



Department of

Human Resources

FMLA/ADAAA Update:

Strategies for Managing Complex Leave Issues

Course Objectives

During this course, participants will:

- ❑ Review the purpose of the Family Medical Leave Act and the Americans with Disabilities Act Amendments Act
- ❑ Explore issues that emerge when an employee requests leave
- ❑ Examine tips for combatting leave abuse

FMLA

- ❑ The Family Medical Leave Act (FMLA) is a federal law passed in 1993 that is designed to help employees balance work and family responsibilities by allowing leave for certain family and medical reasons.



FMLA

- ❑ FMLA provides an eligible employee up to 12 weeks of job-protected leave in a 12-month period for the following circumstances:
 - Birth of a child and to care for a newborn
 - Placement with the employee of a child for adoption or foster care
 - Care for the employee's spouse, son, daughter, or parent with a serious health condition
 - A serious health condition that makes the employee unable to perform the functions of his or her job
 - A qualifying exigency for military member on active duty or called to active duty
 - Military caregiver leave (provides 26 weeks of leave in 12-month period)

ADAAA

- ❑ The Americans with Disabilities Act Amendments Act is a civil rights law that prohibits discrimination based on disability.

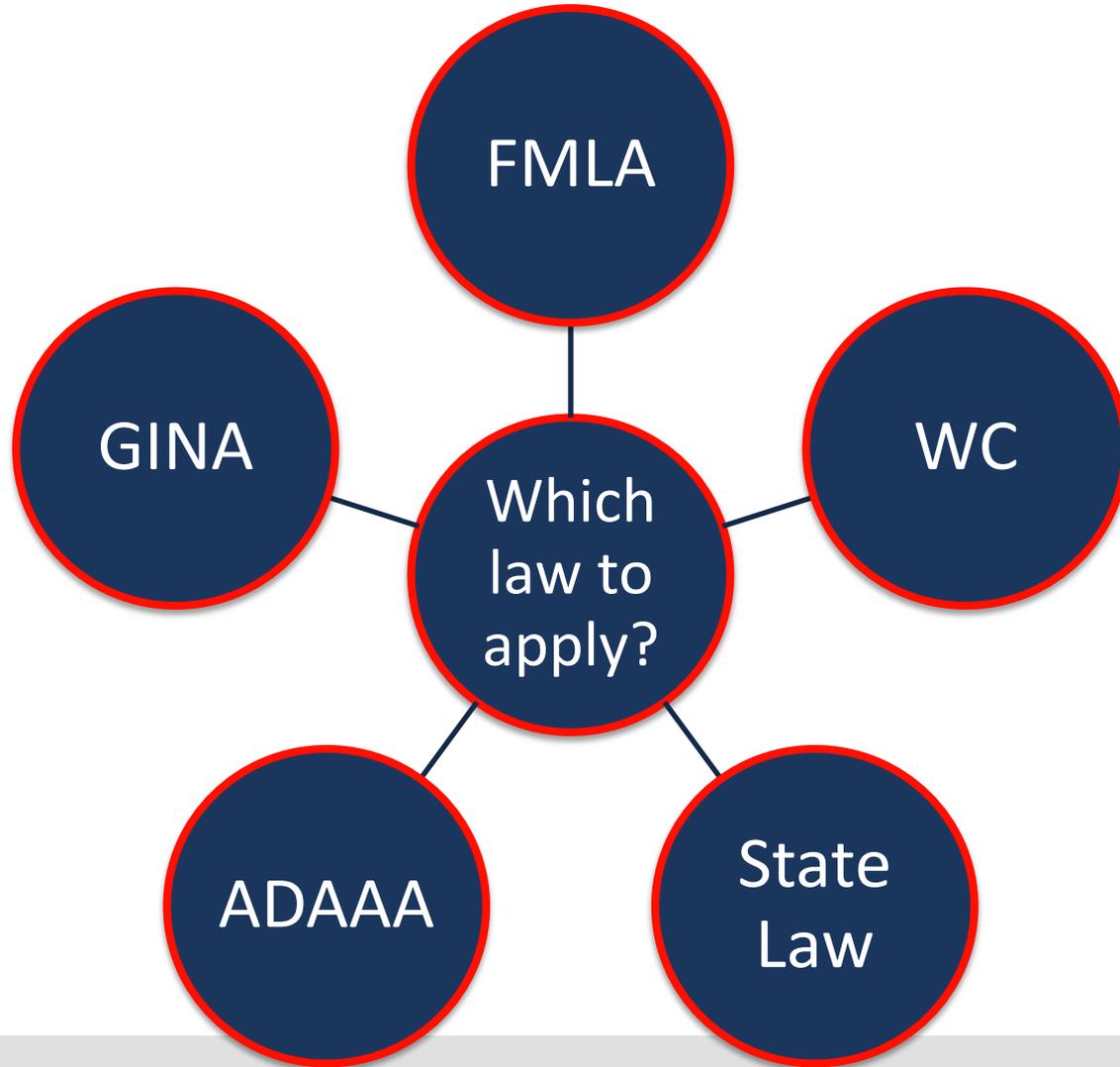
❑ A disability is defined as:

- A physical or mental impairment that substantially limits one or more major life activities; or
- A record of a physical or mental impairment that substantially limited a major life activity; or
- Regarded as having an impairment because of an actual or perceived impairment that is not both transitory and minor

Other laws of interplay

- ❑ Workers' compensation
- ❑ State law
- ❑ GINA

The Compass



Let's Get Started...



The Migraine



The Migraine

Jennifer has worked for Agency XYZ for three years as a full-time employee. Since the beginning of the year, Jennifer's attendance has been spotty and she has used all of her accrued annual and sick leave.

During an attendance discussion with her supervisor, Amy, Jennifer states that she has been having migraines. Amy tells her that while she sympathizes with her condition, Jennifer should report to work in a timely manner. Amy adds that any absences without at least 48 hours notice will be unexcused, unless Jennifer produces a doctor's note.

The Migraine

- ❑ What should the supervisor do?
- ❑ What is Jennifer entitled to?



The Migraine

Jennifer is certified and designated for intermittent FMLA leave. Her certification states that she may miss approximately 3-5 days each month to deal with her migraines.

At first, Jennifer's absences were sporadic. However, recently her supervisor, Amy has noticed that Jennifer has missed over 8 days during the month of May and 12 days during the month of June. Last week, Jennifer did not report to work at all, alleging she needed to use her FMLA. Amy, the supervisor feels Jennifer's absences are causing significant disruptions to the operations of her division.

The Migraine



- What should the supervisor do?
- Is Jennifer entitled to continue in this behavior?
- Should Jennifer receive discipline under the attendance policy?

The Migraine

By July 1st, Jennifer has used six weeks of FMLA leave. She reported that her son, an adult military servicemember, was recently injured in combat. Her son is not married and plans to live with Jennifer during recovery. Jennifer requests leave to care for her son.

The Migraine

- ❑ What do you do?
- ❑ Is Jennifer entitled to any additional leave to care for her son? If so, how much?



Tired and Anxious



Tired and Anxious

Jim has been a model employee for Acme Agency for 10 years. He is well liked by his co-workers and he is friendly and easy going.

Recently, Jim missed three days of work because he was “sick.” When he returned to work, Jim requested two weeks off. He told his supervisor that he was “tired and anxious.”

Tired and Anxious



- Is this a request for FMLA leave?
- Is the employee obligated under FMLA to state a request for FMLA leave?
- What would you do in this situation?

Tired and Anxious

After Jim has been on FMLA leave for two weeks, he calls and requests additional leave of three weeks. Meanwhile, rumors are going around at work that Jim is fine, as he has posted Facebook photos of a recent trip to Puerto Rico, and that his second cousin twice removed is his doctor. A second rumor that he is in jail is also circulating.

Tired and Anxious

- Can the agency request recertification of Jim's request with another doctor?
- Should the agency send Jim a letter saying the "rumor" is that you are in jail, so we are stopping your FMLA?
- If Jim is incarcerated, can he still be on FMLA?



Tired and Anxious

Jim returns to work following his FMLA leave and does his job satisfactorily for a couple of weeks. However, his supervisor is informed that Jim is having conversations with himself in the break room after work hours and is easily agitated. Jim is yelling at co-workers and starts calling in sick or just not showing up for work. This has been going on for about a week.

On one of the days when Jim was out, his wife called in sick for him. She mentioned to the supervisor that Jim is suffering from PTSD.

Tired and Anxious



- Can you deny the request and terminate Jim for his behavior?
- Should the agency confront Jim on his behavior with disciplinary action and hope he reveals what is going on?
- What other laws may come into consideration?
- Will the request be covered by FMLA?

The Re-Hire



The Re-Hire

LOL Agency has recently re-hired Lola to a position as a data programmer. Lola worked for the agency for two years approximately six years ago. On her first day back on the job, Lola shows up to with a list of all the “things” she is going to need on the job to be successful. She also provides you with the name and phone number for a disability advocacy group. She tells you she must have everything on her list before she will perform any tasks and until then she would like to work from home because she will have to drive more than an hour each way to work.

The Re-Hire



- What would you do?
- Does Lola qualify for FMLA? Why or why not?
- Is she protected by the ADA? Why or why not?

The Prescription



The Prescription

Joe works for the ABC Agency. He has been diagnosed with glaucoma, which significantly impairs his vision. When Joe lived in Arizona, about three years ago, he was prescribed medical marijuana. Although he has been in Tennessee for two years, he still visits the physician in Arizona to renew his prescription.

ABC had no idea of Joe's condition or medication until it conducted a random drug test on Joe and he tested positive for marijuana use. ABC has a zero tolerance drug policy.

After testing positive, Joe asks for a reasonable accommodation and requests to be exempted from the policy because of his disability. He argues that he only smokes after work and never comes to work impaired. ABC has never received reports that Joe was impaired at work.

The Prescription

- ❑ Can ABC fire Joe under its zero tolerance policy?
- ❑ Can an accommodation be made for Joe under the ADA?



Tips to Remember



Tip #1

- ❑ Communicating too late is harmful!

Tip #2

- ❑ Supervisors create liability

Tip #3

- ❑ 'Undue Hardship' must be assessed early

Tip #4

- ❑ Do not reject an extension of medical leave as a reasonable accommodation for employees with disabilities.

Tip #5

- ❑ Do not forget about the rules affecting eligibility

Tip #6

- ❑ There are no “magical words.”

Tip #7

- Keep good documentation

Any Questions??

