

Fisher Phillips



Navigating the FMLA, ADA & WC Triangle




McGhan DeLaney

1

The Triangle

- Employers are often faced with challenging employee scenarios because at least three separate laws are implicated
 - The Family and Medical Leave Act
 - The Americans with Disabilities Act
 - Workers' compensation laws



Enshipp.com

2

Purpose



- Prohibits discrimination
- Sets minimum leave standards
- Provides for payment of compensation; rehabilitation



Enshipp.com

3

Let's Get Warmed Up



- Part-time employees are not eligible for FMLA leave
- Like vacation, employees must ask for FMLA leave if they want to use it
- Two weeks off work due to a work-related injury is also considered FMLA leave (assuming the employee is eligible)
- FMLA leave has to be taken in a lump sum of 12 weeks

fbshgill@a.com

4

Let's Get Warmed Up



- Employees on intermittent FMLA leave can be required to bring a doctor's note after each absence
- An employee who cannot return to work after their FMLA leave has expired can be terminated
- Employees who take intermittent FMLA leave can be rated "unreliable" on their performance evaluations
- An employee can be required to exhaust paid leave while using FMLA

fbshgill@a.com

5

Family and Medical Leave Act

- Provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons
- Eligible employees may take up to 12 weeks of leave in a 12-month period for certain identified, covered reasons, including...

fbshgill@a.com

6

Family and Medical Leave Act


General Provisions - Up to 12 weeks per year for

- Birth, adoption, or placement in foster care of child
- Provide care for a seriously ill child, parent, or spouse
- Serious health condition of employee
- "Qualified exigency" (emergency) due to call or order to active duty in covered military service
- Note: A "child" under the FMLA (but not for servicemember leave) includes relationships that are not legal or biological (e.g., unmarried and same-sex partners) and for in loco parentis, "parent" does not have to provide day-to-day and financial support

© 2014 Eshar Phillips LLC. All rights reserved. EsharPhillips.com

7

FMLA – General Provisions



- Up to 26 weeks of leave 12-month period - Servicemember
 - To care for child, parent, or spouse who is a covered servicemember and suffered a serious injury or illness in the line of active military duty
- Who is eligible?
 - Company must have 50+ employees within 75 miles of work site
 - 12 months of service (not necessarily consecutive) – you must count time employee worked as a temp
 - 1,250 hours worked in previous 12 months

© 2014 Eshar Phillips LLC. All rights reserved. EsharPhillips.com

8

Family and Medical Leave Act

Eligibility – how much is 12 weeks?

"Workweek" is the employee's "usual or normal schedule" (hours/days per week) prior to the start of FMLA leave

Determining the "workweek" is most important when calculating intermittent or reduced schedule leave

Overtime worked on an "as needed basis" not part of the usual or normal workweek, or is voluntary, is NOT counted to calculated amount of leave entitlement OR charged against the employee's leave entitlement

If schedule varies from week to week, use a weekly average of hours worked over 12 weeks prior to beginning of the leave to calculate leave eligibility

© 2014 Eshar Phillips LLC. All rights reserved. EsharPhillips.com

9

Family and Medical Leave Act

- What is a "serious health condition?"
 - In-patient care, or
 - Continuing treatment by a health care provider



Esharphillpa.com

10

Family and Medical Leave Act

- Categories of "Serious Health Conditions"
 - Hospital care (in-patient)
 - Absence plus treatment
 - Pregnancy (any period of incapacity or for prenatal care)
 - Chronic conditions requiring 2+ treatments per year (e.g., asthma, diabetes, epilepsy)
 - Permanent/long-term conditions requiring medical supervision (i.e. Alzheimer's or a stroke, where treatment may not be effective but continued care is needed)
 - Multiple treatments (non-chronic conditions)



Esharphillpa.com

11

Family and Medical Leave Act

"Continuing Treatment"

<ul style="list-style-type: none"> • Must be incapacitated for more than 3 consecutive, full calendar days 	<ul style="list-style-type: none"> • Treatment 2 times within 30 days of the first day of the incapacity (unless extenuating circumstances) 	<ul style="list-style-type: none"> • Must see HCP within 7 days of first day of incapacity 	<ul style="list-style-type: none"> • Must visit HCP in person*** (subsequent treatment can still be regimen of continuing treatment like prescription drugs)
---	--	---	---

Esharphillpa.com

12

Do You Know?

Which of the following conditions might be considered a "serious health condition" under the Family and Medical Leave Act and/or be a qualified reason for FMLA leave?

- An employee's migraine headaches
- A spouse's foot surgery
- A pregnant employee's morning sickness
- An employee's request to take a week of vacation because her father is having gall bladder surgery

FisherHillips.com

13

Do You Know?

Which of the following conditions might be considered a "serious health condition" under the Family and Medical Leave Act and/or be a qualified reason for FMLA leave?


- An employee's child needs allergy shots, and so the employee must leave work early every Friday for the next four weeks
- Chronic infection for which employee is not presently incapacitated, but must go to 3-4 doctor's appointments per year
- An employee's daughter, who is unmarried, suffers complications from her pregnancy and is hospitalized for one week
- An employee's work-related injury that renders him unable to work for six weeks

FisherHillips.com

14

FMLA Leave

- Entitlement
 - Most leave may be taken on intermittent or reduced schedule basis
- Employment Protection
 - Reinstatement to original or an "equivalent" position
- Insurance Benefits
 - Continued as if the employee continued to work (can require to pay premiums)



FisherHillips.com

15

The Americans with Disabilities Act (ADA)



- Prohibits discrimination against disabled persons (physical or mental disabilities)
- Employers required to make "reasonable accommodations" unless it causes an "undue hardship"

fisherhillpa.com

16

The Law ADA

The Law – Refresher

Americans with Disabilities Act - ADA

- Prohibits discrimination against qualified individuals with a disability
- The law requires employers to make **reasonable accommodations** for disabled individuals as long as there is no undue hardship to the business; no direct threat of harm to the individual or others; or no fundamental alteration of the business.
- Goal is to create level playing field for "disabled" employees or applicants.
- Emphasis on what individuals can do - not on limitations.



fisherhillpa.com

17

The Americans with Disabilities Act (ADA)

Definition of "disability" under the ADA

- A physical or mental "impairment" that substantially limits one or more major life activities
- Having a record of such impairment
- Being regarded as having such an impairment



fisherhillpa.com

18

The Americans with Disabilities Act (ADA)

"Major Life Activities"

- Includes "operation of major bodily functions" (i.e., diabetes, high blood pressure, epilepsy and asthma)

"Disability"

- Impairment that is *episodic* or *in remission* is a disability if it would substantially limit a major life activity when active

Eshagh@llpa.com

19

The Americans with Disabilities Act (ADA)

"Mitigating Measures"

- Evaluate disability without regard to hearing aids, medications, medical supplies, prosthetic devices, etc.
- Exception: ordinary eyeglasses/contact lenses to correct minor sight imperfections

"Regarded As"

- Employee merely is required to establish discrimination because of an actual or perceived physical or mental impairment (even if not a disability)
 - Unless such impairment is transitory (lasts 6 mos. or less)

Eshagh@llpa.com

20

Could these be ADA-Qualifying Disabilities?

Gambling Addiction	Alcoholism	Drug Addiction
Intellectual Disabilities	Diabetes	Cancer
Epilepsy	Vision impairment that requires reading glasses (magnifiers)	

Eshagh@llpa.com

21

So, Who Is Disabled?

Virtually Everybody



faberhill.com

22

“Otherwise Qualified”

Being disabled is not enough...the individual also must be **qualified**

A **qualified person** is someone who satisfies the requisite skill, experience, education, and other job-related requirements of the position, and can perform the essential functions of the job, with or without a reasonable accommodation and without posing a direct threat to the health or safety of the individual or others.

faberhill.com

23

Duty to Accommodate (ADA): When Triggered?

The Company has a duty to initiate the process if the employee's disability is *known or apparent*.

- Employee tells the Company
- The Company otherwise becomes aware of the condition, such as through a third party or by its own observation.



faberhill.com

24

ADA Reasonable Accommodations

Two general requirements:

- The Employer has duty to engage in a timely, good faith interactive process.
- The Employer has duty to provide reasonable accommodations in appropriate circumstances.

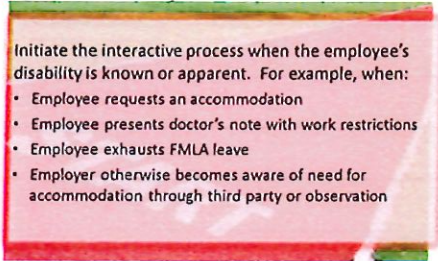


25

When to Start the Interactive Process

Initiate the interactive process when the employee's disability is known or apparent. For example, when:

- Employee requests an accommodation
- Employee presents doctor's note with work restrictions
- Employee exhausts FMLA leave
- Employer otherwise becomes aware of need for accommodation through third party or observation



26

ADA Reasonable Accommodation

- When is an accommodation unreasonable?
- What is an undue hardship?
- Issue of "direct threat" to health and safety of the disabled individual or to others



27

ADA Accommodation

Accommodation Process

- Analyze job and essential job functions
- Consult disabled EE and appropriate professionals to determine precise job-related limitations caused by disability and how can be overcome with reasonable accommodation
- In consult with disabled EE and healthcare or other professional, identify potential accommodations and assess effectiveness of each
- Consider preference of the EE and select accommodation most appropriate for EE and the Company (current job with accommodation; another open position; leave to allow time to recover/strengthen so can perform essential job functions)
- If unable to provide accommodation, advise EE of reasons and be able to support conclusion with specific FACTS, not vague generalizations and assumptions

DOCUMENT EACH STEP OF THE PROCESS!!

Faharghills.com

28

Requests for Accommodations?



- EE leaves mid-shift saying, "I need to leave. I need to leave right now," without any reason
- "My feet hurt"
- "I need a shorter route through the stockroom because the other way is too long and difficult with my leg problems"
- "I just cannot stand for 8 hours anymore"

Faharghills.com

29

Requesting Medical Information



May request medical documentation and information



If unclear, may seek clarification and give reasonable time to obtain



Entitled to know the nature and duration of restrictions



Not necessarily entitled to know diagnosis



Different inquiries than under FMLA

Faharghills.com

30

Ohio Workers' Compensation

- Provides for payment of compensation and medical services for work related injuries and/or occupational diseases
 - Must arise in the course and scope of employment
 - No other requirement
 - Covers all employers and employees
- Types of Compensation
 - TTD
 - Wage loss
 - PPD/loss of use
 - Living maintenance
 - PTB

Eshagh@lps.com

31

Ohio Workers' Compensation

- Continuous and/or intermittent leave is not required
 - But law protects against retaliation
- BUT -- employee may be entitled to compensation if unable to return to former position of employment
 - Employers often consider light duty assignments to avoid temporary total disability benefits and/or wage loss benefits

Eshagh@lps.com

32

Covered Employers

• Employers with 15 or more employees	• Employers with 50 or more employees	• All employers
ADA 15+	FMLA	WC all

Eshagh@lps.com

33

Eligible Employees

- Qualified employee or applicant
- Employee who has worked one year and 1,250 hours; 75 mile rule
- All employees

Am I eligible?

ADA FMLA WC all

34

What Triggers Protection

- Disability—having an impairment, having had an impairment, or being regarded as having an impairment
- Employee or family member's serious health condition, birth or adoption
- A work-related injury or occupational disease

ADA FMLA WC

35

Medical Leave -- CONTINUOUS

- Reasonable accommodation v. undue hardship
- 12 weeks of leave
- None -- but see R.C. 4123.90 concerning protection from retaliation

ADA FMLA WC NONE

36

Medical Leave -- INTERMITTENT

<ul style="list-style-type: none"> Reasonable accommodation v. undue hardship <p>ADA</p>	<ul style="list-style-type: none"> 12 weeks of leave <p>FMLA</p>	<ul style="list-style-type: none"> None – but see R.C. 4123.90 concerning protection from retaliation <p>WC</p>
--	--	---

37

Family Leave

<ul style="list-style-type: none"> No <p>ADA</p>	<ul style="list-style-type: none"> Family member with serious health condition or care for newborn child, adopted or foster care <p>FMLA</p>	<ul style="list-style-type: none"> No – but nursing services <p>WC</p>
--	--	--

38

Medical Certification of Disability/Condition

<ul style="list-style-type: none"> Job-related or consistent with business necessity <p>ADA</p>	<ul style="list-style-type: none"> "May" require <p>FMLA</p>	<ul style="list-style-type: none"> No prohibition – must submit medical proof to receive benefits <p>WC</p>
---	--	---

39

Time Limit

• None – reasonable accommodation and undue hardship
ADA

• 12 weeks per year
FMLA

• Temporary total and wage loss issues
WC

© HarperCollins.com

40

Light Duty or Restricted Duty

• May be reasonable accommodation
ADA

• Focus is on position at time of request for leave; cannot require return to light duty
FMLA

• Loss of total disability benefits – but may be eligible for wage loss
WC

Light-duty Job

© HarperCollins.com

41

What Type of Leave is an Employee Entitled To?

© HarperCollins.com

42

Scenario One

John has been out on FMLA leave for 10 weeks. He has two more weeks of leave left and plans to return. The week before he is to return to work, he submits paperwork from his doctor indicating that he needs an estimated additional 3 weeks of leave. The Company does not have a policy providing additional leave after FMLA leave. You terminate when he exhausts his FMLA leave.



• *Is this lawful?*

Estephillips.com

43

Scenario Two



Bryan has been employed for 2 years as a laborer in the service department. After the conclusion of his probationary period, Bryan's attendance became a problem. He's frequently late for work and often comes in carrying a "fancy" coffee drink. Bryan was finally put on a performance plan related to his tardiness.

Three days after being placed on a performance plan, Bryan comes to work with medical documentation noting that he has incapacitating migraines which may cause him to be absent for up to 4 days a month and up to 8 hours a day.

What do you do?

Estephillips.com

44

Scenario Two Cont.

- Since his approval for FMLA, Bryan's absences have only increased. He has:
 - Is late or absent more than 4 days a month
 - Appears to be absent on Mondays (after the Guardians or Browns are in town) and/or Wednesdays (after Tuesday bowling league)
 - Was seen on TV at the Browns game when he was unable to work

Estephillips.com

45

Scenario Two Cont.

- What should the Employer do?
 - ❖ Deny the time taken over the four approved days?
 - ❖ Ask for recertification for exceeding days listed by provider?
 - ❖ Ask for recertification for other reasons?

fbargh@jps.com

46

Scenario Three



You recently hired a new plant employee, and yesterday he told you he just found out he has cancer and needs several weeks off work for treatment. Under the FMLA, the Company must grant his leave request.

• True or false?

fbargh@jps.com

47

True/False

Employees must always give 30 days notice of FMLA leave



• True or false?

fbargh@jps.com

48

Scenario Four



- You have two employees in the shipping department. One employee is out on FMLA leave to care for his child who has leukemia and will be out for at least another 8 weeks.
- Now the other employee tells you that he is going to need to take FMLA leave intermittently to care for his mother, who has Alzheimer's (even though he has 4 siblings and 3 in-laws who do not work).
- Can the Employer deny the intermittent leave request because it causes an "undue hardship" (i.e., leaves the shipping department with no employees)?

Estherhillips.com

49

True/False



An employee on intermittent FMLA leave can be transferred to another department to better accommodate the unplanned absences.

True or False?

Estherhillips.com

50

Managing ADA and FMLA Absences


- If not FMLA eligible or FMLA exhausted, an employee may be eligible for leave as a reasonable accommodation under ADA
 - Determine whether leave is necessary
- Maximum leave policies need flexibility (i.e., extend maximum period as a reasonable accommodation under the ADA)



Estherhillips.com

51

Test Your Knowledge




Under the ADA, an "indefinite" amount of leave, if medically necessary, is considered a "reasonable accommodation."

True or False?

©Harq301ga.com

52

Test Your Knowledge




"I need a closer parking space because the employee lot is too difficult with my leg problems" is an accommodation request under the ADA.

True or False?

©Harq301ga.com

53

Test Your Knowledge




May an employee work another job while out on medical leave?

True or False?

©Harq301ga.com

54

Test Your Knowledge




To comply with its obligation to provide a safe workplace, employees can be required to provide a list of all medications they are taking during working hours.

True or False?

© 2014 SHRM | www.shrm.org

55

Test Your Knowledge




If an employee is reassigned to a lower pay graded position as a reasonable accommodation under the ADA, the Employer must pay the disabled employee the rate she or he was earning in the prior job.

True or False?

© 2014 SHRM | www.shrm.org

56

Test Your Knowledge



Under the ADA, an employer who provides leave as a reasonable accommodation is required to return the employee at the end of the leave to the same position held prior to leave, or to an equivalent position with the same pay and benefits.

True or False?

© 2014 SHRM | www.shrm.org

57

Scenario Five

You are meeting with Jennifer to discuss some attendance issues and are giving her a written warning for excessive absenteeism. During the conversation, Jennifer explains that she has been battling depression and anxiety and some days is not able to work. Jennifer explained that has been following with a therapist but has not presented any medical documentation.



- Does Jennifer have an FMLA-qualifying serious health condition?
- Does the Employer have to "erase" the absences as a reasonable accommodation under the ADA?

Eshargh@jga.com

58

Scenario Six



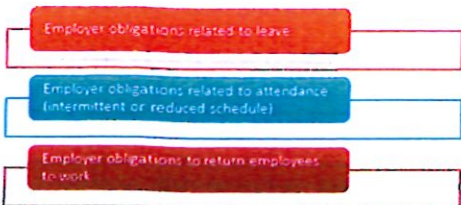
Jimmy, an operations supervisor, had back surgery last year. Two months ago, in a casual conversation between the two of you, Jimmy told you that after his surgery he was addicted to the pain medications. He was quick to assure you that he had received help and had completely recovered from his addiction. Recently, Jimmy seems to be acting differently. He's more forgetful, sometimes looks dazed and confused, and has been arriving to work late. You're concerned for his safety and the safety of other employees.

- What should you do?

Eshargh@jga.com

59

ADA & FMLA Leaves, Intermittent Absences and Job Restoration



Eshargh@jga.com

60

FMLA Intermittent/Reduced Schedule Leave

Required to grant intermittent or reduced schedule leave when **medically necessary** for:

- Employee's or family member's own serious health condition
- Qualifying exigency related to military obligations

©shughllips.com

61


Managing FMLA Intermittent Leave

Foreseeable

- Require 30-days advance notice and, if not given
- Require employee to explain why such notice could not be given

Unforeseeable

- Utilize notice requirements of attendance policy
 - "As soon as practicable" but . . .
 - Employee must comply with employer's usual and customary call in procedure, absent unusual circumstances



©shughllips.com

62

Managing FMLA Intermittent Leave

Attempt to require schedule that least disrupts operations.

Consider option of transferring employee if leave is foreseeable.

- Temporarily transfer to available alternate position if position better accommodates leave than the employee's regular job
- Equivalent job duties not required
- Company must provide equivalent pay and benefits
- Must comply with ADA

©shughllips.com

63

Managing FMLA Intermittent Leave

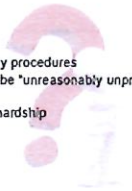
- Identify the Problem Child
- Review patterns of absences
- Recertification as appropriate
- Extreme situations - Investigator

Faherghillips.com

64

Managing ADA Absences

- Sporadic or reduced schedule
 - Is regular attendance is essential job function?
 - Is permitting absences reasonable accommodation?
 - Will permitting absences result in "undue hardship"?
- Consider:
 - Whether employee or designee followed Company procedures
 - Whether absences have been or are expected to be "unreasonably unpredictable, repeated, frequent or chronic"
 - Whether excusing absences would be an undue hardship



Faherghillips.com

65

Managing ADA Absences

- Job Descriptions
 - Suggested for every position
 - Must be accurate
 - Identify "essential" functions, including attendance as appropriate
 - Consider description when assessing employee's ability to do the job



Faherghillips.com

66

Managing WC Absences


- BUT, absences are often covered by FMLA and/or ADA
- Limits on payments for TTD and wage loss
- PTD benefits are ongoing
- Statutorily closed if inactive for 3 years
- Light/Transitional Duty
- MOCs
- Vocational rehabilitation
- Regular ECO exams
- Regular exams/monitoring of treatment
- Communicate with TPA (open up, defense exams, important information, etc.)
- Communicate with employee (ensure working within restrictions, expectations, while working LD, etc.)

©shahillig.com

67

Managing ADA & FMLA Absences

- Attendance Policies
 - Absences exempt from policy, e.g., those protected by FMLA and the ADA
 - Assess employee's own health-related absences not only under FMLA but the ADA
 - Remember WC absences may be covered by FMLA and/or ADA
- Reassess how policies are enforced – (excused versus unexcused; planned versus unplanned)
 - Either way, absences may be protected unless absences render employee unqualified, absences are not reasonable or otherwise present an undue hardship



©shahillig.com

68

Managing ADA & FMLA Absences

FMLA

- 12 weeks unpaid leave
- Designate FMLA leave to run concurrently with other leaves (including workers' compensation!)
- Do not count absences against employee

ADA

- No set period of leave
- Perform individualized assessment to determine how much leave is necessary and whether it would be an undue hardship to extend leave
- No paperwork legally required, but critical

©shahillig.com

69

Managing ADA & FMLA Absences

- If not FMLA eligible or FMLA exhausted, may be eligible for leave as a reasonable accommodation under ADA
 - Determine whether leave is necessary
- Maximum leave policies need flexibility (i.e., extend maximum period as a reasonable accommodation under the ADA)



fisherhillpa.com

70

Managing Job Restoration

FMLA

- Return employee to same or equivalent position
- Ensure all pay and benefits restored to same level

ADA

- If FMLA doesn't apply, return employee to same or equivalent position as reasonable accommodation assuming no undue hardship

fisherhillpa.com

71

Managing Job Restoration

- Give written notice of leave expiring
 - Advise employee that FMLA is going to expire and set expectations on follow-up
 - Do not automatically terminate at the end of FMLA leave if employee is out for own serious health condition
 - Seek input on whether employee will require any additional leave, and if so, set expectations on follow-up and needed support for continued leave



fisherhillpa.com

72

Managing Job Restoration
FMLA Fitness for Duty Certification (FFD)

- Simple release that employee is fit to return to work
 - FFD requirement identified in designation notice
 - Address ability to perform essential job functions
 - Provide those functions to the employee when the employer provides the designation notice
- Employer may clarify and verify FFD, but no second or third opinions
- FFD not permitted after each intermittent leave absence, but FMLA
 - Allows employer to require FFD certification every 30 days if the employee has used such leave during that period and
 - "Reasonable safety concerns exist" regarding the employee's ability to perform job (high standard)

fisherhillpa.com

73

Managing Job Restoration
ADA Fitness-For-Duty Certification

- FMLA FFD release may be sufficient
- Independent basis needed for ADA FFD that requires medical inquiry or exam
 - Direct Threat to Employee or Others
- Used for Reasonable Accommodation request
- Opportunity to seek healthcare provider's input on accommodations

fisherhillpa.com

74

RECAP: Interplay of the FMLA, ADA and Ohio Workers' Compensation



fisherhillpa.com

75

Employer/Employee Eligibility

- FMLA**
 - Employers with 50+ employees
 - Employees with 12 months of service, worked 1,250 hours, and 50+ employees work within 75 miles of the employee's work site
- ADA**
 - Employers with 15+ employees
 - "Qualified" employees (and applicants)
- Workers' Comp.**
 - All Ohio employers and all employees

Fahghillips.com

76

Definitions

- FMLA**
 - "Serious Health Condition"
 - "Qualifying Exigency"
- ADA**
 - "Qualified Disability"
- Workers' Comp.**
 - "Compensable Injury"

Fahghillips.com

77

FMLA Definitions

A Serious Health Condition

- Illness, injury, impairment or physical or mental condition involving either in-patient care or continuing treatment by a HCP

Qualifying Exigency

- A qualifying emergency situation arising out of the fact that the employee's spouse, child or parent has been called up to active duty with the Armed Forces, including the National Guard or Reserves, in a foreign country

Fahghillips.com

78

ADA Definitions

Disability

- Physical or mental impairment that substantially limits a major life activity (seeing, hearing, breathing, walking, etc.)
- A record of such impairment
- Being regarded as having such impairment

Esharghills.com

79

Workers' Comp. Definitions

A Compensable Injury

- An illness, injury or disease sustained in the course of, and arising out of, the eligible employee's employment

Esharghills.com

80

Entitlements

- | | |
|-----------------------|---|
| FMLA | <ul style="list-style-type: none"> • 12 or 26 weeks of unpaid leave (right to substitute paid leave) • Continued insurance benefits • Reinstatement to same "or equivalent" position |
| ADA | <ul style="list-style-type: none"> • Reasonable accommodation • If accommodation is leave, employee entitled to return to the same job (not equivalent) |
| Workers' Comp. | <ul style="list-style-type: none"> • Consistent treatment under employer's leave policies |

Esharghills.com

81

Employer's Right to Medical Information

- FMLA**
 - Limited to HCP certification contents
 - Company representative (other than the employee's direct supervisor) can contact employee's HCP *only* for authentication or clarification of the HCP certification
- ADA**
 - Based only on legitimate, business (need to know) basis
 - Must follow "pre-employment," "post-offer" and "currently employed" medical inquiry guidelines
- Workers' Comp.**
 - Employer may contact employee's treating physician
 - Entitled to records related to treatment of the allowed claim conditions

In all cases, medical information is confidential

Esahp@llpa.com

82

Practical Pointers for Managing Leaves



Esahp@llpa.com

83

-  Integrate your attendance, leave and benefit policies
-  Create a calendar for FMLA, ADA, and Workers' Comp. leave
-  Use the appropriate process for FMLA and Workers' Comp. leave
-  Develop a checklist for FMLA and Workers' Comp. leave
-  Develop a process for handling FMLA and Workers' Comp. leave

84

Train all front line supervisors and managers, and anyone with attendance, recordkeeping or monitoring responsibilities.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

85

Evaluate each leave request individually and consider each law's implication - FMLA, ADA and/or workers' compensation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

86

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

Employees who are unable to perform essential job functions due to a physical or mental injury or illness may be eligible for a temporary accommodation.

87

Final Scenario

- **Meet Dale**
- He was recently hired in September and you noticed that Dale has worn a back brace since the start of his employment.
- In December, Dale reports a low back injury at work after falling. He finished the day and did not seek immediate treatment. When reporting the incident, Dale casually notes that he has a history of back pain and prior work injuries involving his back.
- Dale presents to the ER the following day and reports injuring his elbow and low back in connection with the work incident. He files a WC claim which is recognized for a low back strain and elbow contusion.



fisherhillix.com

88

Final Scenario Continued

- Dale continues working until a pre-planned vacation a few weeks later. While on vacation he has an unrelated medical issue that involves a brief in-hospital stay and surgery. This incident causes Dale to miss two months of work.
- In February Dale begins chemotherapy for a cancer diagnosis that was made the year before.
- That same month, Dale also begins treating with a BWC provider for his back and elbow. Those treatment records document Dale's report of increased low back pain with the onset of chemo.



fisherhillix.com

89

Final Scenario Continued

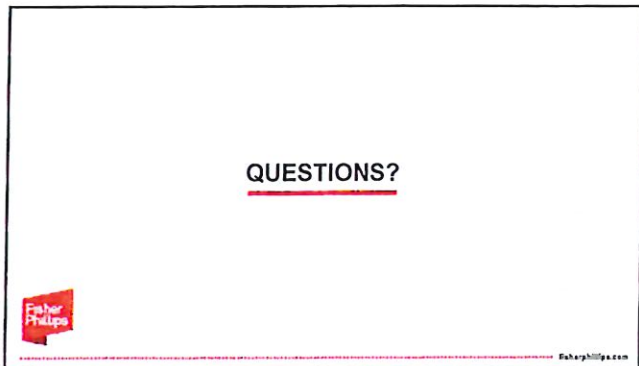
- Dale submits a Medco-14 in his WC claim with significant lifting and hourly restrictions that the employer is not able to accommodate.
- Medical records in the WC claim also document a significant pre-existing history of chronic low back issues that reportedly flare-up every six months.

Where do we even start?



fisherhillix.com

90



91



92
