

# FMLA leave may be ADA accommodation

Here's something to remember when an employee claims she has a disability that interferes with her ability to work overtime or even a full day. You can offer intermittent FMLA leave as a reasonable accommodation rather than restructuring the job or transferring the employee to another open position.

Remember, the employer, not the employee, gets to pick the ADA accommodation.

As long as it is a reasonable accommodation and is designed to let the employee perform his job's essential functions, you have met your ADA obligations.

**Recent case:** Vincent worked as a debt collector, calling individuals who owed money and trying to get them to make payments on their debts. He worked eight or nine hours per day and could work more if he chose.

When Vincent was involved in an auto accident, he received time off under the FMLA to heal.

He came back to work and soon reinjured his back while helping his son move. Doctors forbade Vincent from working overtime after a supervisor asked him to make up missed time with several 12-hour shifts. He then was offered intermittent leave to adjust his schedule for the days he claimed to be in pain.

Eventually, Vincent was fired for poor performance.

That's when he sued, alleging that he had been terminated because he was disabled and had been denied a reasonable accommodation of a transfer to a less stressful position.

The court tossed out Vincent's lawsuit.

It reasoned that by letting Vincent take intermittent FMLA leave, the employer had, in fact, accommodated his back pain, including his need to avoid working overtime.

It didn't need to transfer him to another job or change his schedule permanently. (*Asher v. United Recovery Systems*, No. H14-0661, SD TX, 2015)