NAVIGATING MEDICAL LEAVE AND DISABILITY ACCOMMODATION

SHANNON LAWLESS
## COVERED EMPLOYERS

<table>
<thead>
<tr>
<th>ADA</th>
<th>WLAD</th>
<th>FMLA</th>
<th>WFLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>15+ employees</td>
<td>8+ employees</td>
<td>50+ employees</td>
<td>50+ employees</td>
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</tbody>
</table>

## ELIGIBLE EMPLOYEES

### ADA/WLAD
- Everyone, immediately

### FMLA/WFLA
- 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**

<table>
<thead>
<tr>
<th>ADA/WLAD</th>
<th>FMLA/WFLA</th>
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<tbody>
<tr>
<td>• Provide reasonable accommodations that allow disabled employees to perform their essential job functions</td>
<td>• Provide 12 weeks of unpaid, job-protected leave to qualifying employees (26 weeks for military caregiver leave)</td>
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<td>• Don’t take adverse action on the basis of disability</td>
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**COVERED CONDITIONS**

<table>
<thead>
<tr>
<th>WLAD (more protective than ADA)</th>
<th>FMLA/WFLA</th>
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<tbody>
<tr>
<td>“Disability” means:</td>
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<tr>
<td>• Any sensory, mental, or physical impairment</td>
<td>• Employee’s serious health condition</td>
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<tr>
<td>• Actually diagnosed or “perceived to exist”</td>
<td>• Birth, adoption, or foster care placement of child</td>
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<tr>
<td>• “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”</td>
<td>• Care for immediate family member with a serious health condition</td>
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<td></td>
<td>• Qualifying circumstances for military family member</td>
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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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