



Labor and Employment Law Seminar

**2026
LAS VEGAS**

SMALL BUSINESS AND GROWTH EMPLOYERS: TOO SMALL FOR FMLA DOES NOT MEAN TOO SMALL TO GET SUED



Presented by

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**SMALL BUSINESS AND GROWTH
EMPLOYERS:
TOO SMALL FOR FMLA
DOES NOT MEAN TOO
SMALL TO GET SUED**

Test Your Knowledge

True or False

The FMLA applies to **all employers**, regardless of size.

FMLA Covered Employers

Public Employers

All state and local government agencies, federal agencies and local schools (public and private) are covered without regard to number of employees.

Private Employers

Any company who employs **50 or more** employees for at least 20 calendar weeks in the current or preceding calendar year.



AMERICANS WITH DISABILITIES ACT (ADA) AND NEVADA EQUAL RIGHTS ACT (NERA)

Test Your Knowledge

True or False

The ADA and NERA apply to **all** employers and to all employees.

Test Your Knowledge

True or False

The employer must **anticipate** the need for a reasonable accommodation.



**WHY ARE WE TALKING ABOUT THE ADA IF THE
EMPLOYER IS NOT COVERED BY FMLA?**

Introduction to the ADA

Makes it illegal for covered employers to discriminate against **qualified individuals with disabilities** in all employment practices, such as recruitment, compensation, hiring and firing, job assignments, training, leave and benefits

Requires a covered employer to provide a **reasonable accommodation** to an employee or job applicant with a disability, unless doing so would impose an undue hardship on the operation of the employer's business.

Qualified Individuals With Disabilities

- Under the ADA, a person has a disability if he has a **physical or mental impairment that substantially limits a major life activity**.
- Also protects individuals **who have a record** of a substantially limiting impairment, and people **who are regarded as having** a substantially limiting impairment.
- **Major life activities include**, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.
- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, **can perform the essential functions of the job** in question.

Essential Functions

Essential functions are the [basic job duties that an employee must be able to perform](#), with or without reasonable accommodation. Factors to consider in determining if a function is essential include:

- Whether the reason the position exists is to perform that function;
- The number of other employees available to perform the function (or among whom the performance of that function can be distributed); and
- The degree of expertise or skill required to perform the function.

Reasonable Accommodation

A reasonable accommodation is **any change in the work environment or in the way things are customarily done** that enables an individual with a disability to enjoy equal employment opportunities.

Job restructuring, modifying work schedules,
reassignment to vacant position

Acquiring or modifying equipment or devices,
adjusting or modifying examinations, training
materials, or policies and providing qualified
readers or interpreters.

Examples

An employee with diabetes may need regularly
scheduled breaks during the workday to eat
properly and monitor blood sugar and insulin levels

An employee with cancer may need leave to
undergo radiation or chemotherapy treatments

How Much Leave Do I Have to Give?

- Leave is reasonable when it is finite and will enable a disabled employee to return to work and perform the essential functions of their position with or without accommodation.
- There is a lot of room between finite and indefinite.
- When is leave indefinite?
- Even if leave is reasonable may deny if it's an undue hardship.

Undue Hardship

- An employer does not have to provide a reasonable accommodation if it imposes an **undue hardship**.
 - An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.
 - An undue hardship is an action **requiring significant difficulty or expense** when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.



OTHER LEAVES TO CONSIDER

Pregnant Workers Fairness Act (PWFA)

- Went into effect June 27, 2023
- Applies only to accommodations
- Requires employers with 15+ employees to provide reasonable accommodations to qualified employees and applicants with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions
- Unlike the ADA, an employee who cannot perform their essential duties may still be qualified
- Requires employers to excuse essential job functions for generally up to 40 weeks for each accommodation request, unless it would impose an undue hardship on the employer
- Employee does not have to show that a limitation meets a specific level of severity
- Examples of possible reasonable accommodations:
 - the ability to sit or drink water;
 - receive closer parking; have flexible hours;
 - receive appropriately sized uniforms and safety apparel;
 - receive additional break time to use the bathroom, eat, and rest;
 - take leave or time off to recover from childbirth; and
 - be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy

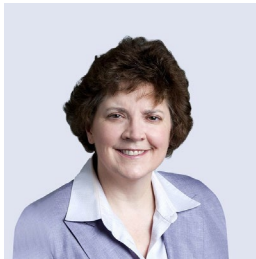
Test Your Knowledge

Pregnant Workers Fairness Act

- I. Leave may run concurrently with ADA.
- II. How it differs from the ADA.
- III. How it is similar to ADA.
- IV. Which law to apply first.



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Questions?



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Thank you.