



JUGGLING ACT:

The Intersection of the ADA, FMLA, FAMI, and Workers Compensation

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INTRODUCTION

When it comes to navigating the disability and leave laws, the intersection between the Americans with Disabilities Act (ADA), the Family & Medical Leave Act (FMLA), the Family & Medical Leave Insurance Program (FAMLI), and Worker's Compensation (WC) can be confusing and challenging because some (or all) of these laws may intersect at some point.

This presentation will help guide you through this thicket of laws and provide tips for how to handle real-world situations where the laws overlap and/or conflict.

THE LAWS



ADA

Provides access to work, prohibits discrimination for qualified individuals with a disability, and requires reasonable accommodation



FMLA

Provides eligible employees with the right to take time off work and protect the employee's job



FAMLI

Provides paid leave for employees to take care of themselves or their family during life circumstances that pull them away from their jobs



Workers Comp

No-fault law that pays for workplace injuries, accidents or health conditions, plus weekly comp, retraining or a lump-sum payment

AMERICANS WITH DISABILITIES ACT

Protection for applicants
and employees

15 or more employees
for 20 weeks during
current or preceding
year, including state &
local governments

Must have a physical or
mental impairment
which substantially limits
1 or more major life
activities

Leave can be a
reasonable
accommodation; no
need to create a position
– no undue hardship

Enforced by the Equal
Employment
Opportunity Commission

300-day statute of
limitations

FAMILY & MEDICAL LEAVE ACT

Protection for employees

50+ employees in 75-mile radius for 20 or more weeks during current or preceding year

1,250 hours in preceding 12 months

Serious health condition affecting employee or specified family member

Return employee to same job or substantially equivalent job

Enforced by the U.S. Department of Labor

2-year Statute of Limitations



Family and Medical Leave Insurance (FAMLI) Program

Applies to all Colorado employers that employ at least one employee in Colorado

Funded through a payroll tax paid 50/50 by employers and employees

Employees who earn at least \$2,500 in wages during the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year

Run by the Division of Family and Medical Leave Insurance (FAMLI Division)

Workers Compensation

- Applies to Colorado employers with at least one employee
- Requirements:
 - Employer-employee relationship
 - Accident/illness/injury must arise in the course and scope of employment
 - Independent contractors may be covered depending on company control
- Limited exceptions—self-inflicted injuries, willful disregard of safety rules, intoxication
- May return to “light duty”
- Enforced by the Colorado Division of Workers' Compensation
- 2-year statute of limitations



TRIGGERING EVENT



ADA

Need for an adjustment or change to job due to an impairment.



FMLA

Serious health condition.



FAMLI

Caring for child during first year after birth, adoption or placement through foster care;

Serious health condition (self or family member);

Qualifying exigency leave;

Safe leave.



WC

On-the-job accident or injury.

NOTICE REQUIREMENTS



ADA

Employee requests a reasonable accommodation.

Employer becomes aware of need for a reasonable accommodation.



FMLA

Employee must provide verbal notice to make employer aware of need for qualifying leave.

Constructive notice may trigger employer obligations.



FAMLI

When the need for leave is foreseeable, employee must provide not less than 30 days' notice before the date the leave is to begin. If the need for leave is not foreseeable or providing 30 days' notice is not possible, employee must provide the notice as soon as practicable.



WC

Employee must notify employer within 10 days.

Employer must notify carrier within 24 hours (the injury results in death; 3 or more employees injured in same accident;) or within 10 days (all work-related injuries or occupational diseases).

DOCUMENTATION REQUIREMENTS



ADA

Cannot require a medical examination or make inquiries to whether an employee has a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

Can make inquiries into ability of employee to perform job-related functions.



FMLA

Employer may require a medical certification of serious health condition.

Medical diagnosis not required.



FAMLI

My FAMLI+ will send employers a determination notice whenever an employee applies for FAMLI leave and is determined to be eligible. These notices will include the dates the employee is eligible to take leave. Employers can also check your HR Dashboard in My FAMLI+ Employer to track employees that are on FAMLI leave. The HR Dashboard allows employers to review the FAMLI leave statuses for all their employees in a single place. On the HR Dashboard, employers can request additional information, such as leave reason and leave amount.



WC

WC 15 - Worker's Claim for Compensation.

Generally handled through WC adjuster.

EXTENT OF LEAVE



ADA

No set amount, but indefinite leave is not a reasonable accommodation.



FMLA

12 workweeks within a 12-month period. May be extended up to 26 workweeks for a covered servicemember with a serious injury or illness.



FAMLI

12 weeks of paid leave for eligible employees. For pregnancy and childbirth complications, employees can receive an additional 4 weeks.



WC

Employee may be entitled to medical care, lost wages, or permanent disability.

REINSTATEMENT PROTOCOL



ADA

Same job unless holding job open creates undue hardship or employee unable to perform essential functions, with or without reasonable accommodation



FMLA

Returned to same position (or an equivalent) unless an exception applies or exceeds FMLA



FAMLI

Generally required to reinstate employees to the positions they held when they started leave if they had been employed for 180 working days before starting leave



WC

Employer must offer suitable available positions, unless good cause exists

Coordination of Benefits

FAMLI was designed to run concurrently with FMLA.

Employers may require exhaustion of FAMLI benefits before making disability benefits available. This requirement MUST be in writing.

Employers cannot require employees to use accrued vacation, sick leave, or other paid time off before or while receiving FAMLI.

If an absence from work is caused by circumstances that would entitle an individual worker's compensation benefits, the individual is not entitled to FAMLI benefits for that absence.

Leaves of absence, leave extensions, and modified work schedules can all be reasonable accommodations (ADA).

Tricky ADA/FMLA/FAMLI/WC Issues

- **QUESTION:** If an employee who suffered a work-related injury asks for time off for medical treatment, should the employer treat this as a request for FMLA too? What about STD? FAMLI?
- **ANSWER:** It depends.
- ADA: accommodation request
- FMLA: “serious health condition”
- An event that triggers FAMLI eligibility
- Report the accident to worker’s compensation carrier

Tricky ADA/FMLA/FAMLI/WC Issues

QUESTION:

An employee has requested a leave of absence because she cannot perform the essential functions of her job due to a work-related injury. Can you offer a vacant position that will allow the employee to continue working instead?

ANSWER:

- ADA: Yes. The employer can choose the accommodation—even if it is not the accommodation the employee wants—as long as it's effective.
- FMLA: If the employee has a serious health condition, the employee is entitled to any available leave, even if she could continue working with a reasonable accommodation.
- WC: The employer can offer the employee alternative duties to reduce TTD.

Tricky ADA/FMLA/FAMLI/WC Issues

QUESTION:

- I have an employee who suffered a work-related injury. How much information can I ask for about the condition and work restrictions?

ANSWER:

- FMLA: Can require an employee to submit a certification from a health care provider for a (covered family member with a) serious health condition but not for leave to bond with a child.
- ADA: Cannot ask about disability unless inquiry is shown to be job-related and consistent with business necessity. Can make inquiries into ability of employee to perform job-related functions.
- FAMLI: Employee applies through FAMLI Division
- WC: Within 10 days of injury, report injury to employer in writing. Report injuries directly to the Division of Workers' Compensation within 2 years. Carrier and state investigate.

Tricky ADA/FMLA/FAMLI/WC Issues

- **QUESTION:** How do I handle requests for intermittent or reduced schedule leave?
- **ANSWER:**
- FMLA: Leave can be intermittent if medically necessary. Employer can transfer employee on temporary basis to an available position with equivalent pay and benefits to accommodate intermittent leave.
- ADA: Employee can take reduced schedule leave as a reasonable accommodation so long as the leave doesn't constitute an undue hardship. Can transfer to a vacant equivalent position.
- FAMLI: may take intermittent leave in increments of either one hour or shorter periods if consistent with what employer typically uses to measure employee leave. Benefits are not payable until the covered individual accumulates at least eight hours of family and medical leave insurance benefits.



AVOID

POLICIES TO AVOID

- Terminating an employee once they have been out of work for 1 year due to a work-related injury.
- Refusing to accommodate temporary restrictions, requiring a full duty release to return to work or 100% healed policies.
- Only accommodating restrictions for conceded work injuries.
- Not running FMLA concurrently with WC benefits.

BEST PRACTICES

- Well-written policies describing what is expected from employees.
- Assess each matter using the law which provides the employee the greatest protection.
- Maintain accurate job descriptions.
- Train your managers, HR & safety personnel.
- Communicate.
- Document, document, document.



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Thank You!



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