



Balancing Health and Compliance: Practical Guidance for Navigating the ADA and FMLA in the Workplace



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Americans with Disabilities Act (ADA)

- Became law in 1990
- Law was amended in 2008 - the Americans with Disabilities Act Amendments Act (ADAAA)
- Prohibits discrimination against individuals with disabilities (including in the workplace)
- Ensures that individuals with disabilities have the same rights and opportunities as others



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ADA - Title I (Employment Practices)

- Applies to:
 - private employers with 15 or more employees
 - state and local governments
 - employment agencies
 - labor unions
 - agents of the employer, and
 - joint management labor committees

ADA - Title I (Employment Practices)

- Enforced by the EEOC
- Prohibits discrimination in the workplace:
 - Including, during and related to recruitment, hiring, promotion, termination, compensation, and benefits

ADA - Title I (Employment Practices)

- Requires that employers provide **reasonable accommodations** to **qualified** candidates and employees with **disabilities** by engaging in an **interactive process** (unless doing so would cause undue hardship)
- **Qualified** - meets job-related requirements and can perform the essential functions with or without reasonable accommodation
- **Disability** - a *physical or mental* impairment that *substantially limits* one or more of the *major life activities* of the individual
- **Interactive Process** - an informal process to clarify what the individual needs and to identify a reasonable accommodation
- **Reasonable Accommodation** - a change in the work, workplace, or application process that helps make it possible for an individual with a disability to perform or apply for a job

ADA - Reasonable Accommodations

Examples of Reasonable Accommodations

- | | |
|--|--|
| <ul style="list-style-type: none"> • Modify or reduce work schedule • Allow remote work • Allow additional leave after FMLA is exhausted or before employee is eligible • Reassignment to another position that is vacant • Light duty/work restrictions (eliminating non-essential duties) | <ul style="list-style-type: none"> • Modify or make exceptions to policies/practices, including attendance or leave policies • Modify facility/workspace for accessibility or acquire/modify equipment • Provide assistive devices, readers or interpreters |
|--|--|

Noncompliance with the ADA

- Potential consequences:
 - EEOC charges filed (or state agency charges)
 - Costly litigation
 - Poor public perception
 - Low employee morale
 - Reputational damage



So, how do you avoid those
consequences?

Establish Company Policies

- **Equal Employment Opportunity (EEO) Policy:**
 - Indicate that you are an EEO employer
 - State acts that you prohibit (i.e., discrimination)
 - Establish that you will make reasonable accommodations to qualified individuals with disabilities

Establish Company Policies

- **Disability Accommodation Policy:**
 - Provide the process for requesting a reasonable accommodation for a disability
 - Encourage (but do not require) written requests that include relevant detail
 - State the circumstances you may request medical information from an employee

Update Job Descriptions

- Have written job descriptions for every role:
 - Reflect the essential functions and qualifications of the position
 - May include physical requirements such as lifting, walking, or sitting
 - Can include certain intellectual or social requirements (handle a stressful, fast-paced environment, communicate effectively with the public)

Document the Interactive Process

- Document every step:
 - The initial request
 - Accommodation selection
 - Accommodation implementation
- Document any failure to engage in the process:
 - Failures to respond to communication
 - Efforts made to contact the employee

Understand when you can (and can't) request medical records



- **Green Light** - the disability or need for accommodation is not obvious

- May ask for reasonable records about the disability and limitations (NOT an employee's complete medical record or information relating to another medical condition the employee has)



- **Red Light** - the disability or need for accommodation is obvious OR sufficient information has already been provided

Train HR and Managers

- Must be familiar with the company policies and the law
- Should be able to recognize requests for accommodation even if the request does not use any “magic words”
- Document requests and the steps taken in the interactive process
- Keep discussions about performance and medical conditions separate (while showing compassion)
- Most importantly - ***Communicate clearly and consistently***

Family and Medical Leave Act

Family and Medical Leave Act (FMLA)

- Provides up to 12 workweeks of job-protected, unpaid leave (additional leave available for military-related reasons) if an employee's impairment qualifies as a serious health condition
- Requires group health benefits to be maintained during the leave
- Covers public agencies, including local, state, and federal employers, and local education agencies (schools); and private sector employers who employ **50 or more employees** for at least 20 workweeks in the current or preceding calendar year (including joint employers and successors of covered employers)

FMLA - Employee Eligibility

- Worked 1,250 hours during the 12 months prior to the start of leave +
- Work at a location that has 50 or more employees within 75 miles +
- Worked for the employer for 12 months

FMLA - Use of the Leave

- The birth, adoption, or foster placement of a child
- Caring for an immediate family member with a serious health condition
- Medical leave when unable to work because of a serious health condition
- Qualifying exigency of a spouse, son, daughter, or parent who is a military member on covered active duty or called to covered active-duty status (or notified of an impending call or order to covered active duty)

FMLA - Serious Health Condition

- Inpatient care
- >3 days incapacity plus continuing care
- Pregnancy or prenatal care
- Chronic condition
- Permanent or long-term condition
- Multiple treatments

FMLA - Unpaid Leave

- Only requires unpaid leave
- An employee can elect (or the employer can require the employee) to use accrued PTO for some or all of the FMLA leave period

Noncompliance with the FMLA

- Potential consequences:
 - Costly litigation
 - An employee may file a private civil action
 - Managers may be subject to personal liability for violations
 - DOL Complaints
 - Poor public perception
 - Low employee morale



So, how do you avoid those
consequences?

Post the required FMLA notice

- Keep posted on the premises (in conspicuous places where employees are employed) a notice that:
 - Explains the FMLA's provisions
 - Provides information concerning the procedures for filing complaints related to FMLA violations
- Include this general notice in the employee handbook
- Ensure the 12-month period is defined

Respond to requests promptly

- Must notify an employee of whether the employee is eligible to take FMLA leave within 5 business days of:
 1. The request *or*
 2. The employer learning that an employee's leave may be for a FMLA-qualifying reason

Appropriately obtain medical certification

- If medical certification is needed, allow the employee at least 15 calendar days to obtain it
- Advise the employee if the certification is incomplete, provide in writing what additional information is necessary, and allow the employee a reasonable opportunity to cure (at least 7 days)
- Only require an additional medical opinion if there is a reason to doubt the validity of the initial certification

Properly track leave

- Accurately track the amount of FMLA taken
- Coordinate overlapping FMLA leave with other leave policies (like PTO or short-term disability)
- Leave may be used in the smallest increment of time the employer allows for other time off usage, so long as the smallest increment is no more than one hour

Understand job restoration requirements

- The FMLA requires that upon return from the leave, the employee be returned to the same job, or one that is nearly identical
- Nearly identical jobs must:
 - Offer the same general work schedule
 - Be at a geographically proximate worksite
 - Involve substantially similar duties/status/responsibilities
 - Include the same level of skill/effort/authority
 - Offer identical pay and benefits

Continue communication with employee

- If you have reason to believe that the employee is abusing leave - ask for recertification from a healthcare provider
- If the employee does not return to work when FMLA leave expires - may have to consider accommodation under the ADA (or other law), but will need to communicate with employee to assess

FMLA & ADA

- An employee may request leave that is potentially covered under both acts:
 1. Determine the eligibility & rights under each act separately
 2. Consider if the acts overlap regarding what action to take
- When FMLA leave is exhausted, the ADA may require additional unpaid, job-protected leave as a reasonable accommodation
- When an employee does not qualify for FMLA leave, leave may be a reasonable accommodation under the ADA

Questions?



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