The Injured Worker –
A Practical Approach To Managing
Workers’ Compensation, ADA and
FMLA Issues

Arizona Employment Law Conference

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OVERVIEW

Workers’ Compensation

- Arizona statute / code / industrial commission
- Posters
- “No fault” system (alternative?)
- No leave, BUT no retaliation either
OVERVIEW

Americans with Disabilities Act (ADA)

- Federal statute / regulations / EEOC
- No discrimination
- Reasonable accommodation
- Medical inquiries
- No retaliation
OVERVIEW

Family and Medical Leave Act (FMLA)

- Federal statute / regulations / DOL
- Eligible employees
- Qualified reasons
  - Own SERIOUS HEALTH CONDITION
PURPOSE

- Workers’ Compensation: No fault compensation
- Americans with Disabilities Act (ADA): Help disabled to work
- FMLA: Leave for those who temporarily cannot work
WHICH EMPLOYERS ARE COVERED?

- Workers’ Compensation: All employers with employees in Arizona
- ADA: 15 or more employees
- FMLA: 50 or more employees
WHICH EMPLOYEES ARE COVERED?

- Workers’ Compensation: Everyone, unless opt out
- ADA: “Disabled” employees (BUT ADAAA…)
- FMLA:
  - With employer at least one year (total)
  - Worked at least 1250 hours (past 12 months)
  - At a facility with 50 or more employees within a 75 mile radius
LIGHT DUTY

- Workers’ Compensation
- Optional, beneficial to employer
- ADA: Second step – other positions?
- FMLA: “No thank you”
FITNESS FOR DUTY

- Workers’ Compensation: Not unusual
- ADA: “Medical inquiry” – job related and consistent with business necessity
- FMLA – Sure…
  - IF all “similarly situated” employees
  - Must notify at time they go on leave
MEDICAL INSURANCE

- Workers’ Compensation: Does not address (look at policy)
- ADA: Does not address (look at policy)
- FMLA: Must maintain for 12 weeks (then look at policy)
- COBRA: “Event” – loss of hours
REINSTATEMENT

- Workers’ Compensation: Not guaranteed / no retaliation

- ADA:
  - Same position
  - Equivalent position
  - Other positions

- FMLA:
  - Same or equivalent position
PREPARING

- Policies
  - Reporting workplace injuries
  - Implementing FMLA leave
  - Other leaves
- Medical insurance policies
- Light duty policy / positions
DAY ONE

- Workers’ Compensation:
  - Worker reports injury
  - Start file
  - Notify employee if leave bank is being charged

- ADA: Medical records protection

- FMLA: Nothing yet
DAY THREE (EMPLOYEE HAS NOT RETURNED)

- Workers’ Compensation: Contact adjuster to get update
- ADA: Nothing yet
- FMLA:
  - Send Eligibility Notice and Notice of Rights
  - Send Designation Notice
DAY TEN (ABOUT)

- Workers Comp: If employee released to light duty, notify employee of its availability
  - If employee reports, let carrier know
  - If employee does not report, let carrier know

- ADA: Nothing Yet

- FMLA:
  - Letter re: handling of insurance premiums
  - Employee can refuse light duty
  - If employee reports for light duty, stop accruing FMLA
  - If employee does not report for light duty; calendar expected return date
BEFORE 11TH WEEK (EMPLOYEE RETURNS TO WORK)

- Workers’ Compensation: Notify carrier; close file
- ADA: Nothing yet
- FMLA: Return employee to pre-injury job
11\textsuperscript{TH} WEEK (EMPLOYEE CANNOT RETURN WITHIN 12 WEEKS)

- Workers’ Compensation: Check with carrier

- ADA:
  - Can employee do light duty? If so, offer as reasonable accommodation
  - Employee can’t work? Offer additional leaves in Handbook
    - If no leaves in Handbook, consider additional leave? If so, offer as reasonable accommodation
    - If not, would brief, finite leave would help
11TH WEEK (CON’T)

- FMLA:
  - Notify employee leave is expiring at 12 weeks
  - If light duty available, instruct them to report
  - Let them know what will happen to insurance
  - If they cannot report
    - Reapply when you can
**AFTER FMLA EXPIRES**

- Workers’ Compensation: Continue to work with carrier (malingering?)

- ADA:
  - If light duty ends, go through leave analysis
  - Once all policy leaves end, ask about brief, finite leave
  - If leave will not work, look at other positions
    - Equivalent positions
    - Lower positions

- FMLA: Nothing

- IF employee cannot work at all, talk to inside or outside counsel to be sure all documents are in order. Upon their advice, termination may be in order
REMEMBER

- Courts will look at each law separately
- YOU need to look at each law separately
- Consider keeping three files
- DOCUMENT, DOCUMENT, DOCUMENT
QUESTIONS?
Thank You

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