

SC Municipal Human Resources Association


2016 Spring Meeting
Thursday, April 28



Malfunction Junction

The Intersection of ADA & FMLA
(And a Wee Bit of FLSA...)

Municipal Human Resources Association
April 28, 2016
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Goals

- *Brief update on FLSA regs*
- Understand basic rights and obligations under ADA & FMLA
- Understand interplay among ADA & FMLA
- Spot ADA & FMLA issues in routine situations
- Special Problems

FLSA White Collar Proposed Regs

- Proposal
 - Increase salary test from \$455/week to \$921/week (2015; for 2016, \$970/week)
 - Annual salary equivalent (for 2016) of \$50,440
 - Highly Compensated Exemption: \$122,148 (from \$100,000)
 - Establish automatic update so salary basis increases with inflation or some other indicator
 - No change proposed to duties test

FLSA White Collar Proposed Regs

- Status
 - Proposed: July 2015
 - Comment Period
 - Ended: September 2015
 - 293,289 comments received
 - Final Rule
 - Submitted to OMB Review in March 2016
 - Still under review
 - Earliest expected final rule date: July 2016

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Summary

ADA

- Prohibits discrimination
- Reasonable accommodations
- Interactive process
- Broad coverage (most any condition may be a disability)
- Chronic
- Temporary (if actual impairment is substantially severe)
- Actually disabled, history of, or regarded as

FMLA

- Minimum leave standards
- Acute (vs. chronic) need
- Inability to perform any (single) essential function
- Excludes minor illness
- Military leave provisions

Who is covered?

- ADA
 - Employee or applicant
 - Able to perform essential functions
 - With or without reasonable accommodation
- FMLA (non-military)
 - Employed 12 months & 1250 hours in preceding 12 months
 - Can't perform any "essential function" due to "serious health condition"
 - Care for parent, child, spouse with serious health condition
 - Birth of newborn/placement of foster/adoptive child

Accommodations?

- ADA
 - Reasonable accommodations required
- FMLA
 - Leave
 - Reduced hours

Leave?

- ADA
 - May be a reasonable accommodation
 - Case-by-case
 - No specific minimum or maximum
- FMLA
 - Up to 12 weeks in a rolling 12-month period

Paid Leave?

- ADA
 - Usually not
- FMLA
 - No
 - Employer can require concurrent use

Intermittent/Reduced Schedule Leave?

- ADA
 - No specific requirement
 - May be a reasonable accommodation
- FMLA
 - Yes

Light Duty?

- ADA
 - May be reasonable accommodation
 - General goal: allow employee to perform essential functions of *his or her* job
- FMLA
 - Can offer; Cannot require

Reinstatement?

- ADA
 - Likely a reasonable accommodation (unless undue hardship)
- FMLA
 - Required
 - Same or equivalent job

Fit-For-Duty?

- ADA
 - Job related
 - Necessary to determine ability to perform essential functions
- FMLA
 - Uniform practice

Medical Documentation?

- ADA
 - Post-offer/pre-employment
 - Current employees
 - Job related
 - Business necessity
 - Ability to perform job
 - Whether accommodation needed
- FMLA
 - Medical certification
 - Limited to DOL-mandated information

Notice to Employer?

- ADA
 - No specific requirement
 - Put on notice of need for accommodation
- FMLA
 - No magic words
 - Must put on notice of qualifying need for leave
 - Duty to inquire

Notice to Employee?

- ADA
 - Rights: poster
 - Benefits: no specific requirement
- FMLA
 - Rights
 - Poster
 - Policy
 - Benefits
 - Notice of Rights and Responsibilities (5 business days)
 - Designation Notice

Retaliation Prohibited?

- ADA
 - Yes
- FMLA
 - Yes

Enforcement

- ADA
 - Equal Employment Opportunity Commission
 - State Human Affairs Commission
 - Courts
- FMLA
 - Department of Labor (Wage & Hour Division)
 - Courts

Penalties & Relief

- ADA
 - Back wages
 - Reinstatement or “front pay”
 - Injunction (accommodations)
 - Equitable/compensatory damages
- FMLA
 - Back wages
 - Reinstatement or “front pay”
 - Injunction or other equitable relief
 - **Personal liability**

Special Problems

- Intermittent Leave
 - Scheduled vs. Unscheduled
 - Temporary transfers
- Reduced Schedule
 - Partial days/weeks
 - Is full-time essential?

Special Problems

- Drugs
 - ADA
 - Excludes active illegal drug use
 - Covers addiction and prior drug use
 - FMLA
 - Absences due to active illegal use not covered
 - Absences for treatment are covered

Special Problems

- Alcohol
 - ADA
 - Alcoholism is covered
 - Absences due to being drunk/hungover?
 - FMLA
 - Treatment for alcohol dependency covered
 - Absences due to being drunk/hungover not covered

Special Problems

- Drug and Alcohol Testing
 - Drugs
 - ADA – permitted at any time; not a medical test
 - FMLA – not an issue
 - Constitution
 - “Reasonable Suspicion”
 - Random/Suspicionless
 - » CDL/DOT
 - » Law Enforcement/Fire Supression/EMS

Special Problems

- Drug and Alcohol Testing
 - Alcohol
 - ADA
 - Generally prohibited – considered a medical test
 - Job related & consistent with business necessity
 - » Reasonable suspicion
 - » Limited random
 - FMLA – not an issue
 - Constitution
 - “Reasonable Suspicion”
 - Random/Suspicionless – limited

Example

Clum Seay is a dump truck driver. One day his foot is run over by a dump truck. Clum goes to the ER and is written out of work and scheduled to see an orthopedist. Ultimately, Clum needs two surgeries to insert rods and remove screws and is out of work for 6 months. After that, he receives a 30% impairment rating in his left leg and walks with a limp but is returned to full duty by his doctor.

Triage!

- E.R./medical treatment
- Report to . . .
 - HR
 - Risk management

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- FMLA
 - 12 weeks of leave
 - HR/Notice of Rights & Responsibilities – 5 days!
 - Certification of Need?
 - Designation Notice
- ADA
 - Leave beyond 12 weeks?
 - Accommodations on return to work?

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- What Else?
- WC
 - On the job injury
 - Treatment/surgeries & benefits
 - Risk management/carrier on notice
- Others?

Left Turn

- Clum released to light duty after 6 months...
 - FMLA?
 - ADA?
 - Other? (WC?)
- Clum is released to duty after 6 months but the injury leaves him permanently unable to operate the clutch pedal on a commercial vehicle...
 - FMLA?
 - ADA?
 - Other? (WC?)

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