

Employee leave: Step carefully through maze of FMLA, ADA

When a worker requests a leave of absence for a medical condition, it can be downright puzzling to balance the different requirements and benefits under the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA).

Add another layer of complexity if the condition falls under workers' comp coverage.

You're not the only one who's confused. Nearly two-thirds of HR professionals say they have questions about coordinating leave under the FMLA and ADA, according to a Society for Human Resource Management survey.

Coordinating coverages

The basics on leave rules: The FMLA allows workers in companies with

50 or more employees to take up to 12 weeks of unpaid leave during a 12-month period for their own "serious" illnesses or to care for an immediate family member.

Under the ADA, you must make reasonable accommodations to help "qualified disabled workers," which can sometimes mean granting leave. Courts, however, have said an indefinite leave under the ADA is usually unreasonable.

The key point: The FMLA's "serious condition" and the ADA's "disability" are different concepts that must be analyzed separately.

A person with a ruptured spleen, for example, may have a serious condition that allows for FMLA time off, but it doesn't make him disabled under the ADA.

Treating a worker with a serious health condition as if he were disabled can trigger ADA protection from discrimination.

It is possible, however, for a person to be covered under both acts. Workers with disabilities may need to take time off for medical treatments and, under the FMLA, they can take their 12 weeks all at once or intermittently through the year.

But the ADA's reasonable accommodation rule may require you to go beyond the FMLA by offering disabled workers more than 12 weeks of leave. In such cases, it's best to work with the employee to balance the demands of the job with the worker's medical needs.

Coordinating coverages also helps keep a handle on the benefits. For example, you can require employees to use up their paid leave to cover some or all of their FMLA leave. And most absences under workers' comp can qualify for FMLA coverage. So if you designate that time missed as FMLA leave, you can avoid employees taking extra time to benefit from both coverages.

In some leave situations, Title VII's antidiscrimination rules also come into play. A woman on the job less than a year wouldn't normally be entitled to FMLA leave for pregnancy. But if you allow leave for other medical conditions in the first year, you can't refuse it for pregnancy.

It's also important to make certain requests, such as requiring a doctor's certification for an FMLA absence or obtaining medical information to determine whether a worker has an ADA-covered disability.

Keeping records private

You also must make sure not to violate the worker's privacy rights. You can keep ADA and FMLA medical information in a single file separate from the employee's personnel file, but you have to follow the confidentiality rules for both laws.

That includes restricting access of most supervisors and managers to the files. That's because they only need to have information regarding the necessary work restrictions and accommodations, not the specifics of the condition.

Accommodating the employer

When a worker requests intermittent leave or a reduced schedule for foreseeable medical treatment, you can require the employee to try to schedule the treatment so that it is least disruptive to your office, such as making appointments after work.

But you can only ask the employee to go so far. While the ADA does give you some leeway by not requiring you to provide an accommodation if it creates an "undue hardship" on your business, there's no such standard for FMLA leave. You can't refuse FMLA leave when workers are entitled to it or force them to return early from an injury for light-duty work.

You must promptly designate leave as an FMLA action for the time to fall under the 12-week limit.

State laws also may grant additional benefits to employees.

For more information ...

The National Institute of Business Management offers two special reports on these laws: *You and the FMLA* (Publication N266) and *You and the ADA* (Publication N264). Cost for each: \$24.95. To order, call (800) 543-2055.

The U.S. Equal Employment Opportunity Commission provides a fact sheet that answers questions about the relationships among the Family and Medical Leave Act, the Americans with Disabilities Act and Title VII. Visit www.eeoc.gov/docs/fmlaada.txt.

FMLA compliance checklist

- q Draft a written FMLA policy and distribute it to employees.
- q Post the Labor Department's "Notice of FMLA Rights."
- q Respond to an employee's request for FMLA leave within two business days.
- q Include absences for workers' compensation as FMLA leave.
- q Explain your company's internal rules on using FMLA leave.
- q Establish a measuring-year method for tracking annual FMLA leave.
- q Verify serious health conditions with medical certification.
- q Deduct intermittent leave from an employee's 12-week entitlement.
- q Continue to pay attendance bonuses to employees on leave.

q Treat the ADA separately from the FMLA.