

THE ADA AND THE FMLA: LOOK BOTH WAYS AT THE INTERSECTION

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Employees who become injured, disabled, or ill may be entitled to leave under several federal laws including the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA). Complying with the responsibilities that arise under these complex and often misunderstood laws can present a great challenge to dealerships. Complicating matters further is that the laws have evolved in ways favorable to employees, and the Equal Employment Opportunity Commission (EEOC) has made fighting disability discrimination a top priority.

As a result, lawsuits under the ADA and FMLA are on the rise, and a number of dealerships have been blindsided by the EEOC's aggressive litigation. For example, the EEOC recently filed suit against one dealership for allegedly refusing to accommodate a manager when, following his spinal surgery, the manager requested the use of a company golf cart and assistance with test-driving vehicles. Several weeks later, the EEOC filed suit against another dealership for allegedly denying partnership to a general manager because of his multiple sclerosis.

Failure to comply with the ADA or FMLA can be an expensive proposition for dealerships, and the intersection of these complicated laws can be a great source of confusion. Consider a situation where Larry, a service technician at your dealership, hurts his back on the job and needs to take some time off to recover. His absence has affected productivity, and other employees are tired of working longer hours to fill his void.

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After Larry's 12 weeks of FMLA leave run out, he informs you that his back injury was more serious than expected, and he is still unable to return to work. Can you let him go?

Although FMLA does not require you to grant additional leave, if Larry's condition meets the definition of an ADA disability, there may be a duty under the ADA to grant additional unpaid time off from work.

On the other hand, what if Larry is anxious to get back to work to earn a paycheck, but he has made it clear to you that his back may never fully heal? Larry's injury has rendered him unable to perform many of his previous job duties, and you may be better off letting Larry go and hiring a new service technician in his place. If Larry is protected, the ADA may require more. How should you respond? Let's take a look at both laws.

YOU OBLIGATIONS UNDER THE ADA

The ADA applies to employers with 15 or more employees and therefore covers almost all dealerships. The ADA prohibits disability discrimination and is designed to create a level playing field for disabled employees and applicants. A 2009 amendment to the ADA broadened the standard for determining whether an individual is considered "disabled" under the law – significantly expanding the number of individuals covered and resulting in a greater overlap with FMLA.

If an applicant or employee is disabled, you cannot deny that person an employment opportunity if the employee can perform the "essential job functions" with or without a "reasonable accommodation." An accommodation is considered reasonable if it doesn't create an "undue hardship" for the employer.

The accommodation can take a number of forms including schedule changes, work-location changes, transfers, assistance on some tasks, and leave. To determine what type of accommodation may be needed, you must have a conversation with the applicant or employee which is called the "interactive process." ADA compliance is not required for employees who pose a "direct threat" to the health or safety of themselves or others in the workplace.

YOUR OBLIGATIONS UNDER THE FMLA

FMLA is a federal law that applies to all employers with 50 or more employees. The FMLA allows certain eligible employees to take 12 weeks of unpaid leave for their own or a family member's serious health condition and up to 26 weeks for military-caregiver leave. The leave can be taken in one block, over several stretches of time, or intermittently.

To take intermittent leave, the employee need only provide a certification that there is a medical need for such leave. During FMLA leave, you must continue employee health insurance benefits and, upon completion of the leave, restore employees to the same or equivalent positions.

GOING FORWARD

So what do you do about Larry? Several key questions must be answered: What are Larry's essential job functions? Can Larry still perform those functions? What if he had a little help, or reasonable accommodation? What are some possible reasonable accommodations? Could you reassign Larry's job duties, or transfer him to a new position altogether without causing undue hardship? Will his back problems pose a safety risk in the workplace?

This article provides only a brief overview of two complex laws. If you'd like more detailed information about either, review one of our booklets on each of them. They're written in plain English and are available free of charge on our website under "Knowledge Center." If you'd prefer a hard copy, just ask your regular Fisher Phillips attorney.

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