

Employment Law Notes

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The Overlap Between ADA, FMLA and Workers Compensation

Health problems that affect an employee's ability to work may implicate both the Family Medical Leave Act and the disability discrimination laws (the federal Americans with Disabilities Act and its state counterpart, the Washington Law Against Discrimination). Add the Workers Comp laws, and the overlap can be confusing.

A Case In Point

Even knowledgeable employers can get tripped up. A paralegal at a large Seattle law firm became ill with cancer, and was granted time off. After surgery he needed to attend several weeks of daily one-hour radiation treatments in the middle of the weekday. The firm told him to take off all of the time while he was getting treatment. "Don't come back until you are at 100%" they told him, because "There are no light-duty positions here."

When the paralegal used up his 12 weeks of FMLA leave, he still had two weeks of daily treatments to do. The very day his leave ran out he received a letter from the firm informing him that he had been replaced. He had used up his leave entitlement, the letter said, and was being laid off. Had the firm missed something?

All the paralegal needed was an extra hour or less at lunchtime over the next two weeks to attend treatment sessions. He was willing to make up time at the beginning or end of each day. The extra long lunch hour would have been a reasonable accommodation of his disability. The paralegal had a slam-dunk case.

Keeping FMLA and ADA Straight

It is helpful to remember that the FMLA generally applies when the employee cannot work, and the disability laws generally apply when she can work but may need help. Confusion arises when the help the employee needs is short term leave or intermittent leave which are governed by FMLA and may also be a reasonable accommodation under the disability laws.

Add Workers Comp and Stir Briskly

If an on-the-job injury is involved, the Workers Comp laws also get thrown into the mix. For example:

- ✍ A worker determined to be totally disabled under the Workers Comp system is not necessarily precluded from establishing that he can perform the essential duties of a position with a reasonable accommodation, and thus has rights under the disability laws.
- ✍ Although an employee may be required to accept a light-duty job under the Workers Comp laws, she is protected under the FMLA from being forced to come back to work at a different job before her leave is used up. She may lose her Workers Comp benefits but she cannot be fired if she refuses the light-duty position.

Conclusion

Each situation must be analyzed under each of these laws separately. It can be helpful to keep a separate folder for documents and notes for each of the laws when a situation implicates more than one law. ✍

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