

The Bermuda Triangle

Workers' Compensation Family and Medical Leave Act American's with Disabilities Act

The Purpose of Each Law

(Condensed for the purpose of this article)

American's With Disabilities Act (ADA)

- Prohibits discrimination against “qualified individuals with disabilities” in all employment practices to include recruitment, advertising, tenure, layoff, leave, fringe benefits and all other employment related activities.
- Definition = persons who have impairments that substantially limit one or more major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself and working. Minor, non-chronic conditions of short duration such as a sprain, broken limb, or the flu generally would not be covered.

Family & Medical Leave Act (FMLA)

- Sets a standard for leaves with regard to:
 - Birth and care of newborn child
 - Placement of child for adoption or foster care
 - To care for an immediate family member with serious health condition
 - Employee's own serious health care condition
 - Requires an absence from work for at least 3 days and a continuation of treatment.
 - Military leave for immediate family member
 - Qualified exigency
 - To care for a service member with serious injury

Workers' Compensation (WC)

- Provide payment of medical bills and compensation for wage loss to employees as a result of a work related injury or illness.

When an employee has scheduled or unscheduled absences this should be an automatic trigger to think about FMLA, ADA, and/or Workers' Compensation

Employers Who are Covered Under These Laws

- **ADA** – 15 or more employees for 20 weeks during current or preceding calendar year
- **FMLA** – 50 or more employees for at least 20 weeks during preceding calendar year
- **Workers' Compensation** – Applies to all employers however, state laws may vary

Employee Eligibility

- **ADA** – an employee (or applicant) who is disabled as defined by the ADA is: qualified for the position and can perform the essential functions of the position with or without a reasonable accommodation.
- **FMLA** – employee who has worked at least 12 months and 1,250 hours prior to the start of the leave & who works at or reports to a worksite where there are 50 or more employees within a 75-mile radius.
- **Workers' Compensation** – an employee who is injured in the course of employment

Length of Leave Required by Law

- **ADA** – no specific time limit
- **FMLA** – 12 weeks in the 12 month period as defined by the employer (usually a 12 month rolling period)
- **Workers' Compensation** – limits are based on state law.

Requirement of Light Duty or Restricted Work

- **ADA** – required to be offered if it is reasonable and does not create an undue hardship on the employer
- **FMLA** – cannot be required
- **Workers' Compensation** – Should be offered if authorized by medical physician.

Fitness for Return to Work Certification

- **ADA** – permitted if examination and inquiry is job related and necessary to determine if employee is able to perform essential functions of the job.
- **FMLA** – May only be required if part of policy that requires employees who have been on a similar type of leave of absence.
- **Workers' Compensation** – Typically required

Benefits While on Leave

- **ADA** – no requirements but cannot discriminate and must provide same benefits as those provided to employees on a non – ADA leave.
- **FMLA** – Health coverage must be continued. Employee contribution may be required based on company policy.
- **Workers' Compensation** – Continuation of benefits is not required unless WC leave is running concurrently with FMLA. EE may be offered COBRA based on company policy except when on FMLA at the same time.

Reinstatement

- **ADA** – Required to previous position unless doing so would create an undue hardship to the employer
- **FMLA** – Required to the same or equivalent job
- **Workers' Compensation** - Not required by law except for retaliatory discharges

How do all 3 laws work together? Below are scenarios where 1, 2 or 3 of these laws may apply.

(All 4 examples make the assumption that the employer and employee meet the qualifications for FMLA eligibility)

Scenario 1:

- Employee broke his leg at work. Taken off work for 3 weeks and has surgery.
 - Work Comp **Yes** Injured in the course of employment
 - FMLA **Yes** Employee's own serious health condition
 - ADA **No** Broken bone is a temporary impairment under ADA
 - File WC claim
 - Provide FMLA paperwork and proceed with certification etc.
 - Employee must continue to pay health insurance premiums per the company policy.

Scenario 2:

- Employee is pregnant and due in 3 months.
 - Work Comp **No** Not a work related injury
 - FMLA **Yes** Birth of a child
 - ADA **No** Pregnancy is temporary impairment under ADA
 - Provide FMLA paperwork and proceed with certification etc.

Scenario 3:

- Employee was in a car accident (not in the course of employment) and suffered a back injury resulting in his/her inability to walk.
 - Work Comp **No** Not a work related injury
 - FMLA **Yes** Employee's own serious health condition
 - ADA **Yes** Physical impairment that substantially limits a major life activity (walking)
 - Provide FMLA paperwork and proceed with certification etc.
 - Employee is covered under FMLA and ADA. The employee may exhaust all FMLA leave and still have additional time off under the ADA if it is considered reasonable
 - Employee may be required to provide reasonable accommodations when employee is released back to work

Scenario 4:

- Employee fell off a ladder at work aggravating a preexisting condition. Taken off work for 14 days.
 - Work Comp **Yes** – aggravation that occurs in the course of employment may be an accepted WC claim
 - FMLA **Yes** – Employee's own serious health condition
 - ADA **Unknown** - May be covered depending on severity of injury
 - File a WC claim
 - Provide FMLA paperwork and proceed with certification etc.

Every situation is different and the examples listed above are intended as a guideline only. You can find further information on these laws at:

<http://www.dol.gov/dol/topic/disability/ada.htm>

<http://www.dli.mn.gov/workcomp.asp>

<http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>