



Fact Sheet: Worker's Compensation, Family and Medical Leave Act, and Americans with Disabilities Act

As of November 20, 2015

Introduction:

This factsheet is designed to assist agency human resources (HR) staff and managers when recognizing and managing situations **where an employee's injury or illness** entitles the employee to one or more benefits or protections of Workers' Compensation (WC), the Family and Medical Leave Act (FMLA), or the Americans with Disabilities Act (ADA).

Overview:

Workers' Compensation (WC) – provides injured employees with medical and wage-loss benefits for occupational injuries or illnesses regardless of fault.

The Health Care and Benefits Division, Workers' Compensation Management Bureau (WCMB), administers WC for Montana state government.

Visit the Workers' Compensation Management Bureau website at <http://workerscomp.mt.gov/> for more information.

Family and Medical Leave Act (FMLA) – as it applies to an occupational injury or illness, provides up to 12 weeks of unpaid, job-protected leave to eligible employees with a "serious health condition" during a specified 12-month period.

A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves inpatient care (e.g., an overnight stay in a hospital) or continuing treatment, as defined in the FMLA, by a health care provider.

Unpaid FMLA leave may run concurrently with other forms of paid leave (e.g., sick leave, annual vacation, etc.) and may be taken in blocks of time or intermittently.

The FMLA also requires the employer to maintain an employee's health coverage during the FMLA

leave and to return the employee to the same or equivalent position.

Americans with Disabilities Act (ADA) – prohibits discrimination against qualified individuals with disabilities for any aspect of employment. An individual with a disability is a person who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

An employee with a disability is considered "qualified" if he or she can perform the essential functions of the position with or without a reasonable accommodation.

Employee Eligibility:

WC – All employees are eligible, regardless of how long they've been in their positions.

FMLA – Executive branch employees are eligible for job-protected leave under the family and medical leave policy after working for the state for 12 months (which need not be consecutive) and 1,040 hours immediately prior to taking time off for a qualifying event.

ADA – All employees who have a disability are covered.

Applying WC, FMLA, and ADA:

An employee who experiences an occupational injury or illness is entitled to WC but may not be entitled to FMLA-qualifying leave unless the employee is "eligible" and has a "serious health condition." An employee who hurts her back after falling off a ladder at work, for example, would not be eligible for FMLA-qualifying leave unless she has

worked 1,040 hours during the previous 12-month period.

Likewise, if the employee met the eligibility requirement and returned to work the following day without further treatment, except for a follow-up visit to her health care provider, the employee would not be entitled to leave under the FMLA. Nor would she be protected under the ADA, because the injury is short term. The injury does not “substantially limit” a major life activity and is considered “short term and minor.”

If the employee could not return to work after three or more consecutive days following her injury and she required continuing treatment by a health care provider (e.g., a regimen of pain medication, physical therapy, surgery, etc.), she would receive wage-loss benefits under WC and job protections under the FMLA. Assuming the employee is expected to recover without “substantial limitations” to a major life activity, the employee would not be protected under the ADA.

Medical Documentation:

WC – An employee must continue to provide required medical documentation to our insurer to process the initial claim, maintain wage-loss benefits, pay medical expenses if the claim is approved, track the employee’s recovery, determine maximum medical improvement (MMI), and assess the employee’s future ability to work.

FMLA – Medical information related to an employee’s WC claim is strictly controlled, and information released by the Workers’ Compensation carrier may not be sufficient to determine an employee’s FMLA entitlement.

Agency HR staff may ask for medical certification of the serious health condition but may not ask for more information than is necessary to establish the need for FMLA-qualifying leave.

An employee typically has 15 days to return the form. An employee may lose FMLA job protections if the employee does not return the form. Agency HR staff must maintain all documentation related to an employee’s FMLA qualifying event in a secured location separate from the employee’s personnel file.

ADA – The FMLA certification form is limited to an employee’s need for time off under the FMLA and may not address the need for other reasonable accommodations under the ADA (e.g., a flexible work schedule, equipment needed, the need for additional time off beyond the employee’s 12-week leave entitlement, etc.).

The appropriate agency representation may request medical documentation to determine an employee’s need for a requested reasonable accommodation. In most cases, this will be the agency ADA coordinator or a designated HR staff member acting on behalf and in coordination with the ADA coordinator. If, for example, an employee returns to work with a substantial limitation to a major life activity (a disability) and the need for the requested accommodation is not obvious or known, the HR staff may request documentation to establish the need for the accommodation.

HR staff must use caution when requesting medical information. Requests should focus on whether the employee has a substantial limitation to a major life activity, the major life activity impacted, how the limitation affects the employee’s ability to perform essential function(s), the recommended accommodation(s), and how the accommodation would enable the employee to perform the essential function(s).

All documentation related to an accommodation request must be kept in a secure location separate from the employee’s personnel file.

NOTE: Although WC, FMLA, and ADA laws, regulations, and policies sometimes overlap, HR staff and managers must use caution and assess each entitlement as separate and distinct.

Return-to-Work Program and Transitional-Duty Work Assignments:

WC – An employee’s health care provider may release the employee to return to work in a transitional-duty position. When management offers a transitional-duty position, the employee **may** accept the position, but acceptance is not required. If the employee chooses not to accept the position, he or she may not qualify for wage-loss payments under the WC benefit plan. An eligible employee would, however, be able to

continue FMLA leave until he or she is able to return to the same or equivalent position or exhausting the 12-week FMLA entitlement.

The Health Care and Benefits Division, Workers' Compensation Management Bureau (WCMB), administers the Return-to-Work (RTW) Program for Montana state government.

The goal of the RTW program is to return eligible employees to the workforce at the earliest medically allowable date and in accordance with their medical treatment plans. The RTW program promotes rehabilitation and enhances the recovery process for employees experiencing an illness/injury while maximizing productivity and controlling related expenditures.

- The RTW program is available to all employees who experience work-related injuries and illnesses in Montana's Executive, Legislative, and Judicial branches.
- Every eligible injured worker who chooses can participate in the RTW program; RTW is subject to operational constraints.
- Employees cleared to return to work must follow policies and guidelines established by the WCMB.
- An employee must provide his or her department's HR or Transitional Duty Team Coordinator a medical status form following each doctor's appointment indicating the employee's current return to work status and noting any restrictions.
- The RTW team, treating physician, and employee work together to create an effective RTW program.

FMLA – Managers may offer a transitional-duty assignment, as long as long as the employee's acceptance of a transitional-duty assignment is voluntary. The transitional-duty assignment cannot be a condition of employment and does not waive an employee's rights to under the FMLA.

Time worked in a transitional-duty position cannot be counted toward an employee's FMLA entitlement.

ADA – By addressing transitional-duty assignments, we are addressing our ADA responsibility to our employees. Agencies must clearly communicate to

their employees that transitional-duty assignments are temporary. Once an injured worker is deemed to be at maximum medical improvement (MMI), the agency is required to address any permanent restrictions placed upon the injured worker by his or her treating physician. All permanent restrictions must be addressed through the interactive process to determine if permanent accommodations can be made to the employee's time-of-injury position. When making this determination, managers must consider whether the following conditions exist:

- 1.) Can the employee perform the essential functions of the position with or without a reasonable accommodation, regardless of permanent restriction(s); and
- 2) Will the permanent restriction(s) or a requested accommodation create an undue hardship; if so, what other possible accommodations, including reassignment to a vacant position for which the employee is qualified, may be implemented?

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