

Don't get confused by 'ADA leave'



Technically, there's no such thing as "ADA leave" in the same sense that the FMLA specifically grants time off to deal with medical issues. However, some disabled employees may be entitled to leave as an ADA reasonable accommodation.

The FMLA grants employees of covered employers an absolute entitlement to take leave—if they meet minimum eligibility requirements by working 1,250 hours in one year.

But disabled workers not yet eligible for FMLA leave may be entitled to time off, too. The ADA may, under the right circumstances, provide time off for disabled employees beginning on Day One.

Example: A disabled applicant takes a job with a company that employs just 25 workers and that provides personal and sick leave once the new hire has been on board for at least 30 days. The new employee earns time off in small increments every pay period.

Then he tells his supervisor that he has to take two days off for medical treatments and requests the time as a reasonable ADA accommodation. If his new employer summarily dismisses the request because he hasn't earned any leave yet, it may have violated the ADA.

The EEOC is increasingly taking this position. In fact, it just filed a lawsuit against toolmaker Stanley Black & Decker alleging failure to accommodate a disabled employee by granting time off.

According to the EEOC, Stanley Black & Decker hired an inside sales representative who had previously been treated for cancer. She had follow-up treatments scheduled throughout the year. About six months after she was hired, she told her supervisor she needed time off to have a biopsy.

HR told her there were no options for leave because she was not yet eligible for FMLA leave, even though she requested time off as a reasonable accommodation under the ADA.

Shortly after, she was fired for poor attendance; the company had counted her cancer-related absences against her.

In announcing the lawsuit, the EEOC pointed out that a rigid attendance policy that penalizes disabled employees for taking needed time off violates the ADA's requirement for providing reasonable accommodations.