

# ADA, the FMLA, and Workers' Compensation




# Recognizing and Analyzing the Interplay of the ADA, the FMLA and Workers' Compensation Laws

- The majority of unscheduled and scheduled absences are related to the illness of employees or their family members. One, two or all three of these laws may be involved.
- Violations of these laws may result in lost wages, back pay, reinstatement, retroactive benefits, compensatory damages and punitive damages.
- Other than the legal responsibilities, employers have moral and ethical responsibilities to ensure that employees receive the benefits and protections these laws provide.

## ADA, the FMLA and Workers' Compensation Laws Highlights

The ADA (as amended) prohibits discrimination against applicants and employees who are qualified individuals with a disability, have a record of a disability, and those “regarded as” having a disability.

The FMLA sets minimum leave standards for employees for the birth and care of a newborn child, placement of a child for adoption or foster care, care for an immediate family member with a serious health condition, an employee’s serious health condition, and to care for an injured servicemember.

A decorative graphic on the left side of the slide, consisting of several parallel lines in shades of blue and grey, forming a jagged, angular shape that points towards the center.

While the federal Occupational Safety and Health Act (OSHA) requires employers to provide safe working conditions, it is the various state workers' compensation laws that provide for payment of compensation and rehabilitation for workplace injuries, and minimize employer liability. They may also provide retaliation and job protection.

# Enforcement Authorities for the ADA, the FMLA and Workers' Compensation Laws

ADA: U.S. Equal Employment  
Opportunity Commission (EEOC)

FMLA: U.S. Department of Labor  
(Wage and Hour Division)

Workers' compensation laws: state  
workers' compensation commissions

# Interplay Between the ADA, the FMLA and Workers' Compensation

These are the areas of interplay between the ADA, the FMLA and workers' compensation laws that employers need to consider when managing employee absenteeism. State laws may provide broader protections than federal requirements.

- Employer coverage:
  - 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 current or preceding calendar year.
  - Workers' compensation: Applies to most, even small, employers. State laws govern.
- 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: An employee who has worked at least 12 months and 1,250 hours before the start of the leave and who works at or reports to a worksite at which 50 or more employees work within a 75-mile radius.
  - Workers' compensation: An employee who has an injury arising out of or in the course of employment, with state law exceptions possible for willful misconduct or intentional self-inflicted injuries, willful disregard of safety rules, or intoxication from alcohol or illegal drugs.

- Length of leave:
  - ADA: No specific limit for the amount of leave that would be provided as a reasonable accommodation that does not create an undue hardship on the employer.
  - FMLA: 12 weeks in the 12-month period as defined by the employer. 26 weeks of leave is provided for the employee to care for an injured servicemember.
  - Workers' compensation: No specific limit for the amount of leave an injured worker may have.
  
- Medical documentation:
  - ADA: Only medical examinations or inquiries regarding an employee's disability that are job-related and limited to determining ability to perform the job and whether an accommodation is needed and would be effective.
  - FMLA: Medical certification of the need for the leave, not to exceed what is requested on the U.S. Department of Labor (DOL) Medical Certification Form.
  - Workers' compensation: Medical information that pertains to the employee's on-the-job injury.

- Restricted or light duty:
  - ADA: Required to be offered if it is a reasonable accommodation that does not create an undue hardship on the employer.
  - FMLA: Cannot be required.
  - Workers' compensation: Ought to be offered if available because it may eliminate the employee's entitlement to the wage replacement benefit and reduce the impact of the claim.
  
- Fitness-to-return-to-work certification:
  - ADA: Permitted as long as the medical examination and inquiry are job-related and necessary to determine whether the employee can perform the essential functions of the job.
  - FMLA: May be required only under a policy or practice that requires employees who have been on a similar type of leave of absence to provide one.
  - Workers' compensation: May be and is typically required.




- Benefits while on leave:
  - ADA: No specific requirements but cannot discriminate and must provide same benefits as those provided to employees on a non-ADA leave of absence.
  - FMLA: Health coverage must be continued at the same level as before the leave. Benefits other than health benefits are determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).
  - Workers' compensation: Not required to be continued unless it runs concurrently with FMLA leave.
- Reinstatement:
  - ADA: Required reinstatement to previous job unless doing so would create an undue hardship on the employer.
  - FMLA: Required reinstatement to the same or an equivalent job. No undue hardship exception.
  - Workers' compensation: No reinstatement rights under most state laws, except for retaliatory discharges.



Questions?  
Comments?

**Example #1:  
Employee  
Absence  
Involving the  
Interplay of the  
ADA, the  
FMLA and  
Workers'  
Compensation**


- Alice Morgan, an assembly line worker, has called in sick for three days, citing extreme back pain. She has been with ABC Manufacturing, a company with over 500 employees, for three years working full time with very few absences. Alice calls in sick for the fourth day stating that she was examined by her doctor who took X-rays and stated that she needs complete bed rest and possibly back surgery and will be unable to work for an extended period of time. Alice states that her doctor thinks the condition is caused by the type of work she has been doing.




Using the areas of interplay between the ADA, the FMLA and workers' compensation laws, here is an analysis of Alice's absence:

- **Employer coverage.** ABC Manufacturing is covered under and must comply with the ADA, the FMLA and the state workers' compensation laws.
- **Employee eligibility.** Alice may be eligible for protection under the ADA and the FMLA, depending on the severity of her condition. A workers' compensation claim must be filed and processed, and a determination must be made as to coverage under workers' compensation.

- **Length of leave.** Leave as a reasonable accommodation under the ADA is not an issue at this point because Alice's absence, with proper medical certification, will be designated as FMLA leave. Should her absence exceed 12 weeks, additional leave of absence may be a reasonable ADA accommodation. If the condition is determined to be work-related, workers' compensation leave will run concurrently with the FMLA leave.
- **Medical documentation.** Under the ADA, no medical documentation is yet required. The employer may require FMLA medical certification. The workers' compensation insurer will require medical documentation.

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- **Restricted or light duty.** Not required at the present time because Alice is unable to work in any capacity until further notice. When she is able to return to work and if she has medical restrictions, the employer must offer light duty, if available, as a reasonable accommodation under the ADA unless this creates an undue hardship on the employer. Her employer may not require light duty if FMLA leave is still available. Light duty should be offered under workers' compensation.
  - **Fitness-to-return-to-work certification.** Not required at the present time because Alice is unable to work in any capacity until further notice. When she is able to return to work, depending on any restrictions, the employer may require her to provide this certification under the ADA, the FMLA (if stated in the designation letter) and workers' compensation.

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- **Benefits while on leave.** Not required under the ADA. Under the FMLA, Alice's health benefits will be continued at the same level as before her leave, and she will receive other benefit continuation given for employees on similar non-FMLA leave. No additional benefit continuation under workers' compensation is required.
  - **Reinstatement.** Alice must be reinstated to her previous job under the ADA unless doing so would create an undue hardship on her employer. If she can return to work before she exhausts her 12 weeks of FMLA leave, the employer must reinstate her in her previous or a similar position. Workers' compensation does not provide for reinstatement under most state laws, except for retaliatory discharge.

The background features a dark, textured surface with numerous 3D question marks scattered across it. A prominent, larger 3D question mark is rendered in a golden-brown color, standing out from the darker ones. On the left side, there are several overlapping, semi-transparent blue and grey geometric shapes that create a sense of depth and movement, resembling a stylized frame or a set of parallel lines.

Questions?  
Comments?





# Summary

- Employers need to recognize and evaluate the interplay of the ADA, the FMLA and workers' compensation laws because most absences are related to the illness of employees or their family members, and one, two or all three laws may be involved.
- Employers have legal responsibilities to comply with these laws and face significant violations for noncompliance. Employers have ethical and moral responsibilities to ensure employees receive the benefits and protections these laws provide.

- The three laws have different purposes. The ADA prohibits discrimination. The FMLA sets minimum leave standards. Workers' compensation laws provide for payment of compensation and rehabilitation for workplace injuries and minimize employer liability.
- The ADA is enforced by the EEOC, the FMLA by the DOL, and workers' compensation laws by state workers' compensation commissions.

Important areas of interplay between the three laws are:

- Employer coverage.
- Employee eligibility.
- Length of leave.
- Medical documentation.
- Restricted or light duty.
- Fitness-to-return-to-work certification.
- Benefits while on leave.
- Reinstatement.



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