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GRIZZAFFI DARBY
BEYOND BENEFITS



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ADA, FMLA, and Workers' Compensation

Both the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA) require employers to grant employees unpaid leaves of absence under certain circumstances. Compliance with the FMLA does not guarantee compliance with ADA and vice versa. Additionally, Texas workers' compensation laws may factor into the mix. The possible overlap of these statutes is complicated and continues to create challenges to employers.

Not every employee who takes FMLA leave is also covered by the ADA. There is overlap only when the employer is covered by both statutes and the employee (1) is eligible for FMLA; (2) has a "serious health condition" as defined by FMLA; and (3) has a disability as defined by the ADA. Likewise, a person with a workplace injury who is receiving workers' compensation benefits may or may not also be covered by the FMLA or ADA.

During FMLA leave, an employer is required to maintain health insurance benefits for the employee on the same terms as for active employees. Upon return to work from FMLA leave, the employee is entitled to be restored to the same position or to an equivalent one. An employee who does not return after the 12th week of leave is not entitled to job restoration under the FMLA.

Under the ADA, a leave of absence may be a reasonable accommodation unless the employer can show an undue hardship. It is the EEOC's position that the employee's job must be held open and restored upon return, again, unless undue hardship can be shown. A clear example may be where a company has one employee who is trained and able to perform certain accounting functions that are necessary to the operation of the business. It would likely pose an undue hardship to hold this position open; however, the employer should consider any vacant, equivalent positions when the employee is ready to return to work.



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Contrary to popular opinion, Texas workers' compensation laws do not provide a right to a leave of absence or guaranteed reinstatement. An employer may not retaliate against an employee because she has filed a workers' compensation claim, and the same employee may be entitled to FMLA or ADA leave depending upon the nature of her injury or illness.

A neutral or "no-fault" absence control policy is a permissible way to manage leave if it is drafted properly and enforced consistently.

It's complicated, isn't it? Call your Grizzaffi Darby Consultant or Account Manager to discuss these and other challenges in understanding compliance with these laws.

