
SMOOTH SAILING — NAVIGATING THE BERMUDA TRIANGLE OF WC/ADA/FMLA

2025 Spring Meeting

NC Ass'n Occupational Health Nurses

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DISABILITY

The word of the day

DISABILITY

- N.C. Workers' Compensation Act,
N.C. Gen. Stat. 97-1:

“Incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.”

DISABILITY

**Americans with Disabilities Act
Amendments Act of 2008 (“ADAAA”)**

Physical or mental impairment that
substantially limits one or more of the major
life activities of an individual;

A record of impairment;

Being regarded as having such an impairment.

DISABILITY

- **Family and Medical Leave Act (“FMLA”):**
disability is referenced as “serious health condition” which means a physical or mental illness, injury or condition involving inpatient care or continuing treatment by a healthcare provider. It may or may not be a disability under WC or ADA.

DISABILITY

- **Social Security disability** may also become an issue in some workers' compensation claims.
- Disabled if:
 - You cannot do work you did before;
 - You cannot adjust to other work b/c of medical condition
 - Disability has lasted or expected to last > 1 yr

CLEAR AS MUD?

No unified
definition of
“Disability”

Is there a way to
integrate these
definitions in a way
that makes sense...?

PURPOSE OF EACH LAW

- Workers' Compensation Act
 - Employers subject to Act must have WC Ins
 - Benefits for covered employees for injuries by accident and occupational disease;
 - Rights can't be contracted away or passed to employee;
 - Fixed benefits, no pain and suffering;
 - Exclusive remedy to employee;
 - Administered by the NCIC.

WORKERS' COMPENSATION

Disability under the WC Act: incapacity because of injury to earn wages which the employee was receiving at time of injury in same or other employment.

- Total incapacity = total disability (97-29);
- Partial incapacity = partial disability (97-30);
- Permanent injury = permanent partial disability (97-31)

Each may have implications under FMLA and ADA

FMLA

- Requires employers to provide up to 12 weeks of unpaid leave during 12 month period to eligible employees for certain family and medical reasons (longer leave in some circumstances);
- Guarantees reinstatement upon return to work;
- Forbids employers from retaliating

FMLA – COVERAGE/ ELIGIBILITY

Employers in interstate
commerce employing

more than 50 employees

Employee eligible if

- Works for covered employer
- worked at least 12 months (doesn't have to be consecutive);
- Employed more than 1250 hours in 12 month period
- Worked in US where at least 50 employees work

FMLA ENTITLEMENT

- *Serious Health Condition of Employee:*
illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities

FMLA ENTITLEMENT

- For birth and care of child of employee;
- Placement of child for adoption or foster care with employee;
- Care for employee's spouse, child or parent with serious health condition;
- Care of "Covered service member" (up to 26 weeks) in qualifying exigencies – family member called to active duty

FMLA - COSTS

- *Unpaid leave*, unless employer requires or permits employees to apply accrued paid time off (vacation/annual leave, sick leave, personal days), unless days are covered by WC or disability payments. Employer may also permit (but not require) application of advance but unearned paid time off toward FMLA absence

FMLA AND WORKERS' COMPENSATION

“Serious health condition” (FMLA) and accidental injury in course and scope of employment resulting in “disability” may coincide

Employer *may* designate time out of work as FMLA leaving running concurrently with WC absence

AMERICANS WITH DISABILITIES (ADA)

- Prohibits employers of > 15 employees from discrimination against disabled with respect to hiring and all terms, conditions and privileges of employment
- May include workplace injury or disease

WHO IS ELIGIBLE UNDER ADAAA?

An Employee is **disabled** if he or she:

- *has a physical or mental impairment which **substantially limits** one or more **major life activities**;*
- *has a record of such an impairment;*
- *is regarded as having such an impairment*

MAJOR LIFE ACTIVITIES

Includes caring for self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working

Major Bodily Functions

Includes immune system, cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory and reproductive

ADA ELIGIBILITY

Disability must “substantially limit one or more major life activities”

- Substantial limitation – standard used to be “unable to perform or severely restricted from performing” activity;
- 2008 ADAAA specifically requires that the new standard will be less stringent and will not require an impairment to be as serious as under prior interpretations

DISABILITY UNDER ADA

Under old ADA, employers frequently litigated whether Employee was **Disabled**. 2008 Amendments greatly expanded definition of *Disabled* and *Substantial Limitation*.

Question now is not whether Employee is *Disabled*, but whether the Employer offered **Reasonable Accommodation**?

REASONABLE ACCOMMODATION

- Employer must make a *reasonable accommodation* to physical/mental limitation unless accommodation would impose *undue hardship*
- Consider partial disability conditions covered under WC scheduled injury statute (97-31)

ADA AND WORKERS' COMPENSATION

WC claimants seek
disability benefits
while out of work

ADA applicants are
seeking to work

The two do not
typically overlap, but
there are some
things to
remember...

ADA AND WORKERS' COMP OVERLAP

- Employer may ask questions about applicant's prior workers' comp claims or occupational injuries only after it has made conditional offer of employment and it asks the same questions of all entering employees in same job category

ADA AND WORKERS' COMP OVERLAP

- Medical information regarding an applicant's or employee's occupational injury or claim must be collected and maintained on separate forms and kept in separate medical file with other information required to be kept confidential under ADAAA

ADA AND WORKERS' COMP OVERLAP

- Only supervisors and managers may be told of necessary restrictions on work or duties
- Others when necessary: first aide/safety personnel; gov't officials investigating compliance; WC officers, carriers in accordance with law

ADA AND WORKERS' COMP EXAMPLES

Back injury resulting in permanent impairment with restrictions has ADA implications

4th Cir. Court of Appeals – has resisted holding that lifting restriction would constitute “disability” under ADA, but has not gone so far as to say lifting restriction would never constitute disability



QUESTIONS?

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THANK YOU!

