

**THE INTERRELATIONSHIP  
BETWEEN THE ADA, THE FMLA,  
AND WORKERS' COMPENSATION**

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## **ONE CARDINAL RULE**

The Americans with Disabilities Act (“ADA”), the Family and Medical Leave Act (“FMLA”), and Iowa’s workers compensation statute confer different rights on employees, and different obligations on employers. Therefore, compliance with one statute does not at all guarantee compliance with the other(s).

## **SCOPE OF EMPLOYER COVERAGE**

**Ann works for a very small company called Acme Widgets.**

**She is injured.**

**What statutes potentially apply?**

1. The ADA applies to employers who employ 15 or more employees.
2. The FMLA applies to employers who employ 50 or more employees.
3. Iowa’s workers compensation statute (and most other states, as well) applies to employers with one or more employees.

## SCOPE OF EMPLOYEE COVERAGE

**Rex fills out a job application at Biggie Insurance Company.  
What statutes potentially apply?**

1. The ADA applies to applicants and employees with a disability, regardless of the length of employment. Ultimately, ADA protection extends to all qualified individuals with a disability who can perform the essential functions of the job with or without reasonable accommodation.
2. The FMLA does not extend to applicants and covers only employees:
  - a. who have been employed by the employer for at least 12 months; and
  - b. who have worked for at least 1,250 hours for the employer during the previous 12-month period.
3. Iowa's workers compensation statute (and most other states, as well) generally applies to employees in the service of an employer, and specifically to employees who are injured in the course and scope of employment and whose injuries are not otherwise excluded from compensability.

## EMPLOYEE NOTICE REQUIREMENT

**Jason wants to take leave from work due to an injury. What notice must he provide his employer?**

1. Under the ADA, an employer's duty to provide reasonable accommodation is triggered when an employee (or his or her representative) asks for a change or adjustment at work due to a medical condition.
2. If foreseeable, an employee must give at least 30 days advance notice of the need for FMLA leave. If unforeseeable, the employee must give as much notice as practicable.
3. Under Iowa's workers compensation statute, an employee must promptly notify the employer of injury or illness caused by his or her job. This notice is to be distinguished from the limitations period to file a claim.

## NATURE OF INJURY OR DISABILITY

### Mike is injured at work. Which statutes potentially apply?

1. The ADA protects qualified individuals with a disability. A “disability” is
  - a. a physical or mental impairment that substantially limits one or more of the individuals’ major life activities; or
  - b. a record of such an impairment;
  - c. being regarded as having such an impairment.
  
2. The FMLA provides leave for persons with a serious health condition. A “serious health condition” under the FMLA is “an illness, injury, impairment, or physical or mental condition that involves – (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider.”
  - a. “Inpatient care” is an overnight stay in a medical care facility, including any period of incapacity or any subsequent treatment in connection with the care.
  
  - b. “Continuing treatment by a health care provider” is defined at length in the FMLA regulations and includes: (a) a period of incapacity of more than three consecutive calendar days that also involves treatment two or more times by a health care provider; (b) any period of incapacity that is permanent or long term due to a condition for which treatment may not be effective (e.g., Alzheimer’s); and (e) any period of absence to receive multiple treatments for restorative surgery or for a condition that would likely result in an incapacity of three days or more if not treated (e.g., cancer).
  
3. Iowa’s workers compensation statute (and most other states, as well) generally applies to employees in the service of an employer, and specifically to employees who are injured in the course and scope of employment and whose injuries are not otherwise excluded from compensability.

**What if Mike is injured at home, not work?**

**What if Mike's injury is a horrible knee injury, so that he can only walk a few steps at a time without resting?**

**What if Mike suffers from adjustment disorder, and he has difficulty concentrating when tired or during long meetings?**

**What if Mike's medical records state that he can only walk a few steps at a time without resting, but this is a mere misdiagnosis?**

**What if Mike is treated by his employer as if he can walk only a few steps at a time, but in fact his knee is more or less fine?**

**Mike's supervisor believes a rumor that Mike has AIDS. Mike, in fact, does not have AIDS. But the supervisor fires Mike, and one of his reasons for the termination is the supervisor's belief in the false rumor. What result?**

## **EXTENT OF LEAVE**

**Sean is injured at work and wants to take leave.  
How much leave can he take?**

1. The extent or duration of leave under the ADA is a developing issue. The employee must demonstrate the leave is a reasonable accommodation, and the employer has an “undue hardship” defense.
2. FMLA leave of 12 weeks is an absolute entitlement for the eligible employee of a covered employer. The employee does not need to demonstrate the leave is a reasonable accommodation, and the employer does not have an “undue hardship” defense.
3. Varies.

**Can FMLA leave and workers’ compensation leave run concurrently?**

**What about “no-fault” leave policies (under which employees are automatically terminated after they have been on leave for a certain period of time)?**

## **LIGHT DUTY**

**Sean's employer wants him to get back to work in a "light duty" position. What consequences under the three statutes?**

1. The ADA does not require an employer to "create" a light duty position, unless the "heavy duty" portions of the employees job are marginal job functions. However, if the employer already has a vacant light duty job for which the employee is qualified, it might be a reasonable accommodation to assign the employee to that position.
2. An employee eligible for leave under the FMLA may decline the employer's offer of a light duty position. If the health care provider says the employer is able to return to a light duty position, and the employee declines an offer of light duty, the employee may lose workers' compensation payments, but he would be entitled to remain on FMLA leave until it is exhausted.
3. The light duty alternative is always attractive to the worker's compensation insurance carrier. Before an employer acts on the insurance carrier's recommendation of light duty, it should evaluate its policies and practices on the light duty issue under the ADA and FMLA.

**What about blanket "no light duty" policies?**

**What about blanket "no return to work unless full duty" policies?**

## **PART TIME LEAVE**

**Due to an injury, Lori wants to work only part time.  
Is this permissible?**

1. Part time work may be required as part of an employer's reasonable accommodation under the ADA.
2. Part time leave under the FMLA is available, if medically necessary, and the part time leave does not unduly disrupt the employer's business.
3. Part time leave is generally not provided under the worker's compensation statute.

## **PAID LEAVE**

**Karl wants to be paid while he is out on leave.  
Is an employer obligated to provide paid leave?**

1. The ADA does not require that the employer pay an employee with a disability, unless the employer's policies would require payment generally. For example, if the employer's policy grants four weeks of paid sick leave, this cannot be denied an employee when the leave taken is because of a disability.
2. FMLA can be unpaid. Paid sick, vacation, or disability leave, if any, can be substituted, unless workers' compensation benefits are being received.
3. Workers' compensation statutes generally provide up to 2/3 weekly salary rate for each day missed from work (with a maximum dollar amount), plus medical expenses and death benefits, if applicable. Long term disability payments are awarded based on assessment of the injury.

## **BENEFITS PROTECTION**

**Todd wants to maintain health benefits during leave.  
Is his employer obligated to do so?**

1. Under the ADA, reasonable accommodation might mean maintaining an employee's benefits while on disability leave, but only in rare cases.
2. The employer must maintain health benefits during FMLA leave under the same terms as if the employee were not on leave. An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate). Upon return, the employee receives all benefits as if never on leave.
3. Most employees on workers' compensation receive w-c benefits instead of health insurance.

## JOB RESTORATION

**Following leave for a medical condition, Stacey wants to return to work. Is she entitled to the same job?**

1. Under the ADA, job restoration depends on whether preserving the job is a reasonable accommodation, which does not cause the employer undue hardship.

2. Following FMLA leave, the employee is entitled to their former position. There are only three limited exceptions to the rule that an employee is entitled to the same or equivalent position upon return from FMLA leave:

a. “KEY EMPLOYEES”

An employer may deny job restoration to key employees, but only if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer. The FMLA regulations define a “key employee” as “a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee’s worksite.”

b. EMPLOYEE UNABLE TO PERFORM ESSENTIAL FUNCTION

If an employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration under the FMLA. In such a case, however, the employer’s obligation may be governed by the provisions of the ADA.

c. FAILURE TO PROVIDE FITNESS-FOR-DUTY CERTIFICATES

The third and last exception is that an employer may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work. A uniform policy that requires an employee who takes leave (because of his or her own serious health condition) to obtain and present certification from the employee’s health care provider that the employee is able to resume work is valid under the FMLA.

3. Iowa (and most states) forbid discrimination against an employee for filing workers' compensation benefits; of course, that does not necessarily mean the job must be held for the employee.

## **INDIVIDUAL SUPERVISOR LIABILITY**

**Tom is a manager with Huge Company. He fires his secretary in violation of the ADA, FMLA, and Iowa's workers compensation statute. The secretary sues both Huge Company and Tom. Can Tom be held individually liable?**

1. Courts have held there is no individual liability under the ADA. But note that the Iowa Civil Rights Act also forbids disability discrimination, and the Iowa Supreme Court held that supervisors could be held individually liable under the ICRA.
2. Generally, most courts have held that there is individual liability under the FMLA, although a few have disagreed.
3. There is no such thing as individual supervisor liability under workers' compensation statutes.

## REMEDIES

### **Huge Company and Tom lose the lawsuit. What can the jury award the plaintiff?**

1. Under the ADA, a successful plaintiff can be awarded reinstatement, back pay, compensatory and punitive damages (subject to caps depending on the size of the employer), and attorneys fees. Punitive damages are also possible. (Under the ICRA, reinstatement, back pay, compensatory and attorneys fees are all recoverable. Punitive damages, however, are not recoverable).
2. Under the FMLA, a successful plaintiff can be awarded reinstatement, back pay, liquidated damages (which means double damages) if the violation was "willful," and attorneys fees. Compensatory damages and punitive damages are not recoverable.
3. The general remedy for compensation claims is payment of disability and medical benefits. For retaliatory discharge, the plaintiff can generally recover reinstatement, back pay, and punitive damages.