

Family Medical Leave Act (FMLA)

How Does It Affect You & Your Surgery Center?

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Objectives

- Determine under what circumstances your company would be a legally covered employer under FMLA.
- Define employee eligibility requirements to receive FML.
- Recognize situations that trigger FML entitlement.
- Monitor use of FMLA benefits and handle potential abuse.
- Comply with employee reinstatement requirements.

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FMLA PRE-TEST

1. Employees must request leave under the FMLA in writing?
 1. True
 2. False
2. Companies must notify employees who have used leave under FMLA of their remaining FMLA leave account balance at least ____ days in writing?
 - a) 30 days
 - b) 60 days
 - c) 180 days
 - d) Never, there's no requirement for notification
3. When an employer receives the written request for FMLA from the employee, it must notify the employee of the leave designation by which method?
 - a) Have the supervisor tell the employee within 5 days
 - b) Notify the employee in writing within 15 business days
 - c) Notify the employee in writing within 5 business day

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FMLA PRE-TEST

- 4. Richard and Jane are married and work for the same company. Jane is due to deliver their first child later this month. They have both asked for leave under the FMLA. What are they entitled to under the FMLA?
 - a) Each will get 12 weeks leave
 - b) They have to share the 12 weeks
 - c) Only one of them can take the leave
- 5. Sally is adopting a daughter and wants to take time off from work to bond with her new child. She qualifies for and has asked to take FML for 3 weeks, then return to work on a part-time basis over the next 5 weeks. She plans to use FML for 4 hours a day and work half days during the 5-week period. Is the employer legally obligated to provide the 5-weeks of intermittent part-time leave?
 - a) Yes
 - b) No

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FMLA PRE-TEST

- 6. The FMLA allows qualified employees to take a minimum of ____weeks of job protected leave in a 12-month period.
 - a) 10 weeks
 - b) 12 weeks
 - c) 18 weeks
 - d) 26 weeks
- 7. When, if at all, must an employer that has less than 50 employees provide employees leave under the FMLA?
 - a) Never – companies with less than 50 employees need not concern themselves with FMLA
 - b) If the company had more than 50 employees last year, then its employees may qualify
 - c) If the company hires temps or leases employees, those employees may qualify
 - d) Both b and c
- 8. Kenny, a long time employee, was injured on the job and will be out of work for 7 weeks on worker's compensation. Can his employer count the 7-week period as FML, too?
 - a) Yes
 - b) No

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FMLA PRE-TEST


- 9. Theresa, has worked for XYZ Surgery Center for several years. She has requested a week of leave under FMLA to care for her daughter's newborn child. The child has a medical condition and needs that cannot be handled by a day care. Theresa states that her daughter resides with her and that she cares for the child and provides for the child financially. Can the employer legally deny Theresa's request?
 - a) Yes
 - b) No
- 10. The Advanced Surgery Center has 3 locations in the metro area that are about 18-20 miles apart. Each location has a full time Administrator, 10 full time employees and 7 part timers. Josh, a part-time employee who normally works at least 25 hours per week has requested leave under the FMLA. His supervisor informed him that Advanced employees were not covered by FMLA. Was the Supervisor correct?
 - a) Yes
 - b) No

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Overview of FMLA of 1993.

- It is intended to provide a means for employees to balance work and family responsibilities by taking unpaid leave for certain reasons.
- Entitles eligible employees to:
 - Take up to 12 work weeks of leave (26 weeks for military caregiver leave)
 - Of unpaid, job protected leave
 - In a 12 month time period
 - For specified family and medical reasons
- Gives employees three basic guarantees:
 1. The right to take a leave
 2. The right to continuation of health benefits
 3. The right to reinstatement to same or equivalent job

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Family Medical Leave Act (FMLA)

- Must have 50 employees (W-2) (FT & PT) (leased or temporary) in order to be mandated; single site or multiple sites within...
- 75 mile radius
- 15 employees/week for at least 6 months
- Do not have to be consecutive

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Joint Employment (temps)

- **Definition:** Joint employment exists when an employee is employed by 2 or more employers such that the employers are responsible, both individually and jointly, to the employee for compliance with a statute.
- The employee performs work that simultaneously benefits 2 or more employers, or works for 2 or more employers at different times during the work week. A joint employment relationship generally will be considered to exist in situations as:
 - There is an arrangement between employers to share an employee's services or to interchange employees
 - One employer acts directly or indirectly in the interest of the other employer in relation to the employee, or
 - When the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by or is under common control with the other employer.

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Joint Employment (temps)

- If a temp goes on FML while working at your company, you have to take them back!
- PEO – Professional Employment Organizations
 - You may have to count those employees base upon definition in the prior slide.
 - You may not have to count those employees if the PEO is only doing payroll.
 - If you hire and give to PEO and then PEO leases back the employee to you, then the PEO is employer of record, taking out taxes and provides benefits.
 - Only the primary employer (employer of record) is responsible for giving required notices to it's employees, providing FMLA leave and maintaining benefits and counts toward FML.

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Joint Employment (temps)

- Job Restoration:
 - A primary employer has the primary responsibility for job restoration
- A secondary employer is responsible for accepting the returning employee in place of the replacement employee if:
 - The secondary employer continues to use an employee from the temporary or leasing agency, and
 - The agency chooses to place the employee with the secondary employer.
- A secondary employer is also responsible for complying with prohibited acts provisions for its temporary/leased employees, whether or not the secondary employer is covered by FMLA.

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Family Medical Leave Act (FMLA)

- Employee: to be eligible:
- Work for a covered employer
 - Have been employed by the employer for a total of 12 months
 - Have worked at least 1,250 hours in the immediately preceding 12 months
 - Work at a location in the US where at least 50 employees are employed by the employer at 1 or more locations within a 75 mile radius.

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Family Medical Leave Act (FMLA)

Employee: to be eligible:

- Count service week-by-week, any part of the week
- If employee, works just 1 day that week, whole week counts
- Include periods of paid vacation or sick time, as well as any period of unpaid leave during which other benefits like group health benefits or worker's comp continued to be administered.
- Non-exempt employees- actual work hours
- Exempt employees- assumed to have worked the hours
- Any employee on break lasting more than 7 years, then the time spent prior to the break will not count EXCEPT if employee was on break due to the USERRA act, written agreement or a collective bargaining agreement. (union)

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Calculating the 12-Month Period

There are 4 allowed methods:

1. The calendar year
2. Any fixed 12-month "rolling" year, such as a fiscal year, a year required by a state law, or a year starting on the employee's anniversary date.
3. The 12-month period measured forward from the date of an employee's first FMLA leave begins
4. A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

Leave Timing:
1 & 2. An employee is entitled to up to 12 weeks of FML leave at any time during the fixed 12-month period.

3. An employee is entitled to 12 weeks of leave during the year beginning on the first date FML leave is taken

The next 12 months period begins the first time FML leave is taken after completion of any previous 12 month period.

4. Each time an employee takes FMLA leave, the remaining leave entitlement is the balance of the 12 weeks that has not been used during the immediately preceding 12 months.

FMLA leave is unpaid unless the employer requires (policy) or the employee elects to substitute paid leave (take concurrently)

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Family Medical Leave Act (FMLA)

An employee is entitled to leave under FMLA for one or more of the following:

- The birth of a child, and to care for the new born child.
- The placement of a child with the employee through adoption or foster care, or to care for the child.
- To care for the employee's spouse, son, daughter, or parent with a serious health condition.

Because a serious health condition makes the employee unable to perform one or more of the essential functions of his to her job.

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Family Medical Leave Act (FMLA)

An employee is entitled to leave under FMLA for one or more of the following:

- A serious health condition is an illness, injury, physical or mental condition that involves either:
 - ✓ Impairment care or
 - ✓ An overnight stay at hospital, hospice or residential treatment facility.
 - ✓ Continuing treatment by a healthcare provider.
 - 3 Full calendar days or more of incapacity
 - Pregnancy/prenatal care
 - Chronic condition (asthma, diabetes)

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Analysis of Terms

Term	Definition
To care for	Includes either physical or psychological and comfort to family members
Spouse	The DOL has moved from "state of residence" rule to a "place of celebration" rule for the definition of spouse under the FMLA. A place of celebration rule allows all legally married couples, whether opposite sex or same sex or married under common law, to have consistent federal family leave rights regardless of where they live.
Child	Son or daughter means biological, adopted, foster child, stepchild, a legal ward or a child of a person standing in loco parentis who is: under 18 years of age or 18 years of age or older and incapable of self-care because of mental or physical disability. Regarding FMLA military leave, an employee's son or daughter of any age applies.
Parent	Biological, adopted, foster, or loco parentis
Military member	Includes National Guard & Reservices and regular Armed Forces.
Veteran	Individual who was discharged and released under conditions other than dishonorable at any time during the 5-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

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Family Medical Leave Act (FMLA)

Remember to think FMLA when the following occurs to an employee / covered family member:

- Hospitalization
- Absence of 3 days or longer.
- Repeated healthcare provider treatments.
- Employee is pregnant.
- Chronic serious illness (1.)
- Multiple treatment therapy (2.)

1. Permanent or long-term/terminal condition (e.g. Alzheimer's, severe stroke, terminal stages of disease). Employer must certify for evidence that employee visited a HP at least twice in a year for treatment.

2. Multiple treatments – non-chronic conditions (e.g. chemotherapy, physical therapy, kidney dialysis).

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Military Family Leave

- Qualifying Exigency Leave**
- Short-term deployment activities.
 - Military events/ related activities.
 - Childcare/school activities
 - Financial/legal arrangements
 - Military counseling.
 - Rest and recuperation.
 - Post-deployment activities.
 - Additional Activities (as agreed upon by employer and employee).
- Military Care Giver Leave.

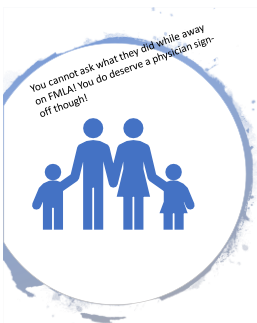
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Special Rules for Service Member Families

- 26 weeks to care for service member with a serious injury or illness suffered in line of duty.
- 12 weeks of leave for service member families in the event of qualifying exigency.

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Family Medical Leave Act (FMLA)

Upon return from FMLA Leave, employee must be restored to same (or equivalent) job. Virtually identical:

- Pay and benefits.
- Duties and responsibilities.
- Other terms and conditions of employment.
- Health benefits must be offered to employees on leave at same level and conditions as would have been offered if employee remained continuously employed.
- Employee must continue to pay any employee share of health plan premiums.

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Notice Requirements for Employers

- **General Notice**
 - Employers must provide all employees with general notice of FMLA rights.
 - Use DOL WH Publication 1420
 - Place notice in the Employee Handbook. If no HB, give notice upon hire.
 - You can provide electronic notice (EM) but best to post in paper.
- **Other Employer Notices**
 - **Eligibility Notice**- once employee requests, employer must with an eligibility notice within 5 business days of the initial request. WH-381
 - **Rights and Responsibilities Notice**- at the same time, employer must respond with WH-381 which has Rights & Responsibilities on it.
 - **Designation Notice**-once the employer has determined that the employee's leave qualifies, must notify employee within 5 business days of having enough information to determine whether the leave is FMLA-qualifying. Use DOL form WH-382.
 - No certification then no FMLA leave.

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Notice Requirements for Employers

- **Employee Reminders**
 - Notice that leave will be counted against employee's annual leave entitlement
 - Explanation of right to maintenance of benefits during the leave
 - Requirements to make premium payment & copayments to maintain health benefits
 - Notice of job restoration rights following leave
 - Any requirements that medical certification must be provided during leave
- **Medical Certification**
 - DOL form WH-308-E and WH-380-F for family member
- **Military Leave Certification**
 - Certification for qualifying exigency -DOL form WH-384
 - Certification for caregiver care - DOL form WH-385 and WH-385-V for veteran
- **Fitness for Duty Certification**
 - Employers may require fitness-for-duty tests for employees returning from FMLA leave if doing the job raises a significant risk of harm to themselves or others. The employer must advise the employee of this requirement in the Designation Notice.

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Notice Requirements for Employees

- **Employers Usual & Customary Notice & Procedural requirements asking for leave for unusual circumstances**
- **May require written notice of the reasons and anticipated start and duration of the leave**
- **Employee must provide sufficient information for employer to determine if leave may qualify for FMLA protection**
- **Employees must also inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified.**
- **REMINDER- CALLING IN SICK IS NOT CONSIDERED A SUFFICIENT NOTICE TO TRIGGER AN EMPLOYER'S FMLA OBLIGATION. IF EMPLOYEE FAILS TO EXPLAIN REASONS, LEAVE MAY BE DENIED.**
- **FORESEEABLE LEAVE:**
 - Employees must provide 30 days notice; when 30 days is not possible, notice must be given ASAP and follow employer's normal call-in procedure.
- **UNFORESEEABLE LEAVE:**
 - Employees can be required to provide certification and periodic recertification supporting the need for leave and continued leave.
- **If an employer believes that an employee's medical certification is incomplete or insufficient/suspicious, employer must notify employee in writing with 7 calendar day notice to fix the problem.**
- **New medical recerts can be requested every 6 months.**

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Maintaining Health Benefits

- Everything must be maintained while on medical leave
- Employer can terminate benefits and/or cease holding the position if:
 - If the employee would have terminated if he/she had not taken FMLA
 - If the employee informs employer that they are not returning back to work after exhausting their 12 weeks of medical leave*
 - If the employee fails to return to work after exhausting the 12 weeks of medical leave
 - Exception: if their medical condition continues to be covered under A.D.A.

* Get employee to put this in writing.

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Top 10 FMLA Employer Mistakes

1. Failing to meet employer obligations. The FMLA places many technical obligations on employers. Even the simplest mistakes can result in legal liability. A few of the most common mistakes are easy to fix:

- Post the latest FMLA poster at every worksite.
- Have an FMLA policy. Distribute it via your handbook.
- Advise employees in writing whether their FMLA leave requests have been approved or denied, including all required designation notices, within the required time frames.
- Properly track FMLA usage and advise employees of the amount of leave remaining.
- Never retaliate or interfere with an employee's right to take FMLA leave.

Resource: Business Management Daily
<http://le.bosdiy.com/index.php?action=social&c=45a3e807b85386821f1f6cd105c09999.61858>

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Top 10 FMLA Employer Mistakes

2. Not including all time worked when calculating FMLA eligibility. Remember that the employee's actual workweek is the basis for determining FMLA leave entitlement. Specific categories that may ultimately need to be factored into FMLA eligibility calculations include overtime hours and break time.

3. Not recognizing a request for leave. There are no magic words required for an FMLA leave request. FMLA leave is not reserved just for medical emergencies. If you need more information to determine if an employee might need leave, ask him or her.

4. Failing to give an employee the chance to provide certification. Employees have 15 calendar days following a leave request to provide certification from their health care provider. At the time you request certification, advise employees of the consequences of failing to provide an adequate certification.

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Top 10 FMLA Employer Mistakes

5. Using the wrong increment to calculate the amount of FMLA used. The FMLA requires you to calculate leave using the smallest increment of time and actual days worked. The increment may be weeks, days, hours or even less than an hour. Allow employees to use FMLA in the smallest increment you allow for other leave. However, it is permissible to exclude days an employee would not be scheduled or expected to work. Examples include weekends, temporary plant closures, furloughs and holidays.

6. Requiring inflexible notice procedures. You can (and should) require compliance with your customary notice procedure for absences, but there are caveats. The FMLA states the notice is due "as soon as practicable." However, employees may be entitled to take leave even if they gave notice after your usual deadline.

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Top 10 FMLA Employer Mistakes

7. Criticizing an employee's use of leave. That can be the basis of an FMLA retaliation lawsuit.
Example: An employee who asked for FMLA leave was told he was on "thin ice" and was "burying himself" by making the request. After he returned from leave, he was suspended without pay and ultimately was fired. The employee sued for FMLA retaliation.

8. Treating an employee differently before and after leave. Employees may have grounds for a retaliation claim if they are subjected to stricter scrutiny or suddenly start receiving poor performance reviews after returning from FMLA leave. Standards by which employees are judged should be the same as before they took leave.

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Top 10 FMLA Employer Mistakes

9. Insisting on meeting time-sensitive goals despite leave. Failure to reasonably adjust goals and standards to account for leave period can result in an FMLA retaliation claim.
Example: An account executive who took intermittent leave sued for retaliation when her employer failed to adjust her sales goals to account for the time she was out on FMLA leave and then fired her when she did not meet them.

10. Wrongly punishing perceived abuse. In a recent poll, 65% of companies complained about the unpredictability of intermittent FMLA leave. However, not every deviation from certification indicates actual FMLA abuse.

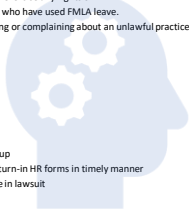
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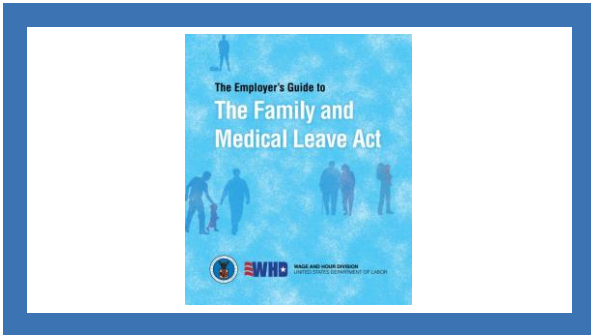


FMLA – Train Your Managers To Avoid Lawsuits

- DO NOT interfere with, restrain or deny the exercise or attempts to exercise any rights of FMLA.
- DO NOT discriminate against employees or prospective employees who have used FMLA leave.
- DO NOT fire or in any way discriminate against a person for opposing or complaining about an unlawful practice under FMLA.
- Difference between FMLA vs. Sick Days
- Define serious health condition(s)
- What employee statements may turn out to be FMLA
- Get the manager to ask the right questions
- Educate them on intermittent leave
- Show them where to direct potential leave requests
- Enforce the policies – call in / call off procedures
- Own the request – you could be monetarily fined if you screw this up
- Write into Managers' Job Descriptions that they must complete & turn-in HR forms in timely manner
- Teach them how to keep emotions in check – they are discoverable in lawsuit
- Watch it on emails
- Demand confidentiality i.e: FMLA vs. HIPAA
- Demand that they leave the leave-takers alone
- HR / Administrator / Board to approve and sign-off on all terminations re: FML'er.



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See forms in exhibits

- WH380-E – Employee form for doctor to complete
- WH380-F – family member
- WH382 – Employer determination
- WH385 – Military Caregiver
- WH285-V – Veteran

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Substantial Limitation

• The term “substantially limited” should be applied broadly. A major life activity is considered “substantially limited” when an individual is restricted in his or her ability to perform the activity, when compared with an average person. Similarly, an individual is considered substantially limited in working if his or her disability restricts his or her ability to perform either a class of jobs or a broad range of jobs in various classes, compared to an average person with similar training, skills, and abilities.

Other Considerations:

Periodic Disorders

- Are covered under the ADA if they:
- are substantially limiting
 - have a high likelihood of recurring (e.g., lupus)

Mitigating Measures

- Measures that eliminate or reduce the effects of an impairment (e.g., prescribed medication, prosthesis) are NOT considered in determining coverage.
- Exception: eyeglasses or contact lenses

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YES or NO **WHICH ONE OF THESE DO YOU THINK IS ADA QUALIFYING?**

Depression

Attention Deficit Disorder

AIDS

Bad Temper

Influenza

Cancer in Remission

Chicken Pox

Broken Arm

Ongoing Drug Addiction

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What Do You Think? Yes or No?

- Megan has been hearing impaired since birth. Without a hearing aid, she cannot hear a normal conversation.
- **Does Megan have a disability under the ADA?**
- Yes of No?

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What Do You Think? Yes or No?

- Megan has been hearing impaired since birth. Without a hearing aid, she cannot hear a normal conversation.
- **Does Megan have a disability under the ADA?**
- **Yes** of No?

Megan's hearing impairment is a long-term condition that substantially limits her ability to hear. Therefore, it meets the definition of disability under the ADA.

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What Do You Think? Yes or No?

- Megan has been hearing impaired since birth. Without a hearing aid, she cannot hear a normal conversation.
- Does Megan have a disability under the ADA?
- Yes of No?

- What if Megan wears a hearing aid that allows her to hear as well as an average coworker.
- **Would her hearing impairment still be considered a disability under the ADA?**
- Yes of No?

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- **Would her hearing impairment still be considered a disability under the ADA?**
- **Yes of No?**

Mitigating measures such as medical devices and/or medications are not generally considered in determining if an individual has a disability.

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What Do You Think? Yes or No?

- What if instead, Megan suffers from nearsightedness but has 20/20 vision when wearing contact lenses?
- **Does she have a disability under ADA?**
- Yes of No?

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What Do You Think? Yes or No?

- What if instead, Megan suffers from nearsightedness but has 20/20 vision when wearing contact lenses?
- **Does she have a disability under ADA?**
- **Yes of No?**

The ADA makes an exception for ordinary corrective lenses intended to fully correct vision. If a person's vision is restored using ordinary eyeglasses or contact lenses, his or her vision is not considered substantially limited and therefore no disability exists under the ADA.

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What Do You Think? Yes or No?

- Angelina was diagnosed with breast cancer. She had radiation treatments that made her nauseous and exhausted and substantially limited her ability to care for herself. A year later, with the cancer in remission, she applies for a promotion for which she is well qualified. After being denied the promotion, she learns that the manager was concerned about her medical history and the possibility of the cancer recurring.
- Is Angelina's history of cancer a disability under ADA, even though it no longer limits any major life activities?
- Yes of No?

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What Do You Think? Yes or No?

- Angelina was diagnosed with breast cancer. She had radiation treatments that made her nauseous and exhausted and substantially limited her ability to care for herself. A year later, with the cancer in remission, she applies for a promotion for which she is well qualified. After being denied the promotion, she learns that the manager was concerned about her medical history and the possibility of the cancer recurring.
- Is Angelina's history of cancer a disability under ADA, even though it no longer limits any major life activities?
- Yes of No?

The ADA protects individuals who have had a substantially limiting disability in the past.

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What Do You Think? Yes or No?

- What if Angelina is denied the promotion because her manager fears she may suffer from anxiety or depression as a result of her health struggles.
- **Would she be protected by the ADA?**
- Yes of No?

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What Do You Think? Yes or No?

- What if Angelina is denied the promotion because her manager fears she may suffer from anxiety or depression as a result of her health struggles.
- **Would she be protected by the ADA?**
- **Yes** of No?

The ADA also protects individuals who are "regarded" as having an impairment even if they are neither substantially limited nor perceived to be substantially limited in any major life activities.

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State and Local Laws

We have looked at the definition of disability under the ADA. However state and local laws may define disability differently, as long as these laws are consistent with the ADA. When defining disability, the ADA represents a minimum bar.

For example, under California law, a disability need only "limit," not "substantially limit," a major life activity. It is important to learn whether there are differences between your state law and the ADA.



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American Disabilities Act (ADA)

REASONABLE ACCOMMODATION:

- Reasonable accommodations to the known physical or mental limitations of a qualified employee or applicant with a disability must be made unless to do so would cause undue hardship on the operation of the employer's business.
- Contact HR (senior management)/ HR Consultant if you believe applicant or employee needs or has requested reasonable accommodation.

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Typical Accommodations

- making existing facilities or vehicles used by employees readily accessible to and usable by persons with disabilities
- restructuring jobs by eliminating non-essential functions or communicating information in a different manner
- changing schedules to allow for part-time work or flexible working hours, more breaks, a longer lunch hour
- reassigning an employee to a vacant position
- acquiring or modifying equipment or devices
- adjusting examinations or training materials
- providing qualified readers or interpreters
- providing additional unpaid leave for necessary treatment

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50 emp / 20hr/week/75m	15 emp/20 weeks	State Specific/min# varies
12 months / 1250 hours	Applicants & employees	Generally None
Serious Health Condition	Disability	Work-Related Injury
Medical Certification	Medical Certification	Medical Certification
12 or 26 weeks	Not defined / not unlimited	Depends nature injury
Not Paid	Not Paid / Some States	Maybe
Light Duty work – NO	Maybe	Depends
Job Restored & Insurance	No / no insurance	State? / no insurance
Job Essentials /R.A.	Unable / W or w/out R.A.	Some level of incapacity
FMLA	FMLA	W/C /State Specific

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Is an FMLA serious health condition the same as an ADA disability?

- NO
- Some FMLA serious health conditions may be ADA disabilities, for example, most cancers and serious strokes.

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Does the FMLA's limit of 12 work weeks of leave in a 12-month period mean that the ADA also limits employees to 12 weeks of leave per year?

- NO
- The FMLA **does not mean** that more than 12 weeks of unpaid leave automatically **imposes an undue hardship** for purposes of the ADA.
- An otherwise qualified individual with a disability is **entitled to more than 12 weeks of unpaid leave as a reasonable accommodation** if the **additional leave would not impose an undue hardship** on the operation of the employer's business.

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How do the ADA & FMLA requirements compare regarding **intermittent** or occasional leave?

- YES
- Under the FMLA, an eligible employee may take leave **intermittently or on a part-time basis for a serious health condition when medically necessary for treatment or recovery, until he or she has used up the equivalent of 12 work weeks in a 12 month period.**
- When such leave is foreseeable based on planned medical treatment, an employer may require the employee to temporarily transfer (for the duration of the FMLA leave) to an available alternative position for which the employee is qualified and which better suits his/her reduced hours.

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What are employee's reinstatement rights under the ADA and FMLA?

- Under the ADA, the employee is entitled to return to the **same job unless** the employer demonstrates that **holding the job open would impose an undue hardship.**
- Under the FMLA, an employee is entitled to return to the **same position or to an equivalent position.**
 - If, after the employee has used all of his or her FMLA leave time, he or she is still unable to perform an essential function of the same or equivalent job because of a physical or mental condition, the FMLA does not require the employer to reinstate the employee into another job.

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What are the ADA and FMLA requirements of **continued health insurance** during medical leave?

➤ Under the **ADA**, an employer must continue health insurance coverage for an employee taking leave or working part-time only if the employer also provides coverage for **other employees in the same leave or part-time status**.

- The coverage must be on the same terms normally provided to those in the same leave or part-time status.

➤ Under the **FMLA**, an employer always **must maintain the employee's existing level of coverage** (including family and employee's existing level of coverage (including family and dependent coverage) under a group health plan during the period of FMLA leave, provided that the employee pays his or her share of the premium.

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May an employer refuse to hire a person with a disability simply because it assumes, correctly or incorrectly, that he or she poses some increased risk of occupational injury and increased workers compensation costs?

- NO
- unless the employer can show that the employment of the person in the position poses a "direct threat".

*"Direct Threat" means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.
 ➤ The determination that a direct threat exists must be the result of a fact-based individualized inquiry that takes into account the specific circumstances of the individual with a disability.
 ➤ Duration of the risk? The nature and severity of potential harm? Likelihood that potential will occur? The imminence of the potential harm?

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May an employer discharge an employee who is temporarily unable to work because of a disability-related occupational injury?

- NO
- An employer may not discharge an employee who is temporarily unable to work because of a disability-related occupational injury where it would not impose an undue hardship to provide leave as a reasonable accommodation.

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Does the ADA require an employer to create a light duty position for an employee when he or she is injured on the job?

> NO

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FMLA Post Test



- Tommy is a temporary accounting employee who has been working at XYZ for 2 months. XYZ has over 400 employees. Tommy needs to take time off to care for his mother who was recently released from the hospital after major surgery. Will his absence qualify for FMLA leave?
 - Yes
 - No
- Sharon was rehired by ABC 9 months ago as a full time employee. She had previously worked at ABC, a company of 200, for 7 months nearly 5 years ago. Now she has asked to take leave under the FMLA to care for her seriously injured son. Must ABC grant her request?
 - Yes
 - No
- Mary, a long-time employee of a 1000 worker company has asked to take leave under the FMLA to care for her 33 year old son who recently left the military. He was injured while on active duty nearly 3 years ago. Is her request covered by FMLA?
 - Yes
 - No

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FMLA Post Test

- Joseph, a U.S. Army Reservist, worked at his company only 9 months before being deployed to the Middle East under military orders for 6 months. He returned to work last Monday, but now needs to take a few weeks off to care for his daughter who has a serious health condition. Must his company grant him leave under the FMLA?
 - Yes
 - No
- Karen, a temporary employee, hired through A1 Staffing only 3 months ago, has asked to take leave under FMLA to care for her seriously injured husband. The Company, Next Day Dry Cleaning, only employs 38 total people in three locations in the same city. Is Tim, the office manager, correct when he denies Karen's FMLA request?
 - Yes
 - No
- Stan a production work for the 1200 employee New Design Motors plant, wants to discipline John for missing work on Monday. John had exhausted all of his sick time several weeks back and has no other paid time off available. John left work on Friday complaining of dizziness. John called in again on Monday and stated that he is sick today, throughout the week-end. On Tuesday, John came in with a doctor's note stating that John may have a diabetic condition and awaiting results. Long story short, John missed more time and Stan was sick and tired of it and wants to discipline John. Can Stan discipline John for 17 1/2 excessive sick time leave?
 - Yes
 - No



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Final HR
Related
Questions?

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