



# INTERPLAY LAW CHART

FMLA, ADA, & Workers' Comp



Thank you for requesting BLR's free Interplay Law Chart: ADA, FMLA, and Workers' Compensation. This chart handy outlines the basic interactions among the three laws at the federal level, including:

- Covered employers
- Basic obligations
- Notice posting requirements
- Preemployment inquiries
- Post-offer inquiries/examinations
- Vesting requirements
- Qualifying events
- Medical certification
- Termination
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- Undue hardship
- Substance abuse
- Attendance policies
- Leave requirements
- Leave amount
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# Interplay Law Chart: ADA, FMLA, and Workers' Compensation

	ADA	FMLA	WORKERS' COMPENSATION
<b>COVERED EMPLOYERS</b>	Private employers and employment agencies with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Employment agencies and labor unions.	Private employers with 50 or more employees within a 75-mile radius for 20 or more weeks in the current or preceding calendar year. All state and local government employees. Most federal employees. All instructional employees of public and private elementary and secondary schools.	Coverage varies from state to state. In most states all employees are covered from the first day of work. The number of employees is irrelevant with the exception of a few states that require between three and five employees for coverage. In most states, domestics, farm laborers, casual employees, real estate agents, and independent contractors are not covered.
<b>BASIC OBLIGATIONS</b>	Employers may not discriminate on the basis of a disability. If an employee or applicant for employment is a qualified individual with a disability, the employer must provide the employee with a "reasonable accommodation" that enables the employee to perform essential job functions or the applicant to participate in the application process. A reasonable accommodation is not required if it would cause the employer an "undue hardship."	Employers must give eligible employees up to 12 weeks of job-protected leave to care for a newborn or adopted child, to care for a spouse, child, or parent with a serious health condition, to attend the employee's own serious health condition, or for a qualifying exigency. Employers must also give eligible employees up to 26 weeks of job-protected leave in a 12-month period to care for a spouse, son, daughter, parent, or next of kin who is a covered service-member or veteran recovering from a serious injury or illness incurred in the line of duty on active duty in the armed forces, or that existed before the beginning of the member's active duty and was aggravated by or that manifested itself before or after the member became a veteran.	Benefits generally include payment of medical expenses, wage replacement benefits when the employee is unable to work, funeral benefits, the cost of physical or vocational rehabilitation, and dependent support.
<b>NOTICE POSTING REQUIREMENTS</b>	Every employer must post notices in an accessible format to applicants and employees describing the applicable provisions of the ADA.	Employees must be informed in writing of the employer's leave policies. This is usually done through posters and employee handbooks. Employers must post a notice in the workplace explaining rights and obligations under the FMLA. Employees must also be given written notice each time an employer determines eligibility, rights, and responsibilities; designates leave as FMLA leave; and each time an employer requests a medical certification.	Notice of compliance required in almost all states. Each state has a form of notice that must be posted in an area accessible by all employees.

## Interplay Law Chart: ADA, FMLA, and Workers' Compensation *(continued)*

	<b>ADA</b>	<b>FMLA</b>	<b>WORKERS' COMPENSATION</b>
<b>PREEMPLOYMENT INQUIRIES</b>	<p>An employer may tell applicants what the hiring process involves (e.g., a written test) and may ask them whether they will need an accommodation for this process. If this question is asked, it should be asked of all applicants.</p> <p>An employer may ask applicants to describe or demonstrate how they would perform the job as long as all applicants in the same job category are asked this question.</p> <p>Before a conditional offer is made, an employer may not ask applicants whether they need reasonable accommodation for the job unless the employer knows that an applicant has a disability (because it is obvious or the applicant has voluntarily disclosed the information).</p> <p>If the applicant states that he or she needs a reasonable accommodation, the employer may inquire as to what type of accommodation.</p>	<p>It is not wise to ask about an employee's past absences and/or any prior use of FMLA leave. Employers should not ask applicants about future plans that might result in FMLA leave.</p>	<p>Generally, employers are not, by law, prohibited from asking about previous workers' compensation claims. However, it is unlawful in most states to discriminate against someone for filing a claim for benefits. In addition, these inquiries are prohibited by the ADA. All medical information must be kept separately and confidentially.</p>
<b>POST-OFFER INQUIRIES AND EXAMINATIONS</b>	<p>After a conditional offer has been made, the employer may ask all individuals whether they need reasonable accommodation to perform the job and for documentation of any disability.</p> <p>After a conditional offer, an employer may require a medical exam (a preemployment physical) as long as all entering employees in the same job category are subject to examination regardless of disability.</p> <p>An employee who is returning to work after an injury may be asked job-related questions consistent with business necessity.</p>	N/A	<p>Generally, examination is permitted if done for all other employees and the examination is job related.</p>

## Interplay Law Chart: ADA, FMLA, and Workers' Compensation *(continued)*

	ADA	FMLA	WORKERS' COMPENSATION
VESTING REQUIREMENTS	None.	The employee must have worked for the employer for a total of 12 months (which need not be consecutive) and for a total of 1,250 hours in the most recent 12 months counting backward from the date of the leave request.	First day of employment but there is a waiting period for wage replacement benefits (usually between 3 days and 2 weeks after injury) in all states.
QUALIFYING EVENTS	Person must be a "qualified individual with a disability." A qualified individual meets the requirements for the job in question (e.g., education, experience). A disability is defined as having a physical or mental impairment that substantially limits a major life activity; a record of such impairment; or being regarded by others as having an impairment.	The birth, adoption, or foster care placement of a minor child, the employee's own serious health condition, or a serious health condition of the employee's spouse, child, or parent. In addition, a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty, or has been called to covered active duty status (or has been notified of an impending call or order to covered active duty).  Military caregiver leave if the employee is the spouse, son, daughter, parent, or next of kin caring for a covered servicemember or veteran recovering from a serious injury or illness incurred in the line of duty on active duty in the armed forces, or that existed before the beginning of the member's active duty and was aggravated by or that manifested itself before or after the member became a veteran.	Work-related injury or illness "arising out of" and "in the course of employment."
EMPLOYEE NOTICE	For a disability that is not immediately apparent to the employer, the employee must self-identify his or her disability. An eligible employee and his or her employer must discuss reasonable accommodations that will enable the employee to perform essential job functions.	In cases where the need for leave is foreseeable, the employee must give at least 30-days' advance notice before FMLA leave is to begin. If the employee gives less than 30-days' notice when the leave is foreseeable, he or she may be required to explain why a longer notice period is not practicable under the circumstances. If the need for leave is not foreseeable, the employee must provide notice in accordance with the employer's policies for such leave. The 30-day advance notice rule is relaxed when leave is needed for a qualifying exigency.	Notice to employer must be given immediately or as soon as possible after an injury or the onset of a work-related illness. Claims must be filed from 2 to 5 years after injury or the "last injurious exposure to" or from the time an employee knows of illness that is work-related. Certain illnesses (that take longer to manifest) have a longer notice period.

## Interplay Law Chart: ADA, FMLA, and Workers' Compensation (*continued*)

	ADA	FMLA	WORKERS' COMPENSATION
<b>MEDICAL CERTIFICATION</b>	After an offer has been made, the employer may require an applicant to undergo a medical exam as long as the same exam is required of all other prospective employees in the same or similar job categories. The employer may require an employee to undergo a medical exam to determine the existence of an ADA disability and the functional limitations that require reasonable accommodation.	When leave is for a serious health condition (the employee's own or a family member's), the employee must, on request from the employer, provide a certification from a healthcare provider stating the medical facts making FMLA leave necessary, the anticipated duration of the condition, and the proposed treatment. Employers may obtain certification of a servicemember's serious injury or illness from doctors within the military healthcare network (DOD, VA, or TRICARE), as well as authorized FMLA healthcare providers allowed for nonservicemembers outside of the DOD.	Physician or other healthcare provider must send report to or otherwise contact the employer.
<b>INDEPENDENT MEDICAL EXAMINATION</b>	If an individual provides insufficient medical documentation of a disability and need for reasonable accommodation, an employer may require the individual to go to an appropriate health professional of the employer's choice. Such exams are conducted at the employer's expense.	If an employer has reason to doubt the validity of a medical certification for nonmilitary caregiver leave, it may require the employee to obtain a second (or third) opinion at the employer's expense, subject to specific rules. Employers are permitted to contact the employee's healthcare provider for clarification and authentication of a medical certification (after employee has had a chance to cure any deficiencies).  No second or third opinions are permitted for military caregiver medical certification unless the certifying healthcare provider is an authorized provider outside of the military healthcare network.	Permitted if employer requests and at employer's expense.
<b>DISQUALIFYING EVENTS</b>	Employee's failure to provide necessary medical information to support a requested accommodation; refusal of a reasonable accommodation.	When an employee fails or refuses to return a completed medical certification the employer can delay designation of the leave as FMLA leave until the certification is returned. If the certification is never returned, the leave is not FMLA leave.	Injury is not related to or arising out of work; "coming and going injury" in some cases; injuries caused by the worker's misconduct, intoxication with alcohol or drugs, efforts to harm another (depending on the state), or self, or "horseplay"; employee's refusal to undergo independent medical evaluation, or refusal to accept work after physician's release.  In some cases, employee is exempt from law (e.g., domestics earning less than a certain amount in a quarter).

## Interplay Law Chart: ADA, FMLA, and Workers' Compensation *(continued)*

	ADA	FMLA	WORKERS' COMPENSATION
<b>UNDUE HARDSHIP</b>	Accommodation is not required when it would require an "undue hardship" on the employer. Whether the accommodation is an "undue hardship" depends on the nature and cost of the accommodation, the overall financial resources of the facility, the number of people employed at the facility, the effect on expenses and resources, or the operation of the facility, the employer's size, resources, and operations as a whole.	There is a very limited "key employee" exception for salaried employees who are paid among the top 10% of employees in an organization (within a 75-mile radius). For those employees the company may deny restoration to their prior position if restoration would cause the employer to suffer substantial and grievous economic injury. If an individual is designated as a "key employee," he or she must be informed of this status at the commencement of leave or as soon as practicable.	N/A
<b>SUBSTANCE ABUSE</b>	Current illegal drug use is not a disability covered by the ADA. A test to determine the illegal use of drugs is not a medical examination and is permissible under the ADA. Alcoholism may be a disability, but it does not prevent an employer from disciplining or terminating an employee for misconduct or absences due to alcohol abuse.	Current drug or alcohol abuse may be a serious health condition if one of the tests for establishing a "serious health condition" is met. FMLA leave may be taken only for treatment by a health-care provider or on referral by a healthcare provider. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.	In some states no benefits or limited benefits are due if the injury or illness is solely or partially caused by alcohol or substance abuse.
<b>OTHER</b>	If an applicant or employee with a disability poses a direct threat to safety in the workplace (e.g., a significant risk that cannot be eliminated by a reasonable accommodation), the employer may need not accommodate the disabled employee.	When both spouses of a married couple are employed by the same employer, the employer can limit the couple to a total of 12 weeks FMLA leave (split between them in any proportion they choose) for birth or adoption, or for 26 weeks for a servicemember.	See "disqualifying events."

## Interplay Law Chart: ADA, FMLA, and Workers' Compensation *(continued)*

	ADA	FMLA	WORKERS' COMPENSATION
ATTENDANCE POLICIES	An employer may not apply a "no-fault" leave policy to terminate a disabled employee after he or she has been on leave for a certain period of time. Instead, the employer must modify its no-fault leave policy to provide the employee with additional leave, unless: (1) there is another effective accommodation that would enable the person to perform the essential functions of the position or (2) granting additional leave would cause an undue hardship.	Employees may not be terminated or otherwise penalized for absences sanctioned under FMLA. Adverse employment action for FMLA leave under a "no-fault" attendance policy is not permitted.	Most states do not allow termination based solely on an employee's claim for WC benefits. But if the WC leave exceeds the time permitted by a consistent, neutral attendance policy, the employee may be terminated.
LEAVE REQUIREMENTS	There is no established paid or unpaid leave requirement under the ADA. The employee may use accrued paid leave pursuant to the organization's policies.	Leave is generally unpaid. However, an employee can choose to substitute accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave pursuant to the employer's established policies for use of paid leave. The employee's job must be protected during the leave.	Leave is granted for a covered injury until a healthcare provider releases the employee to return to work (for light duty, if offered to employee, or regular duties).
AMOUNT	The amount of leave will vary depending on what constitutes "reasonable accommodation" under the circumstances.	Up to 12 weeks in any 12-month period whether calculated by a calendar method, a fiscal year method, or a rolling method (counting backward from the date of the leave request). For military caregiver leave, up to 26 weeks in a single 12-month period beginning on the first day of leave.	Depends on state law.
BENEFIT ISSUES	Unpaid leave may be a form of reasonable accommodation. However, unpaid leave does not entitle the employer to modify or restrict the benefits to which an employee would otherwise be entitled.	The employee's medical benefits must be maintained during the leave (the employee may be required to pay a portion of the premiums). Other benefits ordinarily offered must also be maintained.	Employers are not required by the workers' compensation laws in most states to continue an employee's group healthcare coverage during a workers' compensation leave of absence. However, employers should make sure these employees are treated similarly to those out on other types of medical leave to avoid claims of discrimination.



## Interplay Law Chart: ADA, FMLA, and Workers' Compensation *(continued)*

	ADA	FMLA	WORKERS' COMPENSATION
INTERMITTENT LEAVE	Intermittent leave may be available as a form of reasonable accommodation.	Available for serious health conditions of the employee or the employee's family member, qualifying exigency and military caregiver leave. Available for bonding, adoption, and placement in foster care if both employer and employee agree.	If needed for treatment or rehabilitation.
PART-TIME EMPLOYEES	Part-time employees are covered by the ADA.	Part-time employees are covered if they have worked the requisite 1,250 hours in the last 12 months.	Workers' compensation benefits are prorated.
REINSTATEMENT	A disabled employee returning to work must be given the same or equivalent position, if the employee's former position is no longer available (e.g., if holding the former position open would have posed an undue hardship on the employer). If an equivalent position is not available, the employer must accommodate by providing a vacant position at a lower level. The employer is not required to "bump" another employee in order to make a position available.	Employees returning from an FMLA leave are entitled to reinstatement to the same or an equivalent position at the same salary and benefit level the employee received prior to the leave. Returning employees may be required to provide a fitness for duty certificate.	A few states require reinstatement unless holding the job causes "undue hardship" to the employer.
REHABILITATION/LIGHT DUTY	An employer may provide a light-duty position as an accommodation. However, the employer is not required to create a light-duty position if one does not exist.	Employers cannot insist on light duty, although employees can opt for it. Light-duty hours do not count as FMLA leave. Only hours in which the employee was off duty altogether count against the 12-week allotment. An employee who voluntarily returns to a light duty position retains the right to job restoration to the same or equivalent position <i>only until the end of the 12-month period that the employer uses to calculate FMLA leave.</i>	Most states require physical rehabilitation benefits if appropriate; many states require vocational rehabilitation if injury or illness disqualifies the worker from his or her original job.

## Interplay Law Chart: ADA, FMLA, and Workers' Compensation *(continued)*

	ADA	FMLA	WORKERS' COMPENSATION
<b>TERMINATION</b>	An employer may terminate an employee with a disability if the employee is not able to perform the essential job functions with or without a reasonable accommodation. If no reasonable accommodation is available, employers should first consider a different position in the organization if one is available.	If an employee fails to return to work after FMLA leave and if the ADA or the employer's policies do not offer additional protection, the employer may terminate employment.	Some states bar termination; must allow it as long as it is not done because the worker has a workers' compensation claim and the termination is pursuant to a neutral policy such as an attendance policy.
<b>RECORDKEEPING AND REPORTING</b>	Employer must retain résumés, application forms, notes on interviews, and notes on reference checks; records of promotion, demotion, transfer, layoff, termination, rate of pay or other compensation; selection for training or apprenticeship, including application forms and test papers; applications for disability benefits; and requests for reasonable job accommodation. Note that information from medical exams is confidential, must be maintained separately, and access must be limited to the employee's supervisors and managers; safety workers; and workers' compensation or other insurance carrier.  It is advised that employers keep a detailed record of any requests for accommodation, medical certifications, the employer's attempt(s) to accommodate an employee, and any reason(s) why attempts to accommodate were not successful.	Employers must retain payroll information, dates and hours of leave taken, all notices and correspondence exchanged regarding leave, copies of all employer policies regarding benefits and leave, records of benefit premiums paid, and records of any disputes regarding leave, for at least 3 years.  Applicable records and documents created for purposes of the FMLA containing family medical history or genetic information as defined in The Genetic Information Nondiscrimination Act of 2008 (GINA) must be maintained in accordance with the confidentiality requirements of Title II of GINA.	All states require accident reporting to the workers' compensation commission.

## Interplay Law Chart: ADA, FMLA, and Workers' Compensation *(continued)*

	<b>ADA</b>	<b>FMLA</b>	<b>WORKERS' COMPENSATION</b>
<b>RETALIATION</b>	Employers are prohibited from discriminating or retaliating against any person (disabled or not) who has opposed any practice forbidden by the ADA, or has made a charge, testified or assisted in any manner, in any investigation, proceeding, or hearing under the ADA.	Employers are prohibited from retaliating against any employee who meets the 12-month/1,250-hour requirement, has requested leave, or has opposed a practice forbidden by the FMLA, or has made a charge, testified or assisted in any manner, in any investigation, proceeding, or hearing under the FMLA.	Almost all states bar discrimination against employees in any conditions of employment solely because the employee has claimed workers' compensation or has been out on workers' compensation leave.
<b>EMPLOYER LIABILITY</b>	An employer is liable for discrimination by its supervisors or agents whether or not the employer actually knew of the discrimination. An employer is liable for discrimination by co-workers if the employer knew of the discrimination and failed to take reasonable steps to prevent or stop it. An employer may be liable for discrimination by third party, nonemployees in the workplace if the employer knew of the discrimination and failed to take reasonable steps to prevent or stop it.	An employer is liable for interference with, restraint, or denial of the exercise of employee's FMLA rights. This includes discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. An employer may be liable for compensation and benefits lost, or for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, or promotion.	