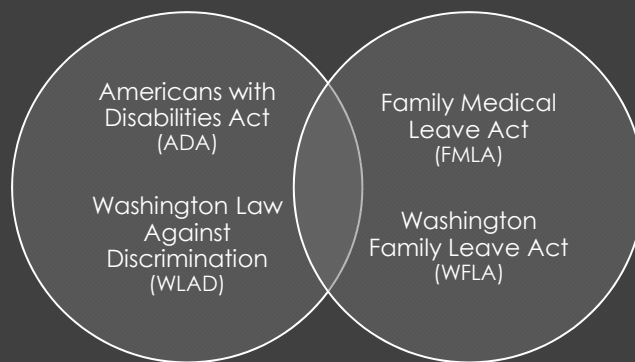


NAVIGATING MEDICAL LEAVE AND DISABILITY ACCOMMODATION

SHANNON LAWLESS



COVERED EMPLOYERS

ADA	WLAD	FMLA	WFLA
15+ employees	8+ employees	50+ employees	50+ employees

ELIGIBLE EMPLOYEES

ADA/WLAD	FMLA/WFLA
<ul style="list-style-type: none">• Everyone, immediately	<ul style="list-style-type: none">• Worked for employer for at least 12 months• Worked at least 1,250 hours during prior 12 months; and• Work at location with at least 50 employees within 75 miles

EMPLOYER'S OBLIGATIONS

ADA/WLAD	FMLA/WFLA
<ul style="list-style-type: none">• Provide reasonable accommodations that allow disabled employees to perform their essential job functions• Don't take adverse action on the basis of disability	<ul style="list-style-type: none">• Provide 12 weeks of unpaid, job-protected leave to qualifying employees (26 weeks for military caregiver leave)

COVERED CONDITIONS

WLAD (more protective than ADA)	FMLA/WFLA
<p>"Disability" means:</p> <ul style="list-style-type: none">• Any sensory, mental, or physical impairment• Actually diagnosed or "perceived to exist"• "A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity"	<ul style="list-style-type: none">• Employee's serious health condition• Birth, adoption, or foster care placement of child• Care for immediate family member with a serious health condition• Qualifying circumstances for military family member

FMLA: DETERMINING ELIGIBILITY

- Employee need not explicitly request FMLA leave
- Determine eligibility within 5 business days
- Provide notice of eligibility, rights, and responsibilities

FMLA: IF EMPLOYEE IS ELIGIBLE

- Ask employee to provide doctor's certification
- Within 5 business days of receiving certification, provide written designation notice

FMLA: DURING LEAVE

- Maintain health benefits
- Employee can choose to use accrued PTO, and employer can require it
- Leave may be unpaid unless required by other law or company policy/plan

FMLA: EXTENSIONS AND RETURN TO WORK

- Require new doctor's certification for extensions or significant changes
- Return to the same or equivalent position

INTERMITTENT FMLA

- Protected leave in short increments due to single qualifying reason
- Count in hour-long increments or shortest increment for which PTO is allowed
- Required when medically necessary
- Where leave is foreseeable, employee must schedule leave to limit disruptions

ADA/WLAD: ACCOMMODATING TIME OFF

- Engage in interactive process
- Leave of absence may be a reasonable accommodation
 - May extend longer than FMLA leave
 - But employer not required to allow indefinite leave

PREGNANCY

- Pregnancy disability leave under WLAD, usually 6-8 weeks
- Runs concurrently with FMLA but consecutively with WFLA
- Therefore, usually a total of 18-20 weeks of leave

DISCHARGING EMPLOYEES WITH HEALTH ISSUES

- FMLA/WFLA leave exhausted
- Employee cannot perform essential functions of job
- Leave of absence is no longer a reasonable accommodation, and all alternative accommodations explored through interactive process
- Be affirmatively helpful in looking for vacant positions, including after discharge, and assist in reapplying if requested

IN CONCLUSION

- Examples
- Remember compassion

Thank You!

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