

ADA vs. FMLA Cheat Sheet

General Purpose

ADA: Prohibits discrimination against disabled individuals

FMLA: Provides leave to employees

Who Is Eligible?

ADA: Individuals 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

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.

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.

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.

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.

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.

Potential Penalties

ADA: Back pay, compensatory damages, punitive damages and attorneys' fees

FMLA: Back pay, reinstatement, benefits and attorneys' fees.