



THE ABC'S OF DISABILITY LAW: ADA AND FMLA

Rita E. Rolf
Texas, Oklahoma, & New Mexico Sales Manager
Kansas City Life Group Benefits




HISTORY OF DISABILITY LAW

- 1973 Rehabilitation Act, Section 504 was the first law that viewed exclusion and segregation of people with disability as discrimination.
- Section 504 was modeled after laws which banned discrimination based on race, ethnic origin, and sex.
- Section 504 was the first time that people with disabilities were recognized as a "class" or minority group.
- Section 504 banned discrimination for recipients of Federal funds.




HISTORY OF DISABILITY LAW

- May 4, 1977 the Section 504 regulations were issued by the Dept. of Health and Education.
- Section 504 was chosen for "de-regulation" under the Presidential Task Force on Regulatory Relief by President Ronald Reagan in 1981.
- Supreme Court decisions in the 1980's stripped away many civil rights protections.
- The disability community worked with other minority groups to include disabled individuals in other civil rights actions.



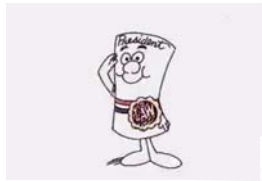

HISTORY OF DISABILITY LAW

- In 1978 The Pregnancy Discrimination Act (PDA) amended Title VII of the Civil Rights of 1964 to ensure that employers could not discriminate based on pregnancy. This law does not have provisions for job protected leave.
- Women could lose their job if they were out on maternity leave for more than 4 weeks.
- Employees with serious illness also did not have job protection if they were on an extended leave.



AMERICANS WITH DISABILITY ACT (ADA)

- Introduced to Congress in 1988.
- Signed into law on July 26, 1990.
- Federal law that protects the rights of people with disabilities by eliminating barriers for participation in many aspects of working and living in America.



ADA

- Title I- Non-Discrimination in Employment
- Title II- Non-Discrimination in State and Local Government Services
- Title III- Non-Discrimination in Public Accommodations and in Commercial Facilities





ADA

Title I of the ADA prohibits covered employers from discriminating against people with disabilities in the full range of employment-related activities, from recruitment to advancement to pay and benefits.


COVERED EMPLOYERS UNDER ADA

- Private Employers with 15 or more employees.
- State and Local governments no matter what size.
- Employment Agencies.
- Labor organizations and labor management committees.





INDIVIDUALS PROTECTED

- Qualified individuals with disabilities.
- Includes applicants for employment and employees.
- Persons to have a known association or relationship with an individual with a disability.




WHO IS A QUALIFIED INDIVIDUAL?

A qualified individual with a disability that meets legitimate skill, experience, education, or other requirements of an employment position that is held or seeks and can perform the essential functions of the position with or without reasonable accommodation.

WHAT IS A DISABILITY?

- Has a physical or mental impairment that substantially limits one or more major life activities (seeing, hearing, walking, breathing, performing manual tasks, learning, caring for oneself, and working, etc.)
- Has a record of such an impairment
- Is regarded as having such an impairment (epilepsy, paralysis, HIV infection, AIDS, a substantial loss of hearing or vision, mental retardation, or specific learning disability).
- An individual with a minor, non-chronic condition is not covered.




EMPLOYMENT ACTIVITIES

- Recruitment
- Advertising
- Tenure
- Fringe benefits
- Layoff
- Leave of absence
- Hiring and firing
- Advancement
- Compensation
- Training
- Other terms, conditions and privileges of employment and employment activities




REASONABLE ACCOMMODATION

- Accommodation only required for a known disability.
- Accommodation must be made on an individual basis.
- Must not cause “undue hardship” on the operation of business.
- May include: Accessibility, job restructuring, modified work schedules, acquiring or modifying equipment, providing qualified reader to interpreters, modifying training, examinations to other program.
- May include reassigning a current employee to a vacant spot that the person is qualified for.





EMPLOYER BEST PRACTICES

- Post notification in an accessible location describing the provisions of ACA.
- Make facilities accessible.
- Develop clear and specific functional job descriptions.
- Establish specific attendance and leave policies.


EMPLOYER BEST PRACTICES

- Pre-employment medical exams are not allowed.
- Pre-employment inquiry about a disability or the nature or severity of the disability are not allowed.
- Hold all employees to the same standards of production and/or performance.
- Maintain good documentation practices.



FAMILY MEDICAL LEAVE

- Signed into law in in February 1993 and implemented in August 1993.
- Federal Law designed to help workers balance job and family responsibilities by giving employees up to 12 work weeks of unpaid leave per 12 month period for specific reasons.
- Amended in 2008 to include Military Caregiver Leave which allows 26 workweeks of unpaid leave during a single 12 month period to care for a covered service member with a serious injury or illness.



COVERED EMPLOYERS UNDER FMLA

- Private employers with 50 or more employees working within 75 miles of employer’s worksite.
- All public agencies, private, and public schools regardless of number of employees
- Employers with fewer than 50 employees can provide benefits similar to FMLA.




BENEFITS UNDER FMLA

- Employers must provide an employee entitlement to the leave.
- Leave is an unpaid leave.
- Employer is required to maintain employee's health benefits during the leave.
- Employer is required to restore the employee to their same or an equivalent job after the leave.



Covered Employees under FMLA

Employees are eligible for FMLA leave if they have worked for the employer for at least 12 months and have worked at least 1250 hours over the 12 months immediately prior to the leave.



LEAVE YEAR



- Calendar year.
- Any fixed 12 month period (fiscal, employment date).
- 12 month period forward from the first date of leave.
- Rolling 12-month period measured backwards from the date the employee uses FMLA.



QUALIFYING LEAVES

- Birth of a child or care for a newborn within 12 months of birth.
- Placement of a child through adoption or foster care within 12 months of placement.
- Care for an immediate family member for a serious health condition including incapacity due to pregnancy or pre-natal medical care.
- Serious health condition that makes the employee unable to do the essential functions of their job.
- Qualifying Exigency arising out of foreign deployment of an immediate family member.



IMMEDIATE FAMILY MEMBER

- Legal Spouse -including common law and same sex marriage.
- Parent-Biological, adoptive, step, foster, or individual that stood in *loco parentis* when the employee was a child. Does not include parent-in-laws.
- Son or Daughter-Biological, adopted, foster, step-child, legal ward, or a child of a person standing in *loco parentis*, who is under age 18 or older.



SERIOUS HEALTH CONDITION

An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a Healthcare provider.





SERIOUS HEALTH CONDITION

- Inpatient Care defined as overnight stay in hospital, hospice, or residential treatment facility.
- Pregnancy.
- Chronic condition.
- Permanent or long term condition.
- Requiring multiple treatments.
- Incapacity Plus Treatment defined as a period of incapacity of more than 3 days and involves 2+ in person visits with a health care provider within 30 days. The first visit must be within 7 days, or at least 1 in person visit within 7 days that results in a regimen of continuing care.




QUALIFYING EXIGENCY LEAVE

- Immediate family is a member of the Armed Forces (includes National Guard and Reserves) and
- Is on covered active duty, or
- Has been notified of an impending call or order to covered active duty.


QUALIFYING EXIGENCY LEAVE

- Issues arising from a short notice deployment.
- Attending military events and related activities.
- Certain childcare and related activities.
- Certain Parental care activities for military member's parents.
- Making or updating financial and legal arrangements.




QUALIFYING EXIGENCY LEAVE

- Counseling arising from call to duty.
- 15 days to spend time with military member who is in rest and recuperation during deployment.
- Post deployment activities within 90 day of coming home.
- Any other event the employer and employee agrees upon.




MILITARY CAREGIVER LEAVE

- 26 workweeks of unpaid leave during a single 12 months period to care for a covered service member with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin to the service member.
- FMLA and Military Caregiver Leave are a combined 26 week leave during a single 12 month period.




EMPLOYER NOTICE REQUIREMENTS


- Display a general notice in an accessible area.
- Provide general notice of FMLA eligibility.
- General notice can be in the employee handbook or other written materials about general leave provisions.
- If no handbook or materials, must give written notice to new hires.




EMPLOYEE REQUIREMENTS


An employee is obligated to provide notice of a needed leave.

- Can be verbal or written.
- Can be based on current leave policy.
- Does not have to specify that the leave is FMLA protected.
- 30 days in advance for a foreseeable leave.
- As soon as possible and practical for unforeseeable leaves or changes to foreseeable leaves.




ONCE THE REQUEST IS RECEIVED

- The employer must provide to the employee an Eligibility Notice that the leave is approved or denied. This notice should be sent within 5 days of the request for leave.
- The eligibility notice is only required the first time the employer takes a FMLA leave in designated 12 month period.
- A Rights and Responsibilities Notice must also be provided with the Eligibility Notice.
- The notices must be in a language which the employee population is literate in.




RIGHTS AND RESPONSIBILITY NOTICE

- Statement on period of leave that is counted as FMLA leave.
- The 12 month period used to track FMLA usage.
- Certification requirements.
- If the employee can use or substitute paid leave during the leave.
- The employee's status as a "key employee".




RIGHTS AND RESPONSIBILITY NOTICE

- The right to job restoration and maintenance of benefits.
- Information on how premium payments for health benefits will be handled and consequences for not making payment.
- The consequences of the employee failing to meet their requirements.




INTERMITTENT OR REDUCED SCHEDULE LEAVE

- Employees can take FMLA leave in periods of weeks, days, hours, and in some cases even less than an hour.
- Employers must allow if there is a medical need for the employee or immediate family member's serious health condition, care for a covered service member, or exigencies.
- Not available for birth, adoption, or placement of a foster child unless the employer agrees to the arrangement.
- The employee must make a reasonable effort to schedule the treatment as not to unduly disrupt employer's operations.




INTERMITTENT OR REDUCED SCHEDULE LEAVE

- Employee on intermittent or reduced schedule leave may be temporarily transferred to an alternate position to accommodate the reoccurring periods of leave.
- Employee must continue pay and benefits equal to the position held prior to the transfer.
- When the leave is no longer needed the employee must be restored to the original or equivalent job that the employee held prior to the leave.




RESTORATION AFTER THE LEAVE

- Employer may require Fitness-for-Duty Certification at the employee's expense.
- Employee must be restored to the same job that the employee held before the leave or to an equivalent job.
- Employer may offer a light duty position but the employee does not have to accept the position versus a FMLA leave.
- May deny restoration of "key employee".
- Termination during a FMLA protected leave is prohibited unless the employee would have been terminated for business reasons in absence of the leave.




FMLA BEST PRACTICES


- Communicate in writing leave policies and procedures.
- Train managers to document and report all leave requested and non-requested.
- Keep well documented records on employees and leaves.
- Be consistent with all employees on any leave policy.
- The employer and the employee should have open communication while the employee is on FMLA leave.



OTHER LAWS FMLA MAY INTEGRATE WITH

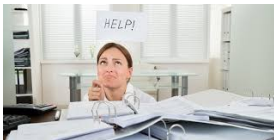



- Americans with Disabilities Act (ADA)
- Pregnancy Discrimination Act (PDA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)




OTHER LAWS FMLA MAY INTEGRATE WITH

- Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
- Worker’s Compensation
- State Family and Medical Leave Laws
- Employer’s own Leave Policy


RESOURCES



U.S Equal Employment Opportunity Commission (EEOC)
<https://www.eeoc.gov>
 Employer and Small Business Resource Center


Department of Labor
<https://www.dol.gov>

The Employer’s Guide to The Family and Medical Leave Act
 FMLA Sample Notices, Forms, and Posters



BROKER RESPONSIBILITY

- ADA and FMLA are employer laws - not insurance law.
- Small Business Owners may not have a certified HR person on staff.
- Employers are asking more and more of brokers in the area of compliance.
- Brokers can be a resource for clients.
- Brokers are educators.




KANSAS CITY LIFE
 GROUP BENEFITS

Rita E. Rolf, CRPS
 469-857-1721
 Rita.Rolf@KCLife.com

