

What is Reasonable? Challenges of Providing Employment Accommodations and Leave of Absences Under the ADA & the FMLA

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Americans with Disabilities Act

- The ADA prohibits employment discrimination on the basis of disability.



ADA Basics

1. Definition of Disability – A physical or mental impairment that substantially limits a major life activity
2. Qualified Individual – Can the individual perform the essential functions of the job, with or without a reasonable accommodation?
3. A reasonable accommodation is not required if it would cause an undue hardship
4. Must engage in an “interactive process”



Stressed Out

Joe has bipolar affective disorder that causes him to interrupt meetings, disturb coworkers, and to act erratically, aggressively and rudely.

Q. Are the ability to handle stress and the ability to get along with others essential functions of most jobs?



Stressed Out

Courts have said that the ability to work well with others and the ability to handle a reasonable level of stress are essential functions of most jobs.

Thus, the absence of those skills might prevent an employee from being considered qualified for a job.



Poor Attendance

Over the past month, Sally missed two day of work the first week, four days of work the second, one day work the third week, and two days the fourth week. She did not request permission in advance before being absent from work on those nine dates.



Attendance

Q. Is regular attendance an essential function of a job?

An employer is generally permitted to treat regular attendance as an essential function requirement and need not accommodate erratic or unreliable attendance.



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Attendance

The EEOC has said, “yes,” if regular attendance is a uniformly applied conduct rule that is job-related and consistent with business necessity.

For example, regular attendance might not be essential for flight attendants where an airline routinely approves intermittent and longer-term leaves of absence by its flight attendants.



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Punctuality

Q. Is punctuality an essential function of a job?

It depends. For front desk staff, where their physical presence is required, punctuality could be an essential function. In addition, courts have found that school teachers can be required to be punctual.

For many employers, however, punctual arrival to work would not be an essential function. A start time adjustment could be a reasonable accommodation for an employee who is unable to arrive at the start of a shift.



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Ability to Work Full-Time

Louis comes to you, his supervisor, and says that for “medical reasons,” he will only be able to work half days for the next six months.

Q. Is Louis’s ability to work full-time an essential function of his job? What should you do in this situation?



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Ability to Work Full-Time

Courts have been split on this issue.

- Some courts have found part-time work may be a reasonable accommodation, deeming full-time work to not be an essential function.
- Others have suggested that full-time work can be an essential function. (For example, teachers)



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Family Medical Leave Act (FMLA)

Employee entitled to 12 weeks of job-protected leave in a 12-month period.

Reasons leave may be taken:

1. The birth of son or daughter
2. To care for a spouse, child or parent with a serious health condition
3. For a serious health condition that makes you unable to perform the essential functions of your job



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Intermittent Leave Request

Q. Can an employee request intermittent medical leave and not follow a strict schedule?

It depends. Consider these 3 cases:

1. Someone who has cancer might not be able to predict when she'll need time off?
2. Someone who suffers from chronic fatigue syndrome might request a variable reduced time schedule?
3. Someone who needs periodic kidney dialysis treatments might only require 2 days off per month?



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Medical Documentation – Best Practices

1. After 3 consecutive days of absence, a manager should require an employee to submit medical (or family) leave paperwork.
2. An employer can request periodic (every 30 days) updates to an employee's medical certifications.
3. Following any leave of absence where there is a concern about an employee's ability to perform the essential functions of his/her job, management should require the submission of a Fitness for Duty form before the employee can return to work.



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The LOA Stacker

Issue #1: Vladimir broke his leg in an car accident over the weekend. He calls you and wants to apply for a medical leave of absence while he stays home recuperating. What do you do?

Issue #2: Three weeks into his leave of absence, Vladimir contacts our Benefits Office and states that he is experiencing some hearing loss and he wants to take additional leave to go see hearing specialist. What do you do?



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The LOA Stacker

Issue #3: While he is out on his previously approved medical leaves, Vladimir comes down with pneumonia and is forced to stay home for the next two months. What do you do?

Q. In sum, what documentation should the employer request from Vladimir and when?



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Documentation Request

Medical Certification should include:

1. Commencement date of health condition
2. Probable duration of the condition
3. Appropriate facts regarding the condition



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Stroke Victim

Following a stroke 18 months ago, a senior administrator has remained out of work on a medical leave of absence ever since.

Q. What options are available to manage this employee's leave situation?



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Questions?


