Overview

Most employers are all too familiar with federal employment legislation such as the Americans with Disabilities Act of 1990 (ADA) and the Family and Medical Leave Act of 1993 (FMLA), as well as the array of Workers’ Compensation laws in each state. These laws have required employers to revise their employment practices substantially over the years as the courts have interpreted an employer’s obligations under each statute.

What employers may not be familiar with, however, is the overlap and areas of commonality between ADA and FMLA that require an employer to adopt an integrated approach to achieve compliance with both statutes. If an employee’s health problems are the result of a job-place injury, state Workers’ Compensation laws come into play and further complicate the employer’s analysis.

The physical health of an employee or his family can have a dramatic impact upon the workplace. At a minimum, personal or family health concerns pose a distraction to the employee. The employee’s own health problems can directly affect performance and, in some cases, render the employee incapable of performing his or her duties and responsibilities.

Employers usually sympathize with good employees who have personal or family health problems. Enlightened human resources policies that take into consideration an employee’s family and health problems help attract and retain quality workers and can lead to employee loyalty and higher productivity. Nevertheless, even the most accommodating employer must be alert to avoid inadvertent violations under the ADA, FMLA, and Workers’ Compensation statutes (Ohio’s Workers’ Compensation laws are addressed in this article), as well as the complex regulations accompanying each.

A Little Background

To understand how ADA, FMLA and Workers’ Compensation laws relate and overlap, it is first necessary to provide a summary of each. ADA prohibits discrimination against employees with a disability. FMLA sets minimum leave standards for workers. Finally, Workers’ Compensation provides for payment of compensation and rehabilitation to workers injured on the job.

ADA at a Glance

The Americans with Disabilities Act (ADA) prohibits covered employers from discriminating against employees and applicants who are “qualified individuals with a disability.” Employers cannot discriminate against an individual based upon his or her association with a disabled person (i.e., if the employee has a child or spouse afflicted with a disability).
• Employers with 15 or more employees must, in most cases, comply with ADA.
• A qualified individual with a disability – protected by the ADA – is a person who can perform the essential functions of his or her job with or without a reasonable accommodation.
• Employers must provide reasonable accommodations to qualified individuals with a disability.

FMLA at a Glance

The Family and Medical Leave Act (FMLA) establishes a minimum standard for leave, much as other federal laws set standards for child labor, minimum wage, safety and health, or pension and welfare benefits.

• Employers with 50 or more full-time employees must, in most cases, comply with FMLA.
• FMLA does not cover part-time or seasonal employees working fewer than 1,250 hours per year.
• Eligible employees may be entitled to 12 weeks of unpaid leave during any 12 month period for:
  o the birth of a child and to care for the child
  o the placement of a child with the employee for adoption or foster care
  o to care for a spouse, son or daughter, or parent who has a serious health condition
  o a serious health condition that makes the employee unable to perform the functions of the employee’s job

Workers’ Compensation at a Glance

State Workers’ Compensation laws seek to compensate employees for workplace injuries while minimizing employer liability. The Ohio Workers’ Compensation Act (as well as workers’ compensation laws in other states) protects both injured workers and their dependants from the costs associated with occupational injury, disease or death. Employers may pay premiums to state-sponsored funds or apply for self-insured status.

• In Ohio, the law applies to employers of one or more employees and anyone who employs casual or domestic workers who earn $160 or more per quarter.
• Employers must meet the insurance requirements of the law or they may be subject to fines.
• Employees must, in Ohio, notify the Bureau of Workers’ Compensation of the injury within two years of the date of injury.
• Employers who pay into the state Workers’ Compensation fund or who are self-insured are normally not subject to civil liability for workplace injuries or death unless its employees can establish an intentional tort on the part of the employer.
## THE ADA, FMLA, and Workers' Compensation

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<thead>
<tr>
<th></th>
<th>ADA</th>
<th>FMLA</th>
<th>WC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
<td>Prohibits discrimination</td>
<td>Sets minimum leave standards</td>
<td>Provides for payment of compensation; rehabilitation</td>
</tr>
<tr>
<td><strong>Who is subject to law</strong></td>
<td>Employer with 15 or more employees</td>
<td>Employers with 50 more employees</td>
<td>All employers</td>
</tr>
<tr>
<td><strong>Who is protected</strong></td>
<td>Qualified employee or applicant</td>
<td>Employee who has worked one year and 1,250 hours; 75 mile radius rule</td>
<td>All employees</td>
</tr>
<tr>
<td><strong>What triggers protection</strong></td>
<td>Disability-having an impairment, having had same, or being regarded as having had the same</td>
<td>A serious health condition, birth or adoption</td>
<td>Sustaining an injury or occupational disease</td>
</tr>
<tr>
<td><strong>Protection</strong></td>
<td>Reasonable accommodation vs. undue hardship</td>
<td>12 weeks of leave if qualifies</td>
<td>Benefits are determined by medical justification and statutory permission: TT, WL, PPD, PTD</td>
</tr>
<tr>
<td><strong>Medical leave continuous or intermittent</strong></td>
<td>Reasonable accommodation vs. undue hardship</td>
<td>12 weeks of leave if qualifies</td>
<td>Benefits are determined by medical justification and statutory permission: TT, WL, PPD, PTD</td>
</tr>
<tr>
<td><strong>Family leave</strong></td>
<td>No</td>
<td>Family member with serious health condition</td>
<td>No</td>
</tr>
<tr>
<td><strong>Medical certification of disability or condition</strong></td>
<td>Employer can obtain if job-related or consistent with business necessity</td>
<td>Employer &quot;may&quot; require medical proof to receive benefits</td>
<td>Employee must submit medical proof to receive benefits</td>
</tr>
<tr>
<td><strong>Time limit</strong></td>
<td>None-reasonable</td>
<td>12 weeks per year</td>
<td>Generally, two years to file a claim</td>
</tr>
<tr>
<td>Light duty or restricted duty</td>
<td>May be reasonable accommodation if offered and refused an employee may lose TTD benefits but may be eligible for wage loss</td>
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<tr>
<td>Focus is on position at time of request for leave</td>
<td>Employers discretion to offer light duty; if offered and refused an employee may lose TTD benefits but may be eligible for wage loss</td>
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<tr>
<td>accommodation and undue hardship</td>
<td>claim; claims last a lifetime, unless there is no activity.</td>
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**Case Study: Applying ADA, FMLA, and Workers’ Compensation Legal Principles**

Knowledge of these statutes can help an employer avoid liability to problem employees, who sometimes use the protections of these statutes to avoid the consequences of poor performance in the workplace. Because each of these three areas of the law has its own distinct purposes and distinct procedures, an employer must analyze an employee’s health issues under each area of the law in order to comply fully. This case study serves as a general guide for employers to follow.

**Mary’s Aching Back: What do You Do?**

Suppose you operate Ramjack Company, a small manufacturing facility with 60 employees. Mary has been working full time at the plant for two years as a widget packer. During the previous year she has missed 14 days of work, but never more than one or two days in a row. Under Ramjack’s “no fault” attendance policy, if Mary has one more absence this year, she will be terminated.

On Friday morning, Mary calls in to say she will miss her second shift duties later that afternoon because she is having back pain. She has visited her doctor, who told her to stay in bed and see him again on Monday morning. As an employer, you have to consider this scenario three different ways, accounting for ADA, FMLA, and Workers’ Compensation.

Depending on the extent of Mary’s back injury it may qualify her for ADA coverage. You employ more than 50 people and Mary has worked for you for more than two years, so FMLA coverage is also a probability. Because she will see her doctor two times and is apparently unable to work for three calendar days, this triggers FMLA coverage. To start, you should inform Mary that her time off will be considered FMLA leave.
Moreover, this absence, if covered by FMLA, cannot trigger any negative repercussions against Mary under the “no-fault” attendance policy. Finally, if Mary hurt her back on the job, Workers’ Compensation will come into play.

Mary’s back injury turns out to be serious, restricting her ability to stand and walk. She contends that she injured her back while lifting a box at Ramjack.

**Mary Wants to Return to Work: What is Your Response?**

After nine weeks Mary comes back to work and wants her old job. The severity of her condition, limiting her ability to stand and walk, will probably qualify her as disabled under the ADA. If she can perform the essential functions of her job, she is entitled to have her job back and entitled to reasonable accommodation. Under FMLA, Mary is entitled to her original position or an equivalent position with equivalent pay and benefits if she can perform the essential benefits of her job. There is no reasonable accommodation requirement under the FMLA. Because Mary’s injury was incurred on the job, she is eligible for Workers’ Compensation benefits as well. FMLA leave and paid Workers’ Compensation leave can run simultaneously. You should require Mary (and all employees) to use all of her eligible leave, such as sick time and vacation time (which is paid), before using FMLA leave (which is unpaid). Otherwise, Mary may request vacation time at the end of her 12 weeks of FMLA leave, resulting in her being away from work for a very long time.

**Mary Decides She Can’t Do Her Job and Goes Home: Can She Do That?**

Upon her return to work after nine weeks, Mary discovers that she is still not able to do her job as a widget packer. You offer her light duty in the office, but she declines, and goes home for another three weeks. The light-duty work you offered Mary may qualify as a reasonable accommodation under the ADA. Mary is entitled, however, to a full 12 weeks of leave under FMLA provided that she still in fact has a serious medical condition that prevents her from working. Though you offered her a choice of light-duty office work, her previous job or an equivalent position upon her return, she does not have to accept light duty under FMLA. If she is receiving Workers’ Compensation benefits – assuming her condition allowed light duty – she may not be eligible for continued Workers’ Compensation benefits after refusing a written offer of light duty.

**Reasonable Accommodations: Is Mary Entitled to these Requests?**

When Mary returns after 12 weeks of FMLA leave, she wants her old job even though she is still experiencing back problems. She is sure she can do the job if she is given a tall chair to use while working, allowed to take a five minute walk every hour, and allowed to report to work a half-hour late on Fridays so she can see her doctor. Under ADA, you should accommodate these requests if they help her perform her job because they pose no “undue hardship” to you as an employer. If Mary is able to perform her old job – with the accommodations requested – she is no longer eligible for Workers’ Compensation temporary total disability benefits.
As an Employer, to What Medical Certification are you Entitled?

You’ll certainly want Mary to provide medical certification that she is ready to return to work and that she needs the chair, the walks, and the visits to the doctor that she has requested as part of her reasonable accommodation. The ADA permits medical inquiries if they are job related and consistent with business necessity. In determining whether Mary is entitled to an accommodation, the two of you are required to conduct an “interactive dialogue.” You may request medical information as part of this dialogue, but medical records must be kept confidential and separate from other employment records. Under FMLA, upon returning to work, all Mary is required to provide is certification from her healthcare provider that she is ready to return to work.

Developing a Proactive Return-to-Work Program

It is critical that you examine and evaluate your workplace and develop a “return to work” program that is right for your industry, your employees and, for Workers’ Compensation cases, the types of injuries you have typically had in the past. What works for one employer in the manufacturing industry, for example, may not work for another employer in the communications industry. Although it is helpful to survey how other employers have approached this issue, ultimately, a “return to work” program must fit your workplace.

At a minimum, your “return to work” program should be in writing in order to be consistent, credible and enforceable. It should address:

- How the company will assess whether the employee is able to return to work and can be reasonably accommodated in his or her current position
- If the employee cannot be reasonably accommodated, the process for finding other available positions within the company
- Required fit-for-duty certification from appropriate healthcare providers
- Time limitations for the employee to remain on a light-duty position
- If reasonable accommodation cannot be provided and there are no alternative positions available, how long is it reasonable for the company to keep the employee on leave of absence

Any “return-to-work program” has to take into account applicable ADA, FMLA and Workers’ Compensation stipulations.

Be aware, for example, that FMLA statutes, where applicable, may interfere with the company’s attempt to return an injured employee on Workers’ Compensation to work if the employee refuses a light-duty offer and chooses to stay off for the full 12-week FMLA period. If the employee is unable, at the conclusion of FMLA leave, to perform the essential functions of his or her former position or of an equivalent position, the employee has no right to restoration to another position under FMLA.
However, if the employee returning from a work-related injury is a “qualified individual with a disability” under the ADA, your responsibilities as an employer are then governed by the ADA’s requirement that the employer make a reasonable accommodation, barring undue hardship. This means that you have an obligation to attempt to return an injured employee to work beyond the 12-week FMLA period.

Conclusion

All of these statutory and common-law areas of ADA, FMLA and Workers’ Compensation overlap and conflict in some way with one another. As a result, here are a few general rules when trying to determine the legally correct action pursuant to these overlapping and conflicting laws.

Determine what legal restrictions are imposed upon you, as an employer, by each of these areas of law. After each group of applicable legal restrictions is identified, you must seek to comply, if possible, with all of the restrictions.

Cases in which the restrictions imposed by the laws are seemingly in conflict or where some restrictions are greater than others, the strictest of most severe restrictions must be honored.

When the two federal statutes – ADA and FMLA – conflict with state law, the federal laws trump or take precedence over the state Workers’ Compensation and common-law tort concerns if the federal laws are more restrictive relative to your status as employer. If the state laws are more restrictive, you must still honor the state laws as they apply to your non-ADA or FMLA decisions and conduct.

As with all legal issues, when attempting to deal with the complexities and overlap of these laws, you should seek the assistance of counsel.

For More Information

Please contact Nancy M. Barnes or Jonathan A. Good or any member of our Labor & Employment practice group for more information.
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