

# Understanding and Managing the Overlap Between the ADA, FMLA and Workers' Compensation Laws

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Rosemary G. Kenyon and Megan P. Black

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# Overlap Between the ADA, FMLA and Workers' Compensation Laws



## **Rosemary G. Kenyon, [rkenyon@smithlaw.com](mailto:rkenyon@smithlaw.com)**

Rose has extensive experience in the employment law field and regularly advises and represents large and small companies in employment and labor law issues and litigation across a broad spectrum of industries. Having served as in-house counsel for a Fortune 500 company, she brings knowledge and experience from a corporate perspective. Rose is a frequent speaker at seminars for human resources professionals and business executives about key employment and labor law trends. She has served as a mediator in a wide variety of civil disputes.



## **Megan P. Black, [mblack@smithlaw.com](mailto:mblack@smithlaw.com)**

Megan focuses her practice on employment and worker safety law. She regularly assists clients in complying with state and federal employment laws and provides corporate transaction support in the field of employment law. Megan also handles administrative matters before governmental agencies, including the Equal Employment Opportunity Commission. Megan's experience includes assisting clients in developing effective employment practices and policies and advising employers regarding wage and hour issues, leaves of absence, hiring and termination issues, discrimination, and other issues arising in the employment context.

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## Focus Today:

Purpose and coverage of each set of laws

When and where these laws intersect

Addressing the reasonable accommodation process

Coordinating and managing the overlap and effectively

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## Americans with Disabilities Act

- Prohibits discrimination
- Requires reasonable accommodations (interactive process)
- Limits medical inquiries and requires confidentiality
- Enforced by the EEOC

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## Family and Medical Leave Act

- Requires unpaid leave for serious health conditions (and other reasons)
- Prohibits retaliation and requires confidentiality
- Limits scope of medical information
- Enforced by the U.S. Department of Labor

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## Workers' Compensation Laws (state)

- Provide system of payments for lost wages and medical treatment for workplace injuries (no-fault)
- Provide for rehabilitation services
- Limit employer liability
- Companion laws frequently prohibit discrimination/retaliation
- State agency administers and enforces

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- Which laws apply to an “injured” employee?
- Does an employer have to provide FMLA notices to an employee on leave for a workplace injury?
- What is light duty, and how does it differ from a reasonable accommodation?
- Is there an obligation to provide “light duty?”
- If “light duty” is offered to a worker on WC, is the employer obligated to provide to disabled employee under the ADA?

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- Is an employer required to provide a reasonable accommodation to an injured worker?
- How does an employer coordinate the flow of medical information between the WC carrier, the administrator for FMLA leave, and HR who is considering reasonable accommodations?

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	ADA	FMLA	Workers' Comp Laws
Employer coverage	15 or more employees in 20 weeks in current or preceding year	50 or more employees in 20 weeks in current or receding year	Minimum number of employees specified by state law
Employee Eligibility	None	<ol style="list-style-type: none"> <li>1. Worksite with 50 or more employees within 75 miles</li> <li>2. Employee has worked for you total of 12 months (need not be consecutive)</li> <li>3. Employee has 1,250 hours of service in 12 months before leave</li> </ol>	Generally none
Employee Health condition triggering protection of law	"Disabled" under ADA, as amended	Employee has serious health condition that keeps him from performing essential job functions	Work-related injury or illness
Impact on ability to work requirement	To qualify for ADA protection, employee must be able to perform essential job functions if reasonable accommodation given	Employee's serious health condition must keep him from performing essential job functions	To receive income benefits, generally must show some level of incapacity

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Leave available?	Depends on facts. Requires reasonable accommodation that doesn't pose undue hardship, which in some cases, may mean leave of absence or the time off	Yes	If employee is unable to work, he is entitled to income benefits
Paid leave required?	Not generally, but again, depends on facts (must give reasonable accommodation), and may not discriminate based on disability)	No, but if provided, can count against annual FMLA leave allotment	Depending on nature of injury and resulting incapacity, may be entitled to income benefits
Duration of leave?	Depends on facts, but must consider extended leave as a possible reasonable accommodation	Up to 12 weeks in a 12 month period	Depends on nature of injury and incapacity
Intermittent leave or reduced work schedule required?	Again, depends on facts of case	Yes	Depends on state law
Notice from employee Required?	Yes, but "constructive notice" is possible	Yes, but "constructive notice" is possible	Depends on state law
Medical certification required?	Yes	Yes	Generally yes

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Nature of medical certification?	Diagnosis, impact on job, impact on major life activities, recommendation on reasonable accommodation	Confirm "serious health condition"	Depends on state but generally employer has broad access to medical information; employer may direct medical care in North Carolina
Frequency?	As needed	No more than every 30 days	As needed
Required to provide benefits during leave?	Depends	Yes, for health benefits (on same terms as before leave); upon return, must restore other benefits as if employee never gone	Generally not required
Required to reinstate at end of leave?	Generally yes, but again depends on facts of case	Generally, must restore employee to same or equivalent job	Generally depends on employee's ability to do the job
Obligated to provide light duty?	Depends on facts of case (reasonable accommodation test)	No; if do provide it, can't require employee to cut FMLA leave short to take it	Depends on state law
Fitness for duty to return to work	Depends	Depends	Generally, yes
Anti-retaliation provision	Yes	Yes	Generally, most states have such laws.
May employer terminate employment	Depends on facts	Only if extended leave	Depends on facts; may have economic consequences
Confidentiality of medical information	Required	Required	Not always addressed

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## Best Practices:

- Establish an internal process to individually assess all absences and medical issues for coverage under the ADA, FMLA and workers' compensation laws
- Comply with each set of laws, when required
- Coordinate the handling of each case under each set of laws
- Coordinate the flow of information to avoid lapses

# Thank you!

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# Past Webinars on Related Topics

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- *When Performance is Impacted by Health, Webinar, May 2014.*
- *Effectively Managing Absences Under the FMLA and the ADA, Webinar, October 3, 2014.*
- *Americans with Disabilities Act: Responding to Requests for Reasonable Accommodations, Webinar, May 2013*

# Webinar Materials

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