

## It's Complicated!

The relationship between ADA, FMLA and Workers Compensation

## Interaction of ADA, FMLA & Workers' Compensation

"If an employee is a qualified individual with a disability within the meaning of the ADA, the employer must make reasonable accommodations, *etc.*, barring undue hardship, in accordance with the ADA. At the same time, the employer must afford an employee his or her FMLA rights."

## Interaction of ADA, FMLA & Workers' Compensation

"Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA. Employees are not required to designate whether the leave they are taking is FMLA leave or leave under State law, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws.

## Interaction of ADA, FMLA & Workers' Compensation

- The three laws may interact concurrently
- They may interact sequentially
- In a case of conflict, whichever provision provides greater employee rights will control

## Intersection of Purposes

- FMLA: Entitles eligible employees to up to *12 weeks* of unpaid, job-protected leave during a 12-month period.
- ADA: Remove workplace barriers to individuals with disabilities by prohibiting discrimination and requiring reasonable accommodation unless undue hardship.
- Workers' Compensation: Provide payment of wage loss and medical treatment for work-related injuries; limit employer liability.

## Employee Eligibility

### FMLA:

- Employee must have worked for the State for *12 months* as of the date the leave will start.
  - Within the last 7 years.
  - Do not need to be consecutive months.
  - If the employee was maintained on payroll for any part of a week, the week counts as a week of employment.
- Employee must have worked for at least *1,250 hours* in the 12 months immediately preceding the start of leave.
  - Actual hours worked *only*.

## Employee Eligibility

### ADA:

- Individual with a disability, qualified for the job, and can perform the essential functions of the job with or without reasonable accommodation.

## Employee Eligibility

### Workers' Compensation:

- An individual who performs services for hire (an "employee").

## Qualifying Conditions

### FMLA: A “serious health condition”

- Illness, injury, impairment, or physical or mental condition
- Involves inpatient care or continuing treatment by health care provider
  - Continuing treatment includes a period of incapacity (more than 3 days) and subsequent treatment
- Chronic serious health condition or requiring multiple treatments
- Unable to work due to pregnancy

## Qualifying Conditions

### ADA: A “disability”

- Physical or mental impairment that substantially limits one or more major life activities
- Major life activities include:
  - Walking, sitting, standing, lifting, speaking, seeing, hearing, learning, etc.
  - Also includes major bodily functions such as circulatory, endocrine, hematic, cellular, reproduction, etc.

## Qualifying Conditions

### Workers’ Compensation

- Injury or disease
- In the course of or arising out of employment
  - Within hours of service
  - In, on, about the premises
  - Caused or made worse by work or workplace (substantial contributing factor)
  - Some exceptions
- Regardless of fault of employer or employee

## Medical Documentation

- ADA – Only medical examinations or inquiries that are job-related and limited to determining ability to perform the job and whether an accommodation is needed and would be effective. (Consent necessary under MHRA)
- FMLA – Medical certification of the need for and duration of the leave; contents limited by Department of Labor (DOL).
- Workers’ Compensation – Medical information that pertains to the employee’s workplace injury or disease

## Leaves Of Absence: When granted

- ADA – If employee is qualified disabled individual, leave must be granted as a reasonable accommodation unless undue hardship.
- FMLA – If employee is eligible, leave must be granted.
- Workers' Compensation – Leave needed to recover from workplace injury or disease.

## Leaves Of Absence: Duration

- ADA – No time limit, but must be reasonable and cannot cause undue hardship; can be intermittent/reduced schedule so long as not undue hardship.
- FMLA – Up to 12 weeks in the 12 month period (FY for State); can be intermittent/reduced schedule– can't require employee to take more leave than necessary.
- Workers' Compensation – No specific limit for the amount of leave; can be intermittent/reduced schedule depending upon the employer's ability to accommodate and whether the restrictions are temporary or permanent.

## Health Benefits During Leave

- ADA –Employer must continue health benefits to the same extent as for employees in a similar leave status (e.g. unpaid personal leave).
- FMLA – Employer is required to continue employer-paid health benefits during 12-week FMLA leave.
- Workers' Compensation – Per collective bargaining agreement/plan, employer-paid health benefits continue so long as the employee has and uses accrued leave and, once accrued leave is exhausted, for one year on a leave of absence.

## Leaves of Absence: Use of Accrued Leave

- ADA: Employee required to exhaust accrued sick leave; may use accrued vacation leave according to normal policy; otherwise unpaid as long as other similar leaves are unpaid.
- FMLA: Employee required to exhaust accrued sick leave, unless employee is receiving short term or long term disability insurance benefits or workers' compensation benefits; may use accrued vacation leave according to normal policy; otherwise unpaid.
- Workers' Compensation: Receives benefit of up to 2/3 average gross weekly wage; can supplement with accrued paid leave (must first exhaust accrued sick leave), but combined total of work comp hours and paid leave hours must not be more than number of regular hours worked.

## Fitness for Duty Certification/Exam

- ADA – Certification and examination to the extent that it is job-related and necessary to determine whether the employee can perform the essential functions of the job. (Consent necessary under MHRA)
- FMLA – Fitness for duty certification only regarding condition requiring leave, only if notice given in designation notice, and only if uniformly-applied policy or practice requiring certification for similarly-situated employees (same occupation, same condition); no examination permitted.
- Workers' Compensation – Certification may be required– usually WorkAbility forms provided by treating doctors.

## Reinstatement After Leave

- ADA – Must be reinstated to same position if qualified to perform essential functions of job with or without reasonable accommodation, unless undue hardship; reasonable accommodation could include reassignment to a vacant position (even demotion) if cannot accommodate in current position. NO 100% fitness policies.
- FMLA – Must restore the employee to the same or equivalent job if can perform essential functions of position at end of 12 weeks of leave. NO undue hardship exception. No accommodation required.
- Workers' Compensation – No retaliatory discharge and can't unreasonably refuse to offer continued employment to employee when employment is available within the employee's physical limitations.

## Light Duty

- ADA – Employers are not required to create light duty positions. Reasonable accommodation may include job restructuring of non-essential functions, modified scheduling; reassignment to a vacant position (including vacant light duty position), subject to undue hardship. An employee who refuses a light duty position that is a reasonable and effective accommodation may be failing to engage in the interactive process in good faith.
- FMLA – Covers only leave time, so employers are not required to create light duty position. Employee cannot be required to take light duty position instead of leave.
- Workers' Compensation – Employers are not required, but are encouraged to offer light duty to reduce wage loss. Employee may lose workers' compensation benefits if refuses a suitable light duty position.

## More ADA & Light Duty Issues

- The ADA does not prohibit creation of light duty positions for employees injured on the job.
- The employer is not required to create a light duty position for non-occupationally injured disabled employees, even if it creates light duty jobs for employees injured on the job. It must provide other forms of reasonable accommodation, however.
- If the employer has a vacant light duty position reserved for employees injured on the job, the employer must still consider reassigning a non-occupationally injured disabled employee to the vacant position as a reasonable accommodation, and cannot refuse reassignment simply because it would otherwise have no vacant light duty positions available if an employee becomes injured on the job.
- If the employer provides light duty positions only on a temporary basis, it is not required to provide a permanent light duty position as a reasonable accommodation.

## Example

Abe injures his back at work after a piece of equipment falls on him. You think that the injury occurred because Abe was not being careful enough. He needs surgery, and needs to take leave.

What issues do you spot?

## Example, cont'd

Abe has been off for 12 weeks because of his back injury. He is able to come back to work, but is not able to return to full duty.

What issues do you spot?

## Example, cont'd

Abe has been working in a light duty position for 12 weeks. You learn that Abe's back injury has permanently restricted him from ever lifting more than 5 pounds, and his normal position requires routinely lifting at least 50 pounds.

What issues do you spot?