

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

11TH 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?

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Thank You



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