

New York State School Safety Group 491

Safe Schools Agenda

___ School Business Off.
___ Athletic Director
___ Supt. Bldgs/Grounds
___ Site Administrators
___ Transportation Dir.
___ Lunch Director
___ Classroom Teachers

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A monthly service provided to help you with your efforts to make your school safe for students, staff and the public

What Do ADA and FMLA Have To Do With Workers' Compensation?

The Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA) and Workers' Compensation Law (WCL) provide benefits and protection to employees. They serve different functions, have different standards of eligibility, and also interact with each other in potentially confusing ways.

Thorough knowledge of the laws, expressed in clear operating procedures, is required if an organization is to serve its employees as required by the laws, and also to maintain high morale and productivity. Attention to the provisions of the laws also can help mitigate or prevent unexpected expenses.

ADA ensures equal opportunities to disabled individuals in employment and access to public facilities.

FMLA allows employees to take unpaid leaves from their jobs to deal with certain family and health issues without the risk of losing their jobs.

WCL requires employers to pay statutory benefits for injuries or occupational illnesses that occur in the scope and course of employment. In effect, it is a "no fault" law.

ADA extends to individuals with disabilities civil rights protections similar to those provided to people on the basis of race, color, sex, national origin, age, and religion. Title I of ADA covers employment issues of both private and public employers. Title II applies only to public entities, but covers all programs, activities and services. Title I prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms and conditions of employment. ADA covers the hiring process, too.

ADA establishes standards for entitlement to ADA protection:

1. A physical or mental impairment that substantially limits one or more major life activities
2. A record of such impairment
3. Being regarded as having such an impairment
4. Is discriminated against because of a known association or relationship with an individual with a disability.

However, if the impairment is temporary or if the impairment does not substantially limit a "major life activity," the individual does not necessarily have a "disability" generating ADA protection. On the other hand, if the employer regards the employee as having an impairment, the employee is protected by ADA.

An individual must be qualified for the job in order to have ADA protection, i.e., must meet job-related requirements such as education, training and skills, and must be able to perform the essential functions of the job with or without a reasonable accommodation.

The **FMLA** requires that covered employers provide eligible employees up to 12 weeks unpaid leave per 12 month period to attend to family medical problems, including their own. An employee is eligible for FMLA benefits if he/she has worked for the covered employer for a total of 12 months, has worked at least 1250 hours over the previous 12 months, and works in an organization where at least 50 employees are employed by the employer within a 75 mile radius.

Under FMLA, the employer must grant an eligible employee up to a total of 12 workweeks of unpaid, job-protected leave in a 12 month period for specified family and medical reasons. They are:

1. The birth and care of the newborn child of the employee
2. Adoption or foster care of a child by the employee

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3. To care for an immediate family member with a serious health condition, or
4. To take medical leave when the employee is unable to work because of a serious health condition (defined very carefully in the law.)
5. A period of incapacity of more than 3 consecutive days
6. Incapacity due to pregnancy or childbirth
7. Incapacity or treatment due to a chronic serious health condition
8. Incapacity which is permanent or long term due to a condition for which treatment may not be effective, or
9. Any period of absence to receive multiple treatments and recovery.

FMLA leave is unpaid. However, employees may choose to use accrued paid leave to cover some or all of the FMLA leave. The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave based on information from the employee.

Employees may be required to provide:

- Medical certification of need
- Second or third medical opinions and periodic re-certification
- Periodic reports during FMLA leave re: status and intent to return to work.

Intersections of **ADA**, **FMLA**, and **WCL**

- **FMLA** does not modify or limit any law prohibiting discrimination. The leave provisions of FMLA are different from the reasonable accommodation obligations of the employer under ADA. "Serious health condition" under FMLA differs from the "qualified person with a disability" under ADA. The employer needs to analyze how both statutes apply to a given situation and provide leave under the statute that gives the greater rights to the employee.
- **FMLA** leave can be for up to 12 weeks in any 12 month period; is unpaid; but group health coverage continues as if the employee was working. ADA leave allows an indeterminate leave, barring undue hardship to the employer, but only requires continuation of group health insurance if it would be continued for people without disabilities in similar circumstances.
- The employer may elect to have an employee's lost time from work due to a work-related injury count as FMLA leave. But, if the employer fails to give notice to the employee that time off work will also be considered FMLA leave, the employee will be able to

use the entire 12 weeks of FMLA for another FMLA qualifying situation.

- The employer cannot rely solely on a physician's certificate of an employee's fitness for duty after FMLA leave if the employee is protected by ADA. The criteria for the determination must be based on job related factors and be a matter of business necessity. Under ADA, the employer must make reasonable accommodations that cause no undue hardship and will allow the employee to perform the essential functions of the job.
- Under FMLA, the returning employee must be restored to his original job or to an equivalent job with equivalent pay, etc. However, if the employee returns with restrictions that prevent performance of the essential functions of the original or a similar job, FMLA does not require an accommodation - ADA does, if there is a reasonable accommodation.
- Employers who refuse to accept disabled employees back to work risk ADA liability. The employer cannot refuse the employee the position or a vacant position for which he/she is qualified, if the employee can perform the essential functions of the job.
- Return to work programs help reduce the costs of workers' compensation. However, the employer must carefully distinguish between temporary modified duty programs designed to get the worker back to full performance and programs to provide reasonable accommodation under ADA. Modified duty programs should be clearly communicated as having the intent to progress the employee to full duty.

Summary:

- FMLA, ADA, and WCL intersect in confusing and aggravating ways, but they should be viewed as benefiting employers and employees by reducing claims costs, improving employee morale, and retaining employees.
- Employers should consider ADA and FMLA provisions whenever dealing with absences due to work related injuries or occupational illnesses.
- A thorough knowledge of the provisions of the three laws and clear operating procedures are a necessity.
- Management should establish trigger points which will alert knowledgeable staff to the possible intersection of the three laws.
- When in doubt, contact your attorney or a qualified human relations professional on a case by case basis.

Resources: Available Upon Request