

When Injury Claims lead to Employment Discrimination

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I grew up in an economically depressed area in West Virginia where good jobs were hard to come by. Most jobs were based in industries such as coal or steel. When an employee suffered an injury and could no longer benefit his or her employer, the employee often would be prevented from taking leave or terminated after they took leave.

Now, I practice employment and personal injury law at Brian G. Miller Co., LPA (“Miller Law”). When representing personal injury clients, I often see an overlap with employment claims when those clients require work-leave and the need for leave later results in employment problems. This article is designed to help identify when your clients are entitled to work-leave, what legal protections they may have, and issues to look for when they qualify under different legal protections.

What are the ADA and FMLA?

The Americans with Disabilities Act (“ADA”) prohibits workplace discrimination based on an employee’s disability. The ADA requires employers who have 15 employees or more to provide reasonable accommodations to employees, or applicants, who have a disability and need such accommodations. A reasonable accommodation is, “any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” These can include changes to existing policies, or even work-leave, to give equal employment opportunities to the disabled employees. The accommodation will not be enforced if it causes an undue hardship to the employer, such as lower quality work product, increased burden or costs to the employer, or increased burden to co-workers.

The Family and Medical Leave Act (“FMLA”) allows qualifying employees the right to take leave for certain responsibilities and health problems. The FMLA prohibits employers from preventing or retaliating against employees who take leave. It also requires employers to maintain employee’s benefits while on leave and to reinstate employees to their previous position after returning from leave.

When is an employee entitled to leave?

Under the ADA, employees are entitled to a reasonable accommodation if they are substantially limited in one or more major life activity due to a physical or mental impairment that is recognized as a legal “disability.” Work-leave may be permitted as a reasonable accommodation, but there is not a certain amount of time that the employer must give. The length of the accommodation is analyzed under a case-by-case basis.

Under the FMLA, employees are eligible for leave if they have been employed for at least 12 months, have worked at least 1,250 hours during the 12 months prior, work for an employer that employs at least 50 employees within a 75-mile radius, and have a qualifying reason for taking leave. Qualifying reasons include: the birth of a child, placement of a child with the employee through adoption or foster care, to care for the employee’s spouse, son, daughter, or parent with a

serious health condition, or for the employee's own serious health condition. Eligible employees may take up to 12 weeks of unpaid FMLA leave in a 12-month period and up to 26 weeks under other limited circumstances.

When do both laws apply?

For employees who suffer their own serious health condition, issues can arise when determining what type of leave is available under the ADA, FMLA, or both. Initially, one should determine how many employees the employer has. For employers that have 50 or more employees within a 75-mile radius, both FMLA and ADA protections can apply if the employee meets other requirements.

One should also determine whether the employee's injuries qualify as a "serious health condition" and/or "disability" for purposes of analyzing what type of leave may be available. Just because an employee has a "serious health condition," does not necessarily mean that he or she is "disabled." An employee who is pregnant, for example, has serious health condition but is not considered disabled. In contrast, sometimes the FMLA and ADA overlap, which can be helpful to the injured employee's recovery. Cancers and strokes, for example, can qualify as serious health conditions under the FMLA and as disabilities under the ADA.

Generally, the standard for proving a serious health condition is much easier than meeting the ADA's disability standard. Under the FMLA, a serious health condition is "an illness, injury, impairment, or physical or mental condition, that involves inpatient care or continuing treatment by a health care provider." If the employee requires two or more doctors' appointments, it typically qualifies as a serious health condition. Under the ADA, Employees are "disabled" if their health condition is a physical or mental impairment and substantially limits one or more major life activity. Examples of recognized disabilities include psychiatric mental impairments, neurological impairments such as seizures, loss of body parts, complications from pregnancy, severe depression, and most cancers.

Remedies for Wrongful Termination

When employees cannot return to work in their original capacity, they sometimes face wrongful termination. For example, an employee may be entitled to an extended period of leave after the employee's initial period of FMLA leave expires. If an employer demands that an employee return to work without allowing an extended period of leave, under certain circumstances, or without allowing a work return in a limited capacity, consistent with the employee's medical capabilities, the employer can be exposed to liability for a wrongful termination. Under these circumstances, the employee may be entitled to reinstatement to their job, back pay, front pay, attorney fees, and other forms of damages. These remedies, of course, would be in addition to any recovery made relative to a separate liability claim for the injury itself. Often, factual details hold the key to exactly what remedies are available. If you have a client who faces issues like these, we are always available to answer questions or assist.