021, April 9). New Mexico joins states expanding sick leave during pandemic. U.S. News. <https://www.usnews.com/news/best-states/articles/2021-04-09/new-mexico-joins-states-expanding-paid-sick-leave-during-pandemic>
3. DeRigne, L., Stoddard-Dare, P., & Quinn, L. (2016). Workers without paid sick leave less likely to take time off for illness or injury compared to those with paid sick leave. *Health Affairs*, 35(3), 520-527. <https://doi.org/10.1377/hlthaff.2015.0965>
4. Kopp, J.S. (2020, January 27). No-fault attendance policy creates “fault” for employer under FMLA. *The National Law Review*. <https://www.natlawreview.com/article/no-fault-attendance-policy-creates-fault-employer-under-fmla>
5. Edelson Lechtzin LLP. (2021, August 3). No-fault attendance policies may violate employees’ rights. <https://www.edelson-law.com/blog/2021/08/no-fault-attendance-policies-may-violate-employees-rights/>
6. Liszka, W.J. (2018, August 28). No fault attendance policies. Wessels Sherman Joerg Liszka Laverty Seneczko P.C. <https://www.wesselssherman.com/2018/08/no-fault-attendance-policies/>
7. Miller, K., Williams, C., & Yi, Y. (2011). Paid sick days and health: Cost savings from reduced emergency department visits. Institute for Women’s Policy Research. <https://iwpr.org/publications/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits/>
8. National Partnership for Women & Families. (2021, July). Paid Sick Days Statutes. <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/paid-sick-days-statutes.pdf>
9. Schiltz, H. (2020, October 20). Meatpacking workers say attendance policy forces them to work with potential Covid-19 symptoms. Midwest Center for Investigative Reporting. <https://investigatamidwest.org/2020/10/20/meatpacking-workers-say-attendance-policy-forces-them-to-work-with-potential-covid-19-symptoms/>
10. Sternlicht, A. (2020, July 30). Over 10,000 Tyson employees reportedly test positive for covid. *Forbes*. <https://www.forbes.com/sites/alexandrasternlicht/2020/07/30/over-10000-tyson-employees-reportedly-test-positive-for-covid/?sh=122286f06da4>
11. Smith, T. W. & Jibum Kim. (2010, June). Paid sick days: Attitudes and experiences. National Opinion Research Center at the University of Chicago. <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/paid-sick-days-attitudes-and-experiences.pdf>
12. The Healthy Families Act, S. 1195, 117th Cong. 2021. <https://www.congress.gov/bill/117th-congress/senate-bill/1195/all-info?r=1&s=1>
13. The Healthy Families Act, H.R. 2465, 117th Cong. 2021. <https://www.congress.gov/bill/117th-congress/house-bill/2465?q=%7B%22search%22%3A%5B%22H.R.+2465%22%5D%7D&s=1&r=1>
14. The Society for Human Resource Management. (n.d.) Managing employee attendance. <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managingemployeeattendance.aspx>
15. Vasel, K. (2018, May 16). How ‘no-fault’ attendance policies can put companies and workers at risk. *CNN Money*. <https://money.cnn.com/2018/05/16/pf/no-fault-attendance-policy/index.html>
16. 29 C.F.R. § 825
17. 29 C.F.R. § 825.220(c)