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How the ADA and FMLA Intersect and Why this is Important for Employees

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For employees with disabilities and serious medical conditions, two key laws provide important protections in the workplace:

- The Family and Medical Leave Act (FMLA), which provides guaranteed paid leave to certain employees to care for serious medical conditions; and
- The Americans with Disabilities Act (ADA), which requires employers to provide reasonable accommodations to employees with disabilities and prohibits discrimination because of disability status.

Although the laws differ in both subject and scope, employees with disabilities or serious health conditions should be aware of both laws. Cases involving disabilities or medical leave frequently involve both FMLA and ADA claims, so it is important for employees to know what protections are offered and how the two laws interact.

Overview of the FMLA

The FMLA protects an employee's right to take leave to attend to medical or family emergencies. This includes dealing with an employee's own serious medical condition, caring for a family member with a serious medical condition, or taking time off for the birth or adoption of a child.

Employees covered by the FMLA can take up to 12 weeks of unpaid leave during any 12-month period. During an employees' FMLA-protected leave, their job status is protected and their health benefits must be maintained.

For more on the FMLA, see this primer on FMLA retaliation claims.

Overview of the ADA

The ADA, on the other hand, protects the rights of individuals with disabilities in the workplace. Under the Act, an individual with a disability is someone:

1. with a mental or physical impairment that limits one or more major life activities; or

2. who has a history of such an impairment; or

3. who is regarded, rightly or wrongly, as having such an impairment.

42 U.S.C. §12102(1).

The ADA prohibits employment discrimination against individuals with disabilities and requires employers to make "reasonable accommodations" for disabled workers. Reasonable accommodations may include:

- changes to make facilities more accessible;
- altering an employee's schedule to allow for part-time work; or
- other workplace changes that do not create an undue hardship.

Importantly, allowing employees to take a leave of absence to attend to their condition may be a "reasonable accommodation under the law." *See Humphrey v. Memorial Hospitals Ass'n*, 239 F.3d 1128 (9th Cir. 2001) (holding that leave of absence was a reasonable accommodation for medical transcriptionist with a disability).

However, when an employee will be unable to return to work and perform their essential job functions after taking leave, a leave of absence may be found to be unreasonable as an accommodation. *See Kitchen v. Summers Continuous Care Center*, LLC, 552 F.Supp.2d 589 (S.D. W.Va. 2008)(finding that leave of absence was not a reasonable accommodation for employee who could not show that she would be able to return to performing work duties).

Seeking Medical Leave Under the ADA and FMLA

The FMLA's regulations specify that the Act is not intended to modify any other federal or state law prohibiting disability discrimination. 29 C.F.R. §825.702(a). This is good news for employees with serious health conditions, as it can mean extra protections under the law.

An employee who is covered by both the FMLA and the ADA and who requires medical leave to care for their condition could be entitled to more than the statutorily-mandated 12 weeks of leave.

Under the ADA's requirement that employer's make "reasonable accommodations" for disabled employees, additional leave may be considered a reasonable accommodation provided that it does not pose an undue hardship and that the employee is able to return to work at the conclusion of their leave. Guidance from the Equal Employment Opportunity Commission (EEOC) clarifies that the ADA may entitle disabled employees to leave beyond the 12 weeks provided by the FMLA:

"[If] an employee uses the full 12 weeks of FMLA leave for her disability but still needs five additional weeks of leave… the employer must provide the additional leave as a reasonable accommodation unless the employer can show that doing so will cause an undue hardship. ***The Commission takes the position that compliance with the FMLA does not necessarily meet an employer's***

obligation under the ADA, and the fact that any additional leave exceeds what is permitted under the FMLA, by itself, is not sufficient to show undue hardship.*"*

A number of recent court cases illustrate that the ADA may afford additional protections to FMLA-covered employees. For example:

- In 2012, a jury returned a $4,850,000 verdict against a trucking company for instituting a policy that required employees to return to work after twelve weeks of leave with no medical restrictions in place. *EEOC v. Interstate Distributor Co., JVR No. 1301220014* (D. Co. Nov. 8, 2012). The suit was filed by the EEOC, which alleged that the employer's policy had led to qualified individuals not receiving reasonable accommodations under the ADA.

- In *Hill v. Asian American Drug Abuse Program, Inc.*, an employee who broke her arm took leave under the California Family Rights Act (CFRA), a state analogue of the FMLA. No. BC582516 (Cal. Sup. Ct. Jan. 19, 2018). While on leave, she began receiving treatment for major depressive disorder and requested additional leave. Rather than granting the leave, her employer terminated her when she failed to return to work at the conclusion of the 12-week statutory period. Hill was awarded $4,572,835 in damages after her employer failed to restate her.

While employees who require additional leave to return to work may find protection under the ADA, not all requests for additional leave have been found to be protected: In *Samper v. Providence St. Vincent Medical Center*, the Court found that a Neo-natal Intensive Care Unit (NICU) nurse who required additional unplanned and intermittent time off was not a "qualified individual" within the meaning of the ADA. 675 F.3d 1233 (C.A.9 2012). The Court found that the plaintiffs' unplanned absences and inability to adhere to the Hospital's attendance policy unreasonably interfered with a key responsibility of being an NICU nurse (regular attendance).

Key Factors to Bear in Mind

The ADA and FMLA can be complementary tools for employees seeking protected leave to attend to health conditions. While it's important to know that the ADA may entitle employees to additional leave, there are several other key aspects of the law that employees should be aware of:

1. **Not every employee who has a "serious health condition" under the FMLA is necessarily "disabled" under the ADA.** The FMLA's enacting regulations specify that the ADA's "disability" and the FMLA's "serious health condition" are different concepts and must be analyzed separately. 29 C.F.R. §825.702(b).

2. **The Acts may not cover the same employers.** The FMLA applies to employers with at least 50 employees within a 75-mile radius, public agencies, and elementary and secondary schools. By contrast, the ADA covers employers with at least 15 employees, state and local governments, employment agencies, and labor organizations. As a result, some employers covered by the ADA may not be subject to the FMLA.

3. **State laws may also overlap with the FMLA and ADA.** Many states have their own statutes which cover similar territory to the FMLA and ADA. For example, Massachusetts' recently-enacted Paid Family and Medical Leave (PFML) law provides leave for employees attending to family or medical emergencies, but ensure that leave is paid and provides an additional

eight weeks of medical leave when compared to the FMLA. Employees should be aware of their state’s employment leave and anti-discrimination statutes, as they often extend protections that are more generous than their federal law counterparts.

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