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The Family and Medical Leave Act, The Americans with Disabilities Act, and Workers' Compensation: An Employer's Survival Guide

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§ 1.01. Introduction.

Congress’ enactment of the Americans With Disabilities Act¹ (ADA) and the Family and Medical Leave Act² (FMLA) have added new corridors to the legal maze through which employers must maneuver to deal properly with injured employees. These new laws and the regulations which implement them are complicated and sometimes enigmatic; additionally, the interplay of these laws with workers’ compensation law can complicate their application.

As volumes have been written about both the ADA and the FMLA, comprehensive coverage of these laws is not intended in this chapter. This chapter contains narrowly focused, basic information intended to enable employers to better understand the fundamental requirements of the ADA and the FMLA, and how those requirements interact with workers’ compensation law.

Because both Acts are still relatively new, there is much uncertainty involved in determining their precise requirements. Legitimate differences of opinion exist on many issues regarding compliance with the Acts. As courts resolve ADA and FMLA disputes and the public debate concerning the policies underlying the Acts progresses, employers’ duties will become

¹ 42 U.S.C. § 12,101 *et seq.* (1993).

² 29 U.S.C. § 2601 *et seq.* (1993).

more focused. For now, determination of many issues under the Acts requires educated guesswork. Employers confronting ADA or FMLA issues should act carefully, based only on informed decisions, and after consultation with counsel experienced in employment law.

§ 1.02. Overview of the Americans with Disabilities Act.

[1] — Coverage.

The ADA covers nearly all employers with 15 or more employees. It applies as well to temporary employment agencies, labor organizations, and similar entities.³

[2] — Who Is Protected?

The ADA protects four groups of workers:

- a) those with a disability;
- b) those with a record of a disability;
- c) those who are perceived as having a disability; and
- d) those who are associated with a person having a disability.⁴

“Disability” is a term of art. The Act defines “disability” as a physical or mental impairment that substantially limits one or more of a person’s major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.⁵ The regulations contain the following factors for use in analyzing whether an impairment is “substantially limiting”:

- a) the nature and severity of the impairment;
- b) the duration or expected duration of the impairment; and
- c) the permanent or long-term impact, or the expected permanent or long-term impact, of or resulting from the impairment.⁶

In addition to having a bona fide disability and belonging to one of the four groups referred to above, in order to receive the protection from

³ 29 C.F.R. § 1630.2(e)(1).

⁴ 29 C.F.R. § 1630.2(g).

⁵ 2 U.S.C. § 12102(2).

⁶ 29 C.F.R. § 1630.2(j)(2).