

## **“FMLA Abuse – Six Sigma Solution” by Andrea Mateer**

### **Reaching critical point on FMLA abuse**

"In today's complex business world, companies welcome simplified solutions to difficult, vexing problems such as those involving the Family Medical Leave Act (FMLA). Breaking with previous piecemeal approaches, an innovative strategy now addresses compliance issues while implementing a tightly controlled solution that dramatically reduces FMLA abuse."

The FMLA was enacted on February 5, 1993 “to generally require private sector employers of fifty or more employees, and public agencies, to provide up to twelve work weeks of unpaid, job-protected leave to eligible employees for certain specified family and medical reasons.” Let’s examine how that ties in with a large, multi-state, unionized company with over 75% of its employees working various shifts, weekends, holidays and quite often on call.

Initially under the Act, requests for leave were few, infrequent and for catastrophic reasons. However, usage increased and reasons became more ordinary and less catastrophic. Compounding the problem, the leave process was fragmented and lacked communication with the manager. Additionally, the administrator usually approved each request without question. Many employees would ignore denial letters and continued using FMLA. Also, with no accountability as to entitlements, many employees were using more than twelve weeks in a twelve-month period.

Meanwhile, employees felt no obligation to notify managers of their approval and managers felt they could not question an employee who took FMLA leave. Consequently, by 2004, management concluded the company was at a critical point on FMLA abuse, with jobs going unfilled or worked at an overtime rate and in management’s opinion (at the time) FMLA abuse was the cause.

### **Six Sigma solution**

The solution? First, the company looked at outsourcing but opted for a Six Sigma strategy and new software. The former seeks to identify and remove causes of defects and errors in manufacturing and business processes by using a set of quality management methods with two methodologies: DMAIC and DMADV, both inspired by Deming’s Plan-Do-Check-Act Cycle.

This company had already been realizing huge time/cost savings benefits regarding other issues through Six Sigma. Therefore, management decided to apply DMAIC to see if its FMLA problem could be quantified and controlled. Implementing DMAIC’s five steps, the company first developed the ARMI (Approver, Resource, Member, and Interested Party), project stakeholders and their roles. The team must have a

champion, sponsor, resources, a black belt and members. In this case, the champion was the Sr. VP Human Resources, as the team business leader who allocated the resources.

The function would reside in the Labor Relations department because the company's contract covered employees were using most of the FMLA leave and Labor Relations was their primary HR contact. Three full-time positions (director and two managers) and two temporary positions were added to implement this change. The Vice President of Labor Relations was the sponsor and also available to allocate resources. Members from the Law Department and the IT staff were team resources on an ad-hoc basis, with the director and two managers being the team members that would actually do most of the work.

Once the ARMI had been defined, the company developed a charter which included a problem statement to clearly define and measure the problem. The goal was to increase productivity by managing the FMLA process, building internal and external controls and measurements, and reducing abuse by 5% by December 31, 2005. Meeting these goals would be critical to the quality (CTQ) of the Six Sigma project.

Specific customer and organization benefit commitments were identified and quantified. These benefits included educated employees as pertains to FMLA, FMLA trained managers, and compliance with the federal regulations. In addition were the elimination of the 2 temporary positions, a reduction in replacement costs, improved availability and a 5% reduction in abuse resulting in a gain in productivity. There was also the cost avoidance of in sourcing rather than outsourcing the function. The commitments were measured and quantified as part of the Six Sigma rigor.

### **Game-changing software**

Technical issues were the first addressed by contracting with a vendor to image documents. Then, the company shopped for an FMLA computer system because its FMLA module was "lacking" and an external technology solution looked more viable than an internal one. After talking to different companies, LeaveLink® enterprise software was selected. Designed to administer federal and state leave laws, employer authorized leaves, and employee attendance policies for mid-size to large multi-state employers," its implementation was fast and painless. The vendor, Chattanooga, TN-based Absentys LLC, was (and remains) excellent to work with.

Prior to LeaveLink the process was manual-driven. Upon introduction, the software made it possible to immediately eliminate two temporary positions and manual letters while significantly reducing the possibility of administrative errors.

The system calculates leave eligibility and entitlements. Hours worked and FMLA time used are sent nightly to the vendor for importing into the software, which creates tasks

and reconciles lists for the FMLA managers; users can also add tasks. LeaveLink® administers the federal FMLA and automatically applies state leave laws based on an employee's work state. When a law changes, the vendor immediately updates the software and notifies their customers. Essentially, the company made the transition from being reactive to proactive by managing FMLA leave usage rather than just administering the leave.

Next, communication was addressed, beginning by reviewing policy, making changes, posting to the employee home page and mailing a copy to each employee's home. Also, a manual titled "What you need to know about the Family Medical Leave Act," was developed and mailed with the policy, and posted online. Weekly, electronic communications are sent to managers, e.g., recognizing and reacting to signs and situations possibly developing into an FMLA event and how to ask the right questions. Managers and employees were field-trained on rights and responsibilities, and company reps also met with union leaders and reps. Letters to employees are regularly revised as is the medical certification form to continually ensure the company best meets employee rights and employer responsibilities.

Three levels of review were developed:

- med cert was reviewed by an FMLA manager
- If a legal question, legal counsel was included
- If a medical question, the medical department was included

Employees' FMLA leave usage was monitored. If the condition was chronic and something had evidently changed, the employee was asked to recertify. If a pattern of unusual absence behavior was detected, additional questions as described in the DOL Opinion Letter FMLA2004-2 were asked and employees notified when they exceeded entitlements. Finally, the company began disciplining employees when the evidence indicated that they had falsely stated the reason for certain absences. At first there was disbelief, but slowly the employees began to more carefully read FMLA-related letters and managers began to come in for advice, seeing a resource rather than just an administrator.

In most cases, the arbitrators and the DOL have supported actions taken. When they have taken exception, some modifications in the process have been made. Data indicates that the abuse began to significantly decline after the company began managing the FMLA leave process. Abuse began to drop around July 2005, especially after employees were sent for second and third opinions and were asked to re-certify their leaves if the data indicated that something had changed.

Since 2005 processes have been continually tweaked. When weaknesses in letters and forms have been determined, revisions have been made. Upon implementation of FMLA Self-Service and FMLA Manager Self-Service, employees can apply for FMLA leave, request their employer packet, download all their forms and letters and check on their usage and entitlements online. The manager can also get the information they need online. A monthly dashboard report with control limits is generated to ensure the

ability to immediately react if the abuse begins to go out of control. This has not yet happened in the three years since deciding to take control.

### **Dramatically reducing abuse & costs without corner-cutting**

The company's savings have been more than anticipated. After implementing Leavelink, educating employees and managers, and assuming responsibility for managing FMLA leave while insisting on total compliance, FMLA staff has been reduced from five to one. One manager can now do the job that required two managers, a director and two temps. The software has also helped to significantly reduce cycle time and to meet the important CTQ's.

Over the last 3 years the abuse has consistently decreased. While the company continues to hire and its workforce has increased, the available days lost to FMLA abuse has decreased by approximately 63%.

Most importantly, the company insists on total compliance with the regulations. No employee who has a need for FMLA and is eligible is ever adversely affected. Rather, the company has become a resource for managers and employees. At times employees have a need but are not eligible. In these instances, the company has worked with managers and union reps to assist in other ways. This includes developing opportunities to partner with the Department of Labor and the unions to help address certain issues. Ultimately, the company has shown that FMLA abuse can be effectively managed with less people and without sacrificing compliance.

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