

AN OVERVIEW OF THE RELATIONSHIP BETWEEN THE AMERICANS WITH DISABILITIES ACT, THE FAMILY AND MEDICAL LEAVE ACT AND STATE WORKERS' COMPENSATION LAWS



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I. INTRODUCTION

The coexistence of state workers' compensation laws with the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), has created much concern about the possibility of employers breaking one such law in order to comply with or exercise rights under another. Under the right circumstances, one or both of these acts, as well as state workers' compensation laws, can apply to a given situation, either at its inception, or at some later stage.

II. PURPOSES OF THE ADA, THE FMLA AND STATE WORKERS' COMPENSATION LAWS

The ADA seeks to provide a clear and comprehensive national mandate to eliminate discrimination against individuals with disabilities, and to provide clear, consistent and enforceable standards for dealing with discrimination against those with disabilities.

The FMLA aims to balance the demands of the workplace with the needs of families by entitling employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition.

Kentucky's workers' compensation laws

compensate workers injured in the course of their employment for necessary medical treatment and loss of wage-earning capacity, enabling them to meet their essential economic needs. Such compensation is awarded without regard to fault.

III. APPLICABILITY AND PREEMPTION

A. APPLICABILITY

The first determination an employer must make is which of the three laws covers an employee in a specific situation. Even if none or only one applies at the outset, passage of time and changes in circumstances can bring the other laws into play at a future point. Employers should periodically review employee records for such case-by-case changes in applicability.

Employees are only entitled to FMLA protection if they have worked at least 1,250 hours for the employer during the preceding twelve months and they work at a site where the employer employs at least 50 employees within a 75 mile radius. The employment provisions of the ADA, on the other hand, apply to all state and local governments regardless of the size of the work-force and the length of employment.

Kentucky's workers' compensation laws furnish monetary compensation for necessary medical treatment and loss of earnings occa-

sioned by virtually any illness, injury, or death arising out of and in the course of employment.

The ADA protects qualified individuals with disabilities. A qualified individual is one who with or without reasonable accommodation, can perform the essential functions of a job. The ADA defines disability generally as a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Generally, temporary conditions like pregnancy and broken limbs do not qualify as disabilities under the ADA, although they might qualify for protection and benefits under the FMLA and workers' compensation laws. Similarly, an employee could have a disability that is not severe enough to substantially limit a major life activity, yet still qualify for coverage under the FMLA or state workers' compensation laws.

An employee covered by the FMLA is entitled to: a minimum of twelve weeks' leave annually; continuation of health care coverage under unchanged terms during the leave; restoration to the same or an equivalent position upon return; and continuation of the status quo with regard to certain other benefits and conditions of employment. The FMLA covers an array of illnesses, impairments, injuries, and conditions that do not meet the ADA definition of "disability."

For example, the FMLA may protect an employee with a short-term viral or bacterial infection. However, the ADA and workers' compensation could become applicable at a later stage. If a chronic condition, such as a respiratory problem, evolves from the infection, it may constitute a disability under the ADA. Additionally, if the employee's work environment exacerbates that condition, the employee may become entitled to workers' compensation as well.

B. EXPRESS PREEMPTION

Each federal act has a section specifying the effect of the act on other laws, including state and local laws. The ADA does not preempt laws that provide equal or greater protection for people with disabilities. The FMLA contains language

providing that it shall not supersede any state or local law providing greater family or medical leave rights, nor shall it diminish an employer's obligation to comply with any existing benefit program that provides greater family or medical leave rights.

As a result of these provisions, employers must pay close attention to state and local laws and to their own policies for the possibility that they confer greater protection than the ADA and FMLA.

IV. CONCLUSION

Employers should monitor individual cases on a regular basis to ensure compliance with all three laws. In cases where more than one law applies, it is necessary to determine which law controls in the event of a conflict. Certain state laws and employer policies affording greater protection must also be considered. This monitoring process can lead to the identification and prevention of conflicts and infractions before they occur.

About Geordie Garatt

Before embarking on a profession in law, Geordie worked in the mental health field for 10 years in urban Connecticut and in the mountains of North Carolina. His wealth of experience within that realm lends itself well to his present-day practice of law.

Geordie's practice has developed in a concentration on real estate transactions, foreclosures, employment law and workers compensation law.

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