

# Employee leave: When does FMLA stop, and ADA begin?

FMLADA! Sometimes employment laws just look all blurry. Like when you're required to grant leave to employees under the Family and Medical Leave Act (FMLA) ... and then grant *additional* time off as a "reasonable accommodation" under the Americans with Disabilities Act (ADA).

Where does one law stop and the other law start? One court recently answered this question with a bright-line finding. The ADA doesn't always have to kick in after FMLA leave.

**Case in Point:** "Rocky" Brown, a supervisor at a New Mexico supply warehouse, was granted FMLA leave to undergo colon cancer surgery. Later, he was given intermittent FMLA leave to deal with recurring health-related absences. Eventually, Brown exhausted all of his 12 weeks of FMLA leave within a 12-month period. He asked for even more leave, but the company terminated him. Brown sued.

While Brown realized his FMLA leave was ending, he argued that he was denied his rights for a "reasonable accommodation" under the ADA. Brown claimed the ADA entitled him to either: 1) More unpaid leave; 2) Be able to work from home; 3) Have his duties be assigned to another worker; or 4) Be assigned to another temporary position.

The employer denied he was a "qualified individual" under the ADA because he could not perform the essential functions of his job—including the physical need to be at work in the warehouse—either with or without a reasonable accommodation.

## What happened next?

The court sided with the company, noting two issues. First, while a reasonable accommodation may include working from home, it all depends on the essential elements of the job. Brown was a warehouse supervisor and needed to be in the warehouse to supervise. Second, the evidence, including the doctor's notes, failed to indicate if and when Brown would ever sufficiently recover from his impairment to return to work. The last doctor's note stated he "may" be able to come back to work, but by then Brown had already missed another return-to-work date.

The court ruled, "Because Brown did not show a reasonable accommodation would allow him to perform the essential functions of his job, we agree...that Brown was not a qualified individual under the ADA and the employer did not wrongfully terminate him." ([\*Valdez v. McGill\*](#), 10th Cir., unpublished opinion 2/13/12).

## 3 Lessons Learned ... Without Going to Court

**1. Be descriptive.** Make sure you 'describe' the essential functions of every job in all job descriptions, including the need for physical attendance at work. Pilots and bank tellers are not the only people who cannot work from home.

**2. Count accurately.** As part of his lawsuit, Brown argued his employer interfered with his FMLA leave. But

when the court added up the weeks (to the day), they were all used up. This left Brown no longer protected by the FMLA.

**3. Huddle closely.** When it comes to untangling FMLA rights from ADA rights, it's always a best practice for HR professionals and legal counsel to huddle closely. Remember, there was a lawsuit here. But, a huddle before employment actions are taken will prove to be a great return on your investment of time and resources. In this case, the court found there was no case. The employer avoided a very costly trial and possible verdict.