

Mesch, Clark & Rothschild, P.C.

INTERACTING PROVISIONS OF ADA, FMLA AND WORKERS' COMPENSATION LAWS

	ADA	FMLA	Workers' Comp Laws
COVERED EMPLOYERS	15 or more employees in 20 weeks in current or preceding year	50 or more employees in 20 weeks in current or preceding year	Minimum number of employees varies between one and five
ELIGIBILITY REQUIREMENTS (OTHER THAN TRIGGERING HEALTH CONDITION REQUIREMENTS, BELOW)	None	1. Employee at worksite with 50 or more employees within 75 miles 2. Employee has worked for you total of 12 months (need not be consecutive) 3. Employee has 1,250 hours of service in 12 months before leave	Generally none
HEALTH CONDITION TRIGGERING PROTECTION OF LAW	1. Employee has impairment that substantially limits major life activity (or has history or regarded as having same) 2. Despite disability, employee can perform essential job functions if provided reasonable accommodation	Employee has serious health condition that keeps him from performing essential job functions	1. Employee is ill or injured 2. Illness or injury occurred during course of employment 3. Illness or injury arose out of employment
ABILITY TO WORK REQUIREMENT	To qualify for ADA protection, employee must be able to perform essential job functions if reasonable accommodation given	Employee's serious health condition must keep him from performing essential job functions	To receive income benefits, generally must show some level of incapacity
LEAVE AVAILABLE?	Depends on facts. Law requires reasonable accommodation that doesn't pose undue hardship, which in some cases, may mean leave of absence	Yes	Maybe, if employee unable to work
PAID LEAVE REQUIRED?	Not generally, but again, depends on facts (must give reasonable accommodation), and may not discriminate based on disability	No, but if provided, can count against annual FMLA leave allotment	Depending on nature of injury and resulting incapacity, may be entitled to income benefits
DURATION OF LEAVE?	Depends on facts	Up to 12 weeks in a 12-month period	Depends on nature of injury and incapacity
INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE REQUIRED?	Depends on facts	Yes	Depends on state law
NOTICE FROM EMPLOYEE REQUIRED?	Yes. ADA doesn't apply to an employee unless you know about his/her disability	Yes, if need is foreseeable, employee must give at least 30 days' notice; if unforeseeable, as much notice as practicable	Yes, employee generally must notify you promptly of job-related condition
MEDICAL CERTIFICATE PERMITTED?	Yes	Yes	Generally yes
REQUIRED TO PROVIDE BENEFITS DURING LEAVE?	Not generally, but depends on facts (reasonable accommodation; can't discriminate)	Yes, for health benefits (on same terms as before leave); upon return, must restore other benefits as if employee never gone	Generally not required
REQUIRED TO REINSTATE AT END OF LEAVE?	Generally yes, but again, depends on facts	Generally, must restore employee to same or equivalent job	Generally depends on employee's ability to do the job
OBLIGATED TO PROVIDE LIGHT DUTY?	Depends on facts (reasonable accommodation test)	No; if it is provided, employee can't be required to cut FMLA leave short to take it	Depends on state law
ANTI-RETALIATION PROVISION?	Yes	Yes	Yes