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FAYETTE COUNTY PUBLIC SCHOOLS

1B - Handling Multiple Leaves the Right Way

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Introduction

There are at least four reasons why administering leaves in compliance with worker's compensation statutes, the Americans With Disabilities Act Amendments Act (ADAAA) and the Family Medical Leave Act (FMLA) can be such a headache – they have (1) conflicting purposes; (2) various sources and enforcement agencies; (3) unclear guidance and un resolved issues; and (4) an absolute requirement of individual, fact specific analysis in order to come to the right conclusion.

Objective

At the close of this session, you will be able to:

- State why it important to recognize and analyze the interaction of the ADA, FMLA and Workers' Compensation Laws
- Cite the different purposes of the three laws.
- Name the enforcement authorities for each law.
- Cite important areas of interplay between the three laws that employers need to consider when managing employee absenteeism.
- Describe and analyze a situation in which the three laws interact.

Purpose of the ADA, FMLA, and Worker's Compensation Laws
ADA

- Prohibits discrimination against applicants and employees who are "qualified individuals with a disability;"
- Prohibits pre-employment medical inquiries;
- Mandates the employer's efforts to reasonably accommodate a known disability

Purpose of the ADA, FMLA, and Worker's Compensation Laws
FMLA

Sets minimum leave standards for employees for

1. the birth and newborn care of a child;
2. placement of a child for adoption or foster care;
3. to care for an immediate family member with a serious health condition; and
4. for the employee's serious health condition.

Purpose of the ADA, FMLA, and Worker's Compensation Laws
Worker's Compensation

- Provides for payment, compensation and rehabilitation for workplace injuries and minimize employer liability.

Enforcement Authorities for the ADA, FMLA, and Worker's Compensation Laws

ADA – Equal Employment Opportunity Commission (EEOC)

FMLA – Department of Labor (Wage and Hour Division)

Workers' Compensation Laws – State Workers' Compensation Commissions

Relationship between ADA, FMLA, and Worker's Compensation

Employer Coverage:

- ADA – 15 or more employees for 20 weeks during current or preceding calendar year.
- FMLA – 50 or more employees within a 75-mile radius for at least 20 weeks during current or preceding calendar year.
- Workers' Compensation – Applies to most, even small employers.

Relationship between ADA, FMLA, and Worker's Compensation

Employer 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 1250 hours prior to the start of the leave and who works at a worksite where there are 50 or more employees 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.

Relationship between ADA, FMLA, and Worker's Compensation

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.
- Workers' Compensation – No specific limit for the amount of leave an injured worker may have.

Relationship between ADA, FMLA, and Worker's Compensation

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 in the Department of Labor (DOL) Medical Certification Form.
- Workers' Compensation – Medical information that pertains to the employee's on-the-job injury.

Relationship between ADA, FMLA, and Worker's Compensation

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 – Not required, but ought to be offered if available as it may eliminate the employee's entitlement to the wage replacement benefit.

Relationship between ADA, FMLA, and Worker's Compensation

Fit-for-Duty Certification:

- ADA – Permitted as long as the medical examination and inquiry is job-related and necessary to determine whether the employee can perform the essential functions of the job.
- FMLA – Can only be required under a policy or practice that requires employees who have been on a similar type of leave of absence.
- Workers' Compensation – May be and is typically required.

Relationship between ADA, FMLA, and Worker's Compensation

Benefits While on Leave:

- ADA – No specific requirements but cannot discriminate and must provide same benefits as those provided to employees on non-ADA leave of absence.
- FMLA – Health coverage must be continued at same level as prior to 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 run concurrently with FMLA leave.

Relationship between ADA, FMLA, and Worker's Compensation

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.

Summary

It is important to recognize and evaluate the interaction of the ADA, FMLA, and Workers' Compensation Laws because most absences are related to the illness of employees or their family members and one, both, or all three laws may be involved. Employers have legal responsibilities to comply with these laws and face significant violations for non-compliance. Employers have ethical and moral responsibilities to assure employees receive the benefits and protections these laws provide.

Summary (cont.)

Important areas of interplay between the three laws are:

1. Employer Coverage
2. Employee Eligibility
3. Length of Leave
4. Medical Documentation
5. Restricted or Light Duty
6. Fit-for-Duty Certification
7. Benefits While on Leave
8. Reinstatement

Sources

- Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*
- Equal Employment Opportunity Commission ("EEOC"), www.eeoc.gov
- Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, *et seq.*
- Society for Human Resources Management ("SHRM") www.shrm.org
- United States Department of Labor, www.dol.gov

Questions???

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