The Difficult Intersection of Workers' Compensation, FMLA and ADA when an Employee gets Sick or Injured

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It can be hard enough for an employer to understand its obligations under state workers' compensation laws. But it can be downright overwhelming when the myriad of other state and federal statutes, such as the Americans with Disabilities Act and the Family and Medical Leave Act, also come into play. This tangled web of laws is one that often leaves employers uncertain and unable to move forward with confidence regarding employment decisions for injured or ill workers.

According to the United States Department of Labor (DOL), "When employees are injured, disabled or become ill on the job, they may be entitled to medical and/or disability-related leave under two federal laws: the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA). In addition, state Workers' Compensation laws have leave provisions that may apply. Depending on the situation, one or more of these laws can apply to the same employee."

Differences in the Laws

The ADA, FMLA and workers' compensation laws each serve a different purpose.

Workers' compensation is a state law, and each state has its own statute. Workers' compensation is a form of insurance that compensates employees - in the form of financial, medical and other benefits - in the event of a workplace injury or illness.

The FMLA is a federal law that applies to employers with 50 or more employees working within a 75 mile radius. It provides up to 12 weeks of unpaid leave per year for an employee dealing with a situation such as his or her own serious health condition, or to allow the employee to care for an immediate family member who has a serious health condition. Employers must also continue health benefits during the period of leave.

The ADA is also a federal law, and applies to employers with 15 or more employees. The ADA prohibits employers from discriminating against people with disabilities, and requires employers to make "reasonable accommodations" for employees with disabilities, which may include leave (although leave is not mandated).

The Tangled Web

Where things get tricky is in trying to understand how the laws work independently, and how they intersect. Just because an employee qualifies for relief under one law, does not mean the employee is automatically disqualified from others.

For example, let's say that a Michigan-based employee suffers from a workplace-related illness. Michigan workers' compensation may not require that the employee receive time off, but the FMLA may. And if the workplace injury or illness results in a disability, then under the ADA the employer may be required to provide even more time off and/or make a "reasonable accommodation" upon the employee's return to work.

The bottom-line is that, if more than one law applies to a particular situation, then the injured worker must be afforded the applicable rights under each applicable law. An employer's failure to adhere to these laws can lead to significant liability, including obligations to pay back wages, retroactive benefits, compensatory and punitive damages, among others.

Essential Steps

It is important for all employers to understand the intersection of these laws to make sure that they are upholding their legal obligations, including obligations to pay, provide time off and make reasonable accommodations for employees when the law requires. Employers must also take into account other laws that may also apply. For example, several states have enacted their own family and medical leave laws, some of which provide greater amounts of leave and benefits than those provided by the FMLA, and/or provide benefits to employees who are not eligible for FMLA.

The DOL has provided a basic framework for employers to follow when considering their responsibilities regarding medical and disability-related leave requests:

1. Determine which laws apply to employees as a group. For example, the ADA applies to employers with 15 or more employees. The FMLA applies to private employers with 50 or more employees. Thus, for both laws to apply, a private employer must have 50 employees.

2. Determine which laws cover the particular employee's situation. For example, a short-term or temporary condition does not usually meet the ADA's definition of disability. Below is a quick checklist:

- Is the injury work-related? (Workers' Compensation)
- Does the employee have a serious health condition? (FMLA)
- Does the employee's condition meet the definition of disability? (ADA)

In some situations, employers may need to decide if a medical certification or consultation is necessary to ensure that a requested accommodation is necessary and reasonable. Also, the FMLA allows employers to request a medical certification of the serious health condition.

3. Determine the employee's benefits and/or entitlements under the relevant laws. When more than one law applies, employers must provide leave under whichever law provides the greater rights and benefits to employees.

4. Evaluate whether the employee is entitled to reinstatement once able to return to work. If so, consider whether there are obligations to provide any accommodations, an altered work schedule, and/or a light duty assignment.

5. Evaluate whether the return to work poses a direct threat to the health or safety of the employee or others in the workplace.

Running through this framework is a good starting point for analyzing a medical and disability-related leave request. However, given the complexity of the laws at issue, the typically nuanced set of facts that underlie a request, and the serious consequences for getting it wrong, it’s often advisable - and necessary - for employers to consult with experienced legal counsel to get it right.

If you have any questions about these or other employment law-related issues, please contact Cliff Hammond at 248.538.6324 and at chammond@fosterswift.com or Mike Sanders at 517.371.8210 and at msanders@fosterswift.com.