

Employees With Temporary Disabilities May Be Entitled To Accommodations

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Employers confront many difficult issues when dealing with an employee with a temporary disability or injury. Is an accommodation necessary? And if so what type? Should the employee be allowed to take a leave of absence and if so for how long? Unfortunately, the law does not provide an easy answer that can be used in every situation. Instead, each case must be evaluated separately and several issues must be carefully considered.

The first issue is whether the Family Medical Leave Act (FMLA) applies to the particular situation. If so, the employee with a temporary disability may be entitled to up to 12 weeks of unpaid leave during any 12 month period, and then reinstatement to the same or an equivalent job. However, determining the applicability of this federal law can itself be difficult. There are three primary issues which must be resolved: Is the employer covered by the FMLA? Is the employee covered? And is the health condition covered?

Determining whether the Act applies to the employer is relatively easy. It applies to all public agencies including state, local and federal employers and to private sector employers that employed 50 or more employees for at least 20 work weeks in the current or past year. The United States Department of Labor estimated that the Act does not apply to 95% of all employers. However, since it applies to the largest employers, it actually covers 60% of all employees in the country.

Determining whether the Act applies to the employee is slightly more complicated because this involves a review of the employee's length of service, hours worked in the past year, and the size of the work force at the employee's worksite. The general rule is that an employee must have been employed for the past 12 months at the time the leave commences (not necessarily consecutive), must have worked at least 1,250 hours during the preceding year and must be employed at a worksite with 50 or more employees within 75 miles.

The most difficult issue to resolve is whether the FMLA applies to the actual health condition. Not all health conditions trigger the Act. It must be a serious illness, injury, impairment or physical condition that requires either inpatient care in a medical facility or continuing

treatment by a physician or healthcare provider. If the employer has doubts whether the condition is covered by the Act, it can require medical verification from the employee's doctor. The employer can also request a second opinion and in limited circumstances a third opinion before deciding whether the health condition is covered by the Act.

The FMLA is not necessarily the only law which must be consulted when dealing with a temporarily disabled employee. The Washington Law Against Discrimination (WLAD) must also be reviewed because it applies in most situations independent of the FMLA. The WLAD applies to all employers in Washington with eight or more employees. It applies to employees with disabilities, which include all physical or mental impairments that substantially limit one or more major life activities (and this has been interpreted to include temporary disabilities). Unlike the FMLA, the WLAD does not require a specific type or length of leave or accommodation. Instead it requires a much greater degree of creativity because the employer is required in most situations to provide a reasonable accommodation to a disabled employee to assist them in the performance of the essential functions of the job. Examples of accommodations can include job restructures, modified work schedules, physical alteration of work facilities and/or a leave of absence.

The intent of this article was not to provide a comprehensive answer to these issues, but merely to highlight the difficulty and complexity when dealing with an employee with a temporary disability. Employers are encouraged to use care when confronted with these issues.