



WorkSmarts Virtual Seminar

The Bermuda Triangle: Navigating the Treacherous Waters of Leave Management

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Covered Topics

- Federal and State Legislation
 - Family and Medical Leave Act (FMLA)
 - Americans With Disabilities Act (ADA)
 - State Leave Laws
 - Workers' Compensation
- Intersectionality, Concurrent & Cumulative Leave
 - FMLA, ADA, State Leave Laws, Workers' Compensation
 - Paid Time Off



FAMILY AND MEDICAL LEAVE ACT (FMLA)



FMLA Requirements

Family and Medical Leave Act

- Covered organizations: More than 50 employees within 75 miles of worksite
- Employed for at least 12 months
- 1,250 hours in the last 12 months
- Serious health condition
- 12 weeks of unpaid leave based upon typical workweek (February 2023 DOL opinion letter)
- Job protection

Leave Requirements

- Upon employee request or within five business days of employer knowledge of leave qualifying reason
- Certification
- Recertification
- Intermittent leave

FMLA Recent Cases

FMLA INTERFERENCE

- *Martin v. Arise Inc.*, Civil Action No. CV-21-08244-PCT-DJH (D.Ariz.June 27, 2023) (summary judgment denied where employee sufficient notice of need to care for father even where FMLA not expressly referenced).

FMLA RETALIATION

- *Ramadei v. Radiall USA, Inc.*, U.S.Dist. LEXIS 159068 (D. Conn. Sept. 08, 2023) (summary judgment denied where employee provided notice of intent to take time off for medical condition, without specifically requesting FMLA leave).
- *Nelson v. Cottonwood Fin. Tex., LLC*, Civil Case No. 3:22-cv-0932 (N.D. Tex. Aug. 16, 2023) (summary judgment denied where plaintiff was terminated thirty-five days after returning from FMLA leave where absences related to prior FMLA leave were a stated reason for termination).

AMERICANS WITH DISABILITIES ACT (ADA)



ADA Requirements



Qualified individual with a disability

- Essential functions
 - Position description
- Medical information
 - Not prior to offer of employment
 - After conditional offer of employment - disability inquires and medical examinations (as long as same for all applicants)
 - After employment –inquiries and medical examination only if job-related and consistent with business necessity)
- Interactive process
- Reasonable accommodation

ADA Recent Case Law

Unlimited Leave Not Required

- *Comacho v. R+L Carriers Shared Servs., LLC*, Civil Case No. H-22-1248 (S.D. Tex. Aug. 30, 2023) (summary judgment granted where commercial vehicle driver was unable to perform his job duties after an additional month of leave was provided and no light duty work was available).

ADA Accommodations

- *Hannah v. United Parcel Service, Inc.*, 72 F.4th 630 (4th Cir. 2023) (published July 10)(summary judgment upheld where truck driver requested smaller truck with softer suspension or new position because of hip and buttock injury. No new positions were available, so UPS accommodated with unpaid leave of absence. Employee did not like that option and sued after returning to work. Case dismissed in favor of UPS on summary judgment).



WORKERS' COMPENSATION, PAID TIME
OFF (PTO), AND PAID LEAVE LAWS

Workers' Compensation and Paid Time Off

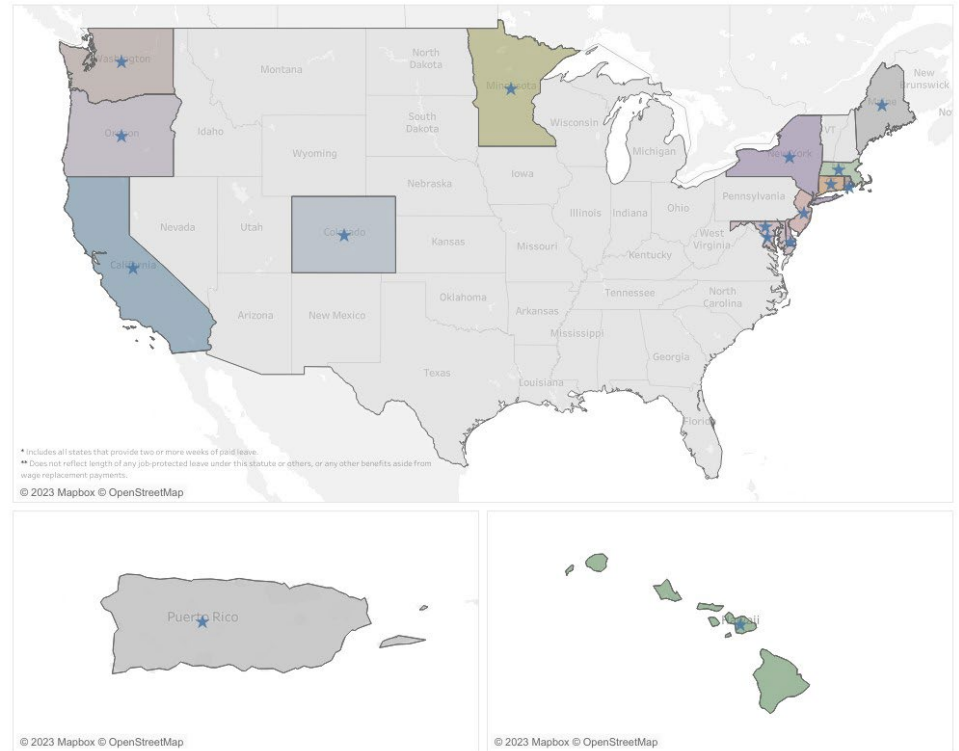
Workers' Compensation Laws

- Review state workers' compensation laws

PTO-no State or Federal Requirement

- Typically Outlined in the Employee Handbook
 - Accrual rates
 - Payable or not payable upon separation
 - Not part of salary (*Higgins, et al. v. Bayada Home Health Care Inc.*, Civil Case No. 21-3286, (3rd Cir. 2023) (PTO that workers accumulate is not part of their salary under the FLSA)).

State Paid Family and Medical Leave Laws



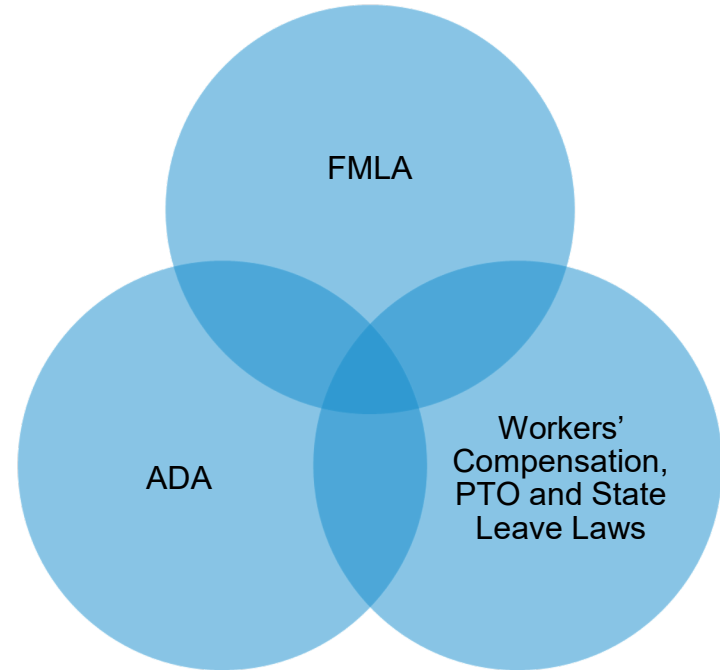


INTERSECTIONALITY (FMLA, ADA, WORKERS' COMPENSATION, PTO AND STATE PAID LEAVE LAWS)



Intersectionality

- Concurrent and continued leave:
 - March 2019 DOL letter: FMLA leave must begin as soon as employer is aware of applicability.
 - FMLA, workers' compensation, and state leave laws may run concurrently (Review state leave laws to confirm)
 - PTO may run concurrently with FMLA and State Leave Laws (Review State Leave Laws to confirm).
 - Continued leave may be a reasonable accommodation after FMLA leave been exhausted.



Example 1

- An employee is involved in a serious car accident after visiting family for the weekend. The employee has had several surgeries and is expecting a 10-week recuperation. The employee is expected to be able to walk after the surgery but will not be able to stand for long periods of time.
- FMLA paperwork has been received and approved. Two days before their expected return date, employee provides additional medical documentation that the recuperation will take another six weeks. Employee has 80 hours of accumulated paid leave.
 - What leave is available to the employee?
 - Will it run concurrently?
 - Would the ADA require the employer to grant additional leave?

Example 2

- An employee injures their back on the job moving boxes. The injury requires back surgery which will require 12 weeks for recuperation.
- The employee is expected to return to work but will not be able to lift more than 10 pounds. The employees does not have any accumulated paid leave.
 - What leave is available to the employee?
 - Will it run concurrently?

BEST PRACTICES

REVIEW YOUR
POLICIES AND
UPDATE THEM

HOW MUCH TIME IS
THE EMPLOYEE
ENTITLED TO?

DETERMINE WHICH
LAWS COULD
APPLY

WILL THE LEAVE BE
COMPENSATED?



Always connected, near and far

Austin

Cape Girardeau

Dakota Dunes

Dallas

Denver

Greenville

Hendersonville

Houston

Jefferson City

Kansas City

Minneapolis

Nashville

Oklahoma City

Omaha

Overland Park

Phoenix

Plano

Springfield

St. Louis

Tampa



Thank You



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