

# ADA INFOBRIEF

## THE INTERPLAY BETWEEN THE AMERICANS WITH DISABILITIES ACT (ADA) AND THE FAMILY MEDICAL LEAVE ACT (FMLA)

The ADA protects qualified individuals with disabilities from employment discrimination and provides them an affirmative right to "reasonable accommodation" which may include leave. The FMLA provides eligible employees the right to take unpaid leave because of the birth or adoption of a child or because either the employee or a family member has a serious health condition. An employee may be eligible for leave under both the ADA and the FMLA which can create confusion for the employer and the employee. Key to the interplay is a determination of whether or not the employee meets the requirements under each of these laws independent of each other.

AMERICANS WITH DISABILITIES ACT	FAMILY AND MEDICAL LEAVE ACT
<p><b><u>Who is covered?</u></b> A private employer who has 15 or more employees or public employer with one or more employees.</p> <p><b><u>How is "disability" defined?</u></b> For the purposes of considering "leave" as a reasonable accommodation, a person with a disability is defined as an individual with a physical or mental impairment that substantially limits them in one or more major life activities. The ADA does not cover "temporary" medical conditions. Not all "serious health conditions" will be disabilities.</p> <p><b><u>Who is eligible?</u></b> A full or part time employee with a disability is eligible for reasonable accommodation which may include "leave" upon employment. An individual may also be eligible for FMLA if they meet the eligibility requirements.</p> <p><b><u>How much "Leave" are they eligible for?</u></b> The ADA does not place any specific time limit on the amount of leave a disabled employee may take as a reasonable accommodation. As a general rule, however, these leaves cannot be indefinite.</p>	<p><b><u>Who is covered?</u></b> Private employers with 50 or more employees and all public agencies and schools.</p> <p><b><u>How does the FMLA define "serious medical condition?"</u></b> The FMLA uses the term "serious health condition" and defines it broadly to include any illness, injury, impairment, or physical or mental condition that involves: (1) inpatient care (i.e., an overnight stay), including any period of incapacity or any subsequent treatment in connection with the inpatient care; or (2) "continuing treatment" by a health care provider. The FMLA may cover temporary conditions such as a broken leg.</p> <p><b><u>Who is eligible?</u></b> An employee is eligible for FMLA leave if: (1) he has been employed for at least 12 months (not necessarily consecutively); (2) he has worked at least 1,250 hours in the previous consecutive 12-month period; and (3) he works at a work site that is within 75 miles of 50 or more employees.</p> <p><b><u>How much "Leave" are they eligible for?</u></b> Employers are required to give up to a total of 12 weeks of leave in any 12-month period. Leave may be taken intermittently or all at once. An individual may be eligible for additional leave under the ADA.</p>

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## COMMONLY ASKED QUESTIONS

***Can I ask medical questions if someone requests “leave”?*** Yes. An employer is allowed to make limited medical inquiry under both the ADA and FMLA. Under the ADA, if an employee requests leave as an accommodation, you may ask for medical documentation of the existence of the disability and the need for the leave. Under the FMLA, an employer may require medical certification of the serious health condition and the need for leave. The certification may relate only to the serious health condition that is causing the need for leave.

***Are the reinstatement requirements the same under the ADA and the FMLA?*** No. The ADA gives employees greater reinstatement rights. Under the ADA, the employee ordinarily is entitled to reinstatement to the same job since the duty of reasonable accommodation is intended to allow the employee to perform the essential functions of that job. Further obligations may exist if reinstatement to the same position poses an undue hardship and reassignment to a vacant position for which the person is qualified may be required. The FMLA requires reinstatement to an equivalent job.

## Resources For More Information

- ◆ **US Equal Employment Opportunity Commission** Fact Sheet: “The Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964” available on-line at <http://www.eeoc.gov>
- ◆ **US Department of Labor** Web Site contains numerous documents related to the FMLA: <http://www.dol.gov/esa/whd/fmla/index.htm>
- ◆ **Cornell University** Program on Employment and Disability Fact Sheet: “Leave Rights under the FMLA and the ADA: The Intersection of Two Laws Impacting Employee Leave” [http://www.ilr.cornell.edu/ped/product\\_spec.html?prod\\_id=145&cat\\_id=2](http://www.ilr.cornell.edu/ped/product_spec.html?prod_id=145&cat_id=2)
- ◆ **Job Accommodation Network (JAN)** Fact Sheets on Accommodations, including FMLA. <http://www.jan/wvu.edu>
- ◆ **Great Lakes ADA Center** provides consultation regarding reasonable accommodation issues, including “leave”. 800-949-4232 (v/tty) [www.adagreatlakes.org](http://www.adagreatlakes.org)

**Disclaimer:** This ADA InfoBrief is intended to provide a general overview of The Interplay between the ADA and the FMLA and should not be considered legal advice.