

HR Insights

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Navigating the Overlap Between the ADA and the FMLA

When an employee becomes sick, has a disability or must take leave to support their family, they may be entitled to legal protections under the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA) or both, in some situations. However, determining which laws apply to an employee's circumstances can often be complicated, and missteps can be costly for employers, resulting in expensive penalties, fines and legal fees.

While the ADA and FMLA support employees with physical or mental health conditions, they have different requirements. Employers must evaluate them carefully to correctly determine which legal protections extend to an employee's situation. This article outlines the ADA and the FMLA and explores the intersection of these laws to help employers navigate difficult compliance situations.

Overview of the FMLA

The FMLA is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons. A private-sector employer is considered a covered employer under the FMLA if they employ 50 or more employees in 20 or more workweeks in the current or previous calendar year. In general, eligible employees may take up to 12 weeks of leave each year for FMLA-qualifying reasons, including the treatment of a serious health condition.

Employee Eligibility Requirements

To be eligible for FMLA leave, an employee must:

- Be employed by a covered employer

- Have worked for their employer for at least 12 months as of the date the leave is to start
- Have accrued at least 1,250 hours of service for their employer during the 12-month period before the leave
- Work at a location where their employer has at least 50 employees in a 75-mile radius

Qualifying Reasons for FMLA Leave

An eligible employee may take up to 12 weeks of leave in a 12-month period for any of the following FMLA-qualifying reasons:

- The birth of a child or placement of a child with the employee for adoption or foster care, as well as the need to bond with the child within one year of birth or placement
- The treatment of a serious health condition that results in the employee being unable to perform the essential functions of their job
- The employee's need to care for an immediate family member who has a serious health condition
- Any qualifying exigency arising out of the fact that the employee has an immediate family member who is a military member on covered active duty or has been called to covered active duty status



A “serious health condition” is an illness, injury, impairment or physical or medical condition that involves inpatient care or continuing treatment by a health care provider. The FMLA does not apply to routine medical examinations (e.g., an annual physical) or common conditions (e.g., an upset stomach) unless complications develop.

Overview of the ADA

The ADA makes it illegal for covered employers to discriminate against qualified individuals with disabilities in all employment practices, including recruitment, compensation, hiring and firing, job assignments, training, leave and benefits. In addition, the ADA prohibits an employer from retaliating against an applicant or employee for asserting their rights under the ADA. It’s also unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual’s family, business, social or other relationship or association with an individual with a disability. Employers with 15 or more employees are covered by the ADA.

Reasonable Accommodations

The ADA requires a covered employer to provide a reasonable accommodation to an employee or job applicant with a disability unless doing so would impose an undue hardship on the operation of the employer’s business. A reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. However, not everyone with a medical condition is protected by the ADA. To be protected, a person must be qualified for the job and have a disability as defined by the law.

Qualified Individuals With Disabilities

The ADA protects qualified individuals with disabilities from employment discrimination. Under the ADA, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment and people who are regarded as having a substantially limiting impairment.

Major life activities include but are not limited to caring for oneself, performing manual tasks, seeing, hearing,

eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. A major life activity also encompasses the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Essential functions are the basic job duties an employee must be able to perform, with or without reasonable accommodation. Factors to consider in determining if a function is essential include:

- The reason the position exists is to perform that function
- The number of other employees available to perform the function (or among whom the performance of that function can be distributed)
- The degree of expertise or skill required to perform the function

How the ADA and FMLA Intersect

The ADA and FMLA can overlap in some situations, entitling employees to the legal protections of both laws. When an employee is covered by the ADA and the FMLA, a covered employer must provide the employee with the rights afforded by both laws: 12 weeks of unpaid, job-protected leave (FMLA) and a reasonable accommodation to allow the employee to perform their essential job functions (ADA).

These laws can overlap because they provide legal protection to employees with physical and mental health conditions and use similar terms, such as illness and disability. Due to their requirements, the ADA and FMLA intersect when an employer has 50 or more employees. For example, if an employee has exhausted their FMLA leave, they may be entitled to additional protections under the ADA, including additional leave, if they have a qualifying disability. Therefore, FMLA-

covered employers must consider if and when the ADA factors into an employee's FMLA-qualifying leave.

Considerations for Navigating the Intersection of the ADA and FMLA

Employers can consider the following strategies to help them navigate the intersection of the ADA and the FMLA:

- **Consider each law's purpose.** While the ADA and the FMLA may provide distinct yet similar protections, considering each law's purpose can guide employers as they navigate the intersection of these laws. For example, the purpose of the ADA is to help qualified individuals with disabilities gain access to the workforce; the FMLA offers employees leave from work for health or family reasons.
- **Understand each law's requirements.** The ADA and the FMLA don't cover the same employers. The FMLA applies to employers with at least 50 employees within a 75-mile radius, and the ADA covers employers with at least 15 employees. Therefore, some employers will be subject to the ADA but not the FMLA. Further, knowing the rights and requirements of the ADA and the FMLA can allow employers to analyze an employee's situation and respond appropriately. Employers should also be aware of their own policies as well as state laws and regulations that provide employees with greater benefits than the ADA and the FMLA.
- **Evaluate an employee's situation under each law separately.** As ADA and FMLA requirements differ, employers should evaluate each law individually. For example, the ADA's definition of "disability" differs from the FMLA's "serious health condition." Therefore, not every employee with an FMLA-qualifying serious health condition is considered a qualified individual with a disability under the ADA. Since these are different legal concepts, they must be analyzed differently. Employers should

consider an employee's specific situation when determining which law applies.

- **Apply the law that provides the most benefit.** If the ADA and the FMLA provide an employee with different rights in the same situation, the employee is entitled to whichever provides the greatest benefit. This can also be impacted by an employee's desires.

Takeaway

Navigating the intersection of the ADA and the FMLA can be challenging. However, understanding how these laws overlap can help employers better comply with the ADA and the FMLA, reduce the risk of costly errors and ensure employee rights are protected.

Employers can explore these government resources for more information:

- The U.S. Department of Labor's [website](#) on ADA compliance
- [The Employer's Guide to the FMLA](#), a publication from the DOL's Wage and Hour Division
- The DOL's [website](#) on FMLA compliance, including links to model forms
- The DOL's [website](#) on medical- and disability-related leave

For more workplace resources, contact PK Benefits Consulting today.