

OSC 12
Ohio Safety Congress & Expo

WELL AT HOME. SAFE AT WORK.

424 The Regulated Workplace - Addressing Issues of the Sick, Injured and Disabled Worker, Part 1

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Ohio Bureau of Workers' Compensation

The Regulated Workplace –
Addressing Issues of the Sick, Injured,
and Disabled Worker.
Part I

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Family Medical Leave Act (FMLA)

• What Is It?

- Provides up to **12 weeks of unpaid leave** each year to a covered employee for the following reasons:
 - **Parenting leave:** To care for the birth, adoption or placement of a child
 - **Family Medical Leave:** To care for "serious health condition" of spouse, son, daughter, or parent
 - **Employee Medical Leave:** To take leave for employee's own "serious health condition"
 - **Family Military Leave:** To take leave for a "qualifying exigency" if the employee is a spouse, child, or parent of a servicemember called to active duty
 - **Caregiver Military Leave:** To care for a spouse, child, or parent who is a servicemember injured while on active duty (allowed to take **26 weeks** of unpaid leave)



Family Medical Leave Act (FMLA)

• To What Employers Does It Apply?

- Employers with **50 or more** employees who are employed in at least **20 or more** calendar workweeks in the current or preceding calendar year



Family Medical Leave Act (FMLA)

• To What Employees Does It Apply?

- An employee who has worked at least 12 months, whether or not consecutive, for at least **1,250 hours** during the 12 months prior to the start of the FMLA leave



Americans With Disabilities Act (ADA)

• What Is It?

- Requires employers to provide **reasonable accommodations** to a qualified individual with a disability
- A "**disability**" is:
 - Physical or mental condition that substantially limits one or more major life activities;
 - Regarded as or record of disability; or
 - Condition or impairment of employee



Americans With Disabilities Act (ADA)

- **To What Employers Does It Apply?**

- Employers with **15 or more employees** who are employed in at least 20 or more calendar workweeks in the current or preceding calendar year



Americans With Disabilities Act (ADA)

- **To What Employees Does It Apply?**

- **All employees and applicants**



Ohio's Workers' Compensation Statute

- **What Is It?**

- Requires employers to provide compensation to an employee who suffers a compensable injury on the job



Ohio's Workers' Compensation Statute

- **To What Employers Does It Apply?**

- **All employers**



Ohio's Workers' Compensation Statute

- **To What Employees Does It Apply?**

- All employees who, in the course of and arising from employment, sustain a compensable injury, including:
 - A gradual injury resulting from the performance of the injured worker's job-related duties;
 - Occupational diseases (e.g., diseases to which an employee is not ordinarily subjected or exposed outside of employment);
 - Emotional or mental disorders IF it results from a compensable physical injury; and
 - Substantial aggravation of preexisting conditions

Ohio's Workers' Compensation Statute

- **What Can An Employee Get?**



- **Temporary Total Disability Compensation (TTD):** 66 2/3 % of average weekly wage until terminated
- **Wage Loss Compensation:** 66 2/3 % of the difference between his average weekly wage and his present earnings for a maximum of 200 weeks (or 52 weeks if the wage loss is due to his inability to find employment because of the injury)
- **Permanent Partial Disability Compensation (PPD):** 66 2/3% of average weekly wage for a maximum of 200 weeks based upon the percentage of the employee's permanent disability
- **Permanent and Total Disability Compensation (PTD):** 66 2/3 % of the employee's average weekly wage until death if the impairment prevents the employee from obtaining employment
- **Violation of Specific Safety Requirement (VSSR):** Any of the above awarded amounts + up to 15% if the employer failed to comply with a specific requirement for the protection of the lives, health or safety of employees

Pregnancy Leave



- **What Is It?**
 - New law that pregnant employees be given the same rights and benefits (including leave benefits) as other employees.
 - There continues to be a presumption that 12 weeks is enough, but Ohio Civil Rights Commission has the right to rebut that presumption

Pregnancy Leave

- **To What Employers Does It Apply?**
 - Ohio - All employers employing **4 or more employees**
 - Federal protection – **15 or more employees**

Pregnancy Leave

- **To What Employees Does It Apply?**
 - **All female** employees, regardless of how long they have worked for the employer!
 - Also may apply to female employees who have already exhausted her 12 weeks of FMLA leave for non-pregnancy reasons



Overlap of FMLA, Ohio Pregnancy Act, ADA, and Workers' Compensation

- **Covered Employers**
 - FMLA = 50 employees
 - Ohio Pregnancy Act = 4 employees
 - ADA = 15 employees
 - Workers' Compensation = no minimum number of employees required

Overlap of FMLA, Pregnancy Leave, ADA, and Workers' Compensation

- **Covered Employees**
 - FMLA = longevity
 - Pregnancy Leave = employed females
 - ADA = employed
 - Workers' Compensation = employed



Overlap of FMLA, Pregnancy Leave, ADA, and Workers' Compensation

- **Required Time Off**
 - FMLA = Maximum of 12 weeks per year (26 weeks to care for an injured Servicemember)
 - Pregnancy Leave = look to other policies 12 weeks per year safe harbor
 - ADA = Leave beyond 12 weeks may be required to be considered a "reasonable accommodation"
 - Workers' Compensation = not applicable
 - **Caution:* If the employer has a disability leave plan or other leave plan that allows an employee additional leave, the employer should inform the employee about that policy and give the employee the option of continued leave under that plan.

Duties under the FMLA, ADA, Workers' Compensation Act, and Ohio Pregnancy Leave Act

ADA: Must provide "reasonable accommodation"



- Includes offering paid and/or unpaid leave, which may require leave in excess of 12 weeks under the right circumstances
- **Exception:** "Undue hardship" → Consider:
 - Business size;
 - Whether the employee's position was vacant before the employee was hired and is likely to remain vacant if the employee is granted the requested leave or discharged; and
 - Whether there is a pre-existing policy of providing employees with long periods of disability-related leave

Injuries, Illnesses, and Disabilities: Which Law Applies?

- **FMLA:** Applies to a "serious health condition"
 - Inpatient care;
 - Outpatient treatment involving 3 consecutive days + treatment with a "regimen" of continuing treatment;
 - Chronic serious health condition; or
 - Incapacitation due to pregnancy
 - Not "serious health condition": Cold, flu, earache, stomach ache, absence due to substance abuse, etc...



Injuries, Illnesses, and Disabilities: Which Law Applies?

- **ADA & ADAAA:** Applies to a "disability"
 - Defined as:
 - physical or mental condition that substantially limits one or more major life activities;
 - regarded as or record of disability; or
 - Condition or impairment of employee
 - Includes:
 - Drug or alcohol addiction IF seeking treatment (addiction or dependency must exist)
 - Psychiatric disabilities

Injuries, Illnesses, and Disabilities: Which Law Applies?

- **Workers' Compensation Statute:** Applies to injuries sustained in the course of and arising from employment, including:
 - A gradual injury resulting from the performance of the injured worker's job-related duties;
 - Occupational diseases (e.g., diseases to which an employee is not ordinarily subjected or exposed outside of employment);
 - Emotional or mental disorders IF it results from a compensable physical injury; and
 - Substantial aggravation of preexisting conditions

Proof of Injury, Illness, or Disability

- **What Health-Related Inquiries Are Permitted?**
 - **ADA:** Inquiries must be job-related and consistent with business necessity
 - **FMLA:** Information specified in the FMLA certification; can request additional information from the employee's health care provider with employee consent in order to clarify or authenticate the certification
 - **Workers' Compensation:** Information relating to injury and history of injury – statutory right



Proof of Injury, Illness, or Disability

- **What Documentation May You Require?**
 - **Workers' Compensation:** Employers have an absolute right to require employees to undergo an independent medical exam (at the employer's expense)



Update on Ohio Workers' Compensation Law



- Employees may sue under R.C. 4123.90 if they are discharged solely based on their absence or inability to work when it is directly related to an allowed workers' compensation condition.
- **BUT:** Recently held that employees terminated while receiving workers' compensation cannot sue under common law for wrongful discharge in violation of the public policy.

Additional Issues

- Evolution of Coolidge
- Intermittent and Reduced Leave
- Mental Health Leave – stress, anxiety, nerves, depression

QUESTIONS?



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