

# ADA v. FMLA v. Workers' Compensation Cheat Sheet

## General Purpose

- ADA: Prohibits discrimination against disabled individuals
- FMLA: Provides leave to employees
- WC: Provides compensatory benefits for illnesses or injuries incurred in the course and scope of employment

## Who Is Eligible?

- ADA: Employees with a qualifying disability
- FMLA: Employees who have worked for at least 12 months and at least 1250 hours during the previous 12 months at a location within a 75-mile radius of where at least 50 employees work
- WC: Employees who experience an illness or injury in the course and scope of employment

## What Conditions are Covered?

- ADA: "Disability" that substantially limits one or more major life activities (or a history or perception of having such a disability)
- FMLA: "Serious health condition" of employee or certain family members of employee. Birth, adoption and foster care placement of employee's child. Certain types of military-related leave
- WC.: Any job related injury that is in the course and scope of employment

## What Leave is Required?

- ADA: Leave for employee may be required if it would constitute a reasonable accommodation that doesn't impose undue hardship on the employer. Leave typically must be for a defined period and is unpaid unless employer pays for other similar leaves
- FMLA: Up to 12 weeks/year for serious health condition-related leave. Up to 26 weeks/year for certain military-related leave. Leave may be intermittent and is unpaid but the employer can require or the employee can choose to use accrued paid benefits
- WC: Varies, depends on length of incapacity. Some states have statutory prohibitions against terminating employees on workers' compensation leave

## What About Benefits?

- ADA: No specifics under the law, other than the prohibition of discrimination based on disability
- FMLA: Benefits typically don't accrue during leave, but seniority, service and vesting continue. May require use of certain paid leaves depending on type of FMLA leave
- WC: State workers' compensation will compensate the employee for the temporary period he or she is unable to work

## What About Reinstatement?

- ADA: If leave is required as a reasonable accommodation, the employer generally must keep the employee's position open during the leave
- FMLA: Generally, employees must be reinstated to the same or a substantially equivalent position
- WC: There are no statutory reinstatement rights under state workers' compensation law. Most states prohibit employers from retaliating against an employee for exercising his/her workers' compensation rights. Additionally, some states have statutory prohibitions against terminating an employee on workers' compensation leave

## What About Light Duty?

- ADA: Employers are not required to remove essential job functions as an accommodation, but if an employer reserves light duty jobs for workers' compensation purposes, it may have to offer such jobs to disabled individuals
- FMLA: An employer can't require FMLA-qualifying employees to work light duty
- WC: In most states, if a physician certifies that an employee may return to work under some restrictions that require a light duty position, the employee must generally accept such a position or risk losing workers' compensation benefits

## Potential Penalties

- ADA: Back pay, compensatory damages, punitive damages and attorneys' fees
- FMLA: Back pay, reinstatement, benefits and attorneys' fees
- WC: Back pay, compensatory damages and punitive damages