

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

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Employment Law Corner: The FMLA and the ADA, Hand and Glove

The FMLA and the ADA:

Family Medical Leave Act (FMLA) questions are the most frequent compliance issues we handle, day in and day out. In many cases, compliance with the Americans with Disabilities Act (ADA) is right behind those questions. These two federal laws can overlap, depending on the facts, causing confusion and a slippery compliance slope.

Here's a useful explanation of how these commonly utilized leave laws, the FMLA and the ADA, interact:

The ADA is Always Lurking:

When an employee takes FMLA leave for *their own serious health condition*, the ADA is always lurking in the background. Whenever an employer receives a request for FMLA leave for an employee's own serious health condition, the employer should immediately begin thinking about the ADA and whether it is triggered by the facts.

The ADA requires employers to offer a reasonable accommodation to employees who have a qualifying physical or mental disability, with the exception of accommodations that are an undue hardship. Many times, the serious health condition under the FMLA also qualifies as a disability under the ADA.

When an employee takes FMLA leave for a serious health condition, the warning signs that the ADA is also in play should light up. Do not assume that FMLA leave satisfies your compliance issue with these facts.

A Common Scenario:

The FMLA and ADA oftentimes interact in the following way: An employee has a serious health condition, and they request FMLA leave. As they are about to exhaust FMLA leave, they inform the employer they need more time off because they have not recovered.

The mistake here is to assume that when the FMLA leave is exhausted, so too is the employee's protections under federal law. Not true! This is when

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the ADA becomes a factor. If an employer is reasonably aware of a potential disability, they are obligated to begin the interactive process.

A serious personal health condition under FMLA leave is your red flag to consider the ADA obligations. Walk the employee through the interactive process and find out if there are any reasonable accommodations that exist that would allow the employee to continue to perform their job duties. Remember: initiating the interactive process is required by law to explore whether and what accommodation is needed.

A reasonable accommodation in that scenario may be an extension of leave-although the ADA does not require unlimited extensions of leave or indefinite leave. By exploring the employee's needs and the job requirements, a return-to-work solution may be found that eliminates the need for more leave time.

Bottom Line:

Whenever an employee takes FMLA leave for a serious health condition, be prepared to initiate the ADA process. Many times a serious health condition under the FMLA is also a qualifying disability under the ADA.

Questions about reasonable accommodations and the interactive process? Need help ensuring your organization is making the FMLA/ADA connection? We have solutions. Our office has a popular [Reasonable Accommodation Compliance Toolkit](#), and an [ADA Reasonable Accommodation and Undue Hardship Assessment Service](#). For a deeper dive, we can conduct and FMLA and ADA Compliance Audit. We can help.

Contact Us



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