FMLA/ADAAA Administration

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Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.
Objectives

Overview of the FMLA
Identify the purpose and benefits of the FMLA
Recognize when and to whom it applies
Assist employees in handling leaves appropriately
Overview of the ADAAA
The Triangle

Family Medical Leave Act (FMLA)

Americans with Disabilities Amendments Act (ADAAA) can’t be disregarded

Texas Workers’ Compensation (WC)
Effective August 5, 1993

Family Medical Leave Act (FMLA)

Family Medical Leave Act

- FMLA applies to all public agencies

- All counties with 50 or more employees employed within 75 miles of the workplace must grant FMLA to eligible employees

Seasonal and temporary employees count towards the 50, but not elected officials!
How FMLA Helps Employees

✓ It allows them to take off for family and medical issues

✓ It provides benefits without interruption

✓ It “guarantees” reinstatement to the same or equivalent job
FMLA Eligibility

Employee has worked for county for at least 12 months

- Break >7 years not counted unless military call up
- >3 years burden on employee

Has worked at least 1250 hours during the last 12 months prior to FMLA Leave

- Part-timers and long-term temps might qualify

All time lost due to military service is counted as time worked
What is FMLA?
FMLA = Leave Entitlement

- Can be paid leave but the law does not require it to be paid.
- County policy dictates when to pay FMLA.

**TIP**—Require in policy use of all paid time off to be used under FMLA
Paid or Unpaid FMLA?

FMLA allows for substitution of paid leave for unpaid leave including:

• Vacation, personal or sick leave
• Compensatory Time Off
• Short Term Disability Leave
• Workers’ Compensation Leave
FMLA Allows 12 Weeks Leave For

- A newly born, adopted or foster-placed child
- A spouse, child or parent with a serious health condition
- The employee’s own serious health condition
Serious Health Condition – Definition

- Overnight Stay in Hospital
- Lasts for > 3 full days
- 1 visit to health care provider within first 7 days and a regimen of continuing treatment (prescription)
- 2 visits to health care provider within first 30 days of incapacity
- Chronic, serious health condition (2 visits/year)
- Physical or Mental Health Issues
- Pregnancy or Prenatal
Military Qualifying Exigency Leave

Qualified employee can receive 12 weeks of leave in a 12 month period for:

- Spouse, child or parent of the employee is being deployed to a foreign country.

Reserves  National Guard  Regular Armed Forces

Does not extend FMLA 12 weeks.
Military Qualifying Exigency Leave

Defined as...

- Short term notice of deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation expanded to 15 days in 2013
- Post deployment activities (during first 90 days home)
- Any additional agreed upon activities
Military Qualifying Exigency Leave

- Leave to care for military members parent
- Arranging for alternative care
- Attending meetings with staff at care facility
- Can require copy of military members rest and recuperation leave orders or other military documentation
Intermittent FMLA

May be taken when medically necessary to care for a seriously ill family member or because of the employee’s own serious health condition.

(usually chronic conditions)
Intermittent Leave

May be taken to care for a newborn, newly adopted or newly placed foster child with county approval.
Medical Certifications

- County may require (give employees 15 days to obtain)
- Can only require intermittent leave recertification every 6 months
- Privacy requirements must be met
- Supervisor is never allowed to contact the physician to clarify the information provided
- Include a copy of the job description or essential functions on or before the designation notice is given to the employee.
Employer Notification

- Post the notice approved by the Secretary of Labor – Applicants must have access
- Include information about employee rights in handbook
- Must provide written notice designating leave as FMLA
Other FMLA Information

• Poster must be posted where all employees and all applicants have access, $110 fine for failure to do so.

• Needed to care for a family member with a serious health condition does not require that the employee be the only person available to provide the care – care does include “psychological care”
FMLA and Benefits

• Insurance premiums must continue to be paid
• Employees are entitled to any new benefits
• Changes of benefits notices must also be provided to employees on FMLA
• If employee chooses not to continue benefits while on leave, they must immediately be reinstated upon return
If FMLA is Exhausted, What Next?

1. Have a policy in place to offer employees COBRA at the end of their 12 weeks.

2. Review the employee’s status and condition.

3. Begin the interactive process to determine and DOCUMENT your actions. Not every leave under the FMLA will have the ADAAA protection but evaluation is important.
Tips Going Forward

Forced Use Allowed

✓ Letter Ruling FMLA-68
What now?

✓ Don’t interfere with an employees rights to FMLA/MFL

✓ Don’t retaliate against any employee for taking or asking for FMLA/MFL

✓ Remember as a supervisor – if you violate an employee’s rights under the FMLA, you may be **personally liable**.

✓ Make certain your FMLA/MFLA policies are up to date
What now?

✓ Make certain you use the new FMLA/MFL forms

✓ Make certain you have the new FMLA/MFL posters up and available to all employees and applicants

✓ Make sure all supervisors in your county understands the changes to the FMLA/MFL
Americans with Disabilities Act
Amendments Act
ADAAA

ADA was effective
July 26, 1992

Amended 2008

New regulations effective date was May 24, 2011
No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment
Who’s covered?

ADAAA applies to all local government employers with 15 or more employees.

Employees who meet the definition of “qualified individual with a disability” who, with or without a reasonable accommodation, can perform the essential functions.
What’s makes a “qualified individual”? ADAAA states that an individual with a disability is qualified when:

- They satisfy the requisite skill, experience, education and other job related requirements of the position
- with or without reasonable accommodation
- and can perform the essential functions.
What is a disability?

- A physical or mental impairment that “substantially limits a major life activity” of an individual
- A record of such an impairment
- Being “regarded as” having such an impairment

Regulations state the term “major” does not create a demanding standard for disability and should not be interpreted strictly.
Purpose

To “reinstate a broad scope of protection” by expanding the definition of the term “disability to include many types of impairments that were originally left out of the ADA.

It’s easier now for employees to show they have a disability.
“physical impairment” includes any Physiological disorder or condition, or anatomical loss affecting one or more body systems such as:

Neurological  
Musculoskeletal  
Special sense organs  
Respiratory (including speech organs),  
Cardiovascular  
Reproductive  
Digestive  
Genitourinary  
Skin  
Endocrine  
Immune  
Circulatory  
Hemic  
Lymphatic
includes any Mental or psychological disorder such as:

- Intellectual disability (formerly termed “mental retardation,”)
- Organic brain syndrome,
- and specific learning disabilities.
“major life activities”

Caring for oneself  Sitting  Concentrating
Performing manual tasks  Reaching  Thinking
Seeing  Lifting  Communicating
Hearing  Bending  Interacting with others
Eating  Speaking  Working
Sleeping  Breathing
Walking  Learning
Standing  Reading
“major bodily function”

Functions of the immune system
Special sense organs and skin
Normal cell growth
Digestive
Genitourinary
Bowel
Bladder
Neurological

Brain
Respiratory
Circulatory
Cardiovascular
Endocrine
Hemic
Lymphatic
Musculoskeletal
Reproductive functions

* Includes the operation of an individual organ within the body.
“virtually always”

These are ADAAA impairments that are “virtually always” disabilities.

- Deafness substantially limits hearing
- Blindness substantially limits seeing
- An intellectual disability substantially limits brain function.
- Partially or completely missing limbs or mobility impairments substantially limit musculoskeletal function

This is not an exhaustive list.
These are ADAAA impairments that are “virtually always” disabilities.

Autism substantially limits neurological function

Cancer substantially limits normal cell growth

Cerebral Palsy substantially limits brain function

This is not an exhaustive list.
“virtually always”

These are ADAAA impairments that are “virtually always” disabilities.

- Diabetes substantially limits endocrine function
- Epilepsy substantially limits neurological function
- HIV infection substantially limits immune function

*This is not an exhaustive list.*
“virtually always”

These are ADAAA impairments that are “virtually always” disabilities.

Multiple Sclerosis substantially limits neurological function

Muscular Dystrophy substantially limits neurological function

Major depressive disorder, bipolar, post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia substantially limit brain function

This is not an exhaustive list.
What does the EEOC say?

The primary focus in an ADAAA case should be if the employer complied with their obligations under the ADAAA and if discrimination occurred, not if the individual meets the definition of disability.

No extensive demand analysis to determine if disabled.
What do you do now?

- Review job descriptions to ensure regulatory compliance
- Train supervisors to comply
- Assure interactive process in place with documentation
- Check your policies
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