



ALPHABET SOUP FEDERAL EMPLOYMENT LAWS

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FEDERAL EMPLOYMENT LAWS

(not all inclusive)



FLSA : Fair Labor Standards Act

FMLA : Family Medical Leave Act

ADA : Americans with Disabilities Act

ADEA : Age Discrimination in Employment Act

PDA : Pregnancy Discrimination Act

HIPAA : Health Insurance Portability &
Accountability Act

Civil Rights: Harassment, Discrimination, etc.

FAMILY MEDICAL LEAVE ACT (FMLA)



FMLA

- Two requirements for FMLA to apply
 - *Covered Employer*
 - *Eligible Employee*

FMLA

- Employees granted 12 weeks of unpaid leave for:
 - Birth, adoption, or placement in foster care of a child;
 - Care of a seriously ill child, spouse or parent;
 - The employee's own serious illness.
- Employees granted up to 26 weeks to care for injured soldiers, or 12 weeks for family members of soldiers called to active duty.

FMLA

Eligible employees:

1. 50+ employees (not counting elected officials) within 75 miles of employee's principal place of work
2. Must have worked for employer for at least 12 months (out of last 7 years)
3. Must have worked at least 1,250 hours during the preceding 12 months
 - must credit an employee returning from military service with hours of work that would have been performed but for the military service.

FMLA

- Medical Certification of Serious Medical Condition
 - May be required at employee's expense
 - Employer may contact provider for authentication (did she actually do the certification) and clarification (what did you mean . . .?)
 - May require second opinion at employer expense if reason to doubt validity of employee-provided certification
 - If the two opinions conflict, may require third opinion at employer expense with provider approved by both employer and employee

FMLA

- May require employees to take paid leave benefit (*i.e.* vacation/PTO/sick leave) contemporaneously with FMLA leave
 - Protects against situation where they don't return from FMLA leave and then you have to pay out additional sums
 - Also, often prevents extension of time off when employee is needed back in the office
- Record-keeping
 - Important to capture all potential FMLA time
 - Don't wait for employee to request it
 - Helps prevent allegations of discrimination because all employees are treated the same
- Retroactive accounting of FMLA time
 - Allowed as long as it does not prejudice the employee

FMLA

- Now that the 12 weeks are over, can we terminate the employee?
 - Give employee at least two weeks prior notice of expiration of FMLA
 - Identify date they are expected to return to work
 - Consequences of failing to appear
 - May require a doctor's note (fitness for duty) if required for all similar situations
 - Must accept employee's doctor's determination if released for return to work
 - May have independent FFD exam under ADA, but only after they have returned to work
 - If they don't show up, give them notice and an opportunity to be heard before terminating

FMLA

■ Resources

- *USDOL website: <https://www.dol.gov/whd/fmla/>*
- *New USDOL Employer's Guide:
<https://www.dol.gov/whd/fmla/employerguide.pdf>*

AMERICANS WITH DISABILITIES ACT



ADA

ADA

- Prohibits employment discrimination against qualified individuals with a disability

QUALIFIED?

- Person must meet the skill, experience, education and other job-related requirements, and who, with or without reasonable accommodation, can perform the essential functions of the job

ADA

- Essential functions of the job
 - Determined by the job description
 - Make sure it is correct

ADA

- Prohibits discrimination of an individual based upon:
 - a physical or mental disability which substantially limits one or more major life activities, or
 - who is perceived or regarded as having a mental or physical impairment that substantially limits one or more major life activities.

ADA

- Reasonable Accommodation

- Any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities
- Recent EEOC focus on additional time off as reasonable accommodation

ADA

- Does NOT give a disabled person an unequal advantage, but tries to put them on equal ground with other employees
- USDOL Resource
 - <https://askjan.org/index.html>
 - <https://www.eeoc.gov/eeoc/publications/ada-leave.cfm>
- Examples of reasonable accommodations:
 - Job restructuring
 - Modifying work schedules
 - Reassigning to a vacant position
 - Acquiring or modifying equipment
 - Placing on light duty (if available)

ADA

- Individuals NOT Protected:
 - Persons who CURRENTLY use drugs illegally
 - Does not apply to injuries/illnesses with duration of 6 months or less (broken bone, flu, common cold, sprains, concussions, etc.)
 - Unknown disabilities—the employer must be told about the disability in order to accommodate

ADA

Undue Hardship

- Significant difficulty or expense relative to the operation of a public entity's program
- The public entity must determine if another accommodation is available that would not result in an undue hardship
- An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids

ADAAA

ADA Amendments Act of 2008

- Congress tightened up definitions.
 - **“Disability”** – remains the same
 - **“Major life activity”** – expanded to include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working

ADAAA

- **“Major life activity”** – also now includes major bodily functions”—functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions
- An impairment must still substantially limit a major life activity.

ADA

Questions:

- Can employer ask pre-employment questions about medical problems?
 - NO. Can't ask about the existence, nature or severity of a disability
 - Can ask about their ability to perform a specific job function

- Can employer require a pre-employment medical examination?
 - NO. A job offer may be conditioned on the results of a medical exam, but only if it is required of ALL entering employees in similar jobs
 - Must be job related

ADA

Questions

- Is an employer required to provide light duty?
 - *NO. But if possible, it is a good idea in the short-run*
- Is an employer required to create a new position?
 - *NO*
- Should the employer bump another employee out of his position?
 - *NO*
- A job comes open and an employee with more seniority wants it, do you have to give it to the disabled employee?
 - *NO*

Pregnancy Discrimination Act

- Amendment to the Civil Rights Act.
- Prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions
- Must treat these conditions in the same manner as other applicants or employees with temporary disabilities
- Remember—FMLA will apply too

