considered a "disability" under the provisions of the Americans with Disabilities Act, as amended, (ADAAA), there is a likelihood that it may apply at least in some ...

Richard D. Alaniz, JD • May. 21, 2018

Workers' compensation claims, and how to keep them under control, have always been a focus for most employers. They occur in virtually all industries and can be costly and time consuming. There is no federal workers' compensation law that addresses workplace injuries. It is a state law issue and each state enacts and enforces its own legal framework. Today, every workers' compensation claim raises the potential for a variety of workplace laws to come in to play. Some have referred to

this intersection of laws as the Bermuda Triangle of the workplace. To keep from

involve some period of leave from the normal job duties, leave laws can also come in to play. It requires patient analysis to work one's way through the various laws to determine whether they apply, to what specific issues, and most importantly what steps must the employer take to be in compliance. The ADAAA, like the anti-discrimination rules of Title VII, applies if the employer has 15 or more employees and the injury at issue is a "disability". It requires an employer to go through the interactive process to determine if a reasonable accommodation is possible without creating an undue burden.

The Family Medical Leave Act

The Family Medical Leave Act (FMLA) applies to all employers with 50 or more employees within a 75-mile radius. These numerical limits, like the 15 employee threshold under the ADAAA, cannot be waived. The FMLA requires employers with 50 or more employees to provide up to 12 weeks of unpaid leave each year to employees who qualify. An employee must have worked at least for 1 year and a minimum of 1,250 hours in that year to be eligible for the unpaid leave. Numerous states and even some cities have adopted medical and family leave laws in recent years. Most are similar to the provisions of the FMLA, and in some cases, it is paid leave. If the injured employee is eligible for FMLA leave, most employers run that leave concurrently with the workers' compensation leave, at least for up to 12 weeks. The employer has the right to designate the leave as FMLA qualifying.

The Usual Workers' Compensation Claim

In a typical workers' compensation claim, for example: an employee with a serious back injury caused by heavy lifting at work, all three of the laws mentioned above could come into play. If, as almost always occurs, the treating medical provider requires that the employee be off the job for a period of time to recover, he would be out due to the workers' compensation qualifying injury. However, he might also

qualify for FMLA leave as well. If the nature of the back injury required follow-up

employee to greater protections and impose greater obligations on the employer. If, for example, the employee was able to work with limitations, the employer would be obligated to go through the "interactive process" to try to identify a reasonable accommodation for the limitations. In addition, if the employer had a policy that limited leave to a specific maximum, say one (1) year, an extension of a few weeks or perhaps even a few months to permit full recovery would likely be considered a "reasonable accommodation" mandated by the Act. A few workers' compensation state laws may have a maximum limit for workers' compensation leave, but most do not and the period of permitted absence can be quite extensive. They do require periodic re-certification of the medical inability to return to work. An ADAAA mandated extension beyond maximum leave periods would also require medical confirmation of the continuing need to be off of work.

Released Back to Work

When an employee is released to return to work from a workers' compensation leave virtually all employers return the person to their former job, although it is not a requirement of most workers' compensation laws. Under the FMLA, the individual must be returned to their former job or one that is substantially similar. This means virtually identical positions in work duties as well as compensation. As for the ADAAA, it has, in practice, virtually the same requirement as the FMLA. However, as noted above, if the person cannot perform all of the essential functions of the job, for example the person is released with limitations, the employer must engage in the "interactive process" and determine what accommodations might be available that do not create an undue hardship. "Reasonable accommodation" here could mean reducing the non-essential duties of the job, switching the person to another open position consistent with any limitations, or offering other accommodations that do not create an undue hardship.

- Communicate with the employee, health care provider, and claim representative frequently to let the employee know that you are concerned for their health and to assess when they may return to work. Do not demand that they return by any set date, tell the employee that you think they are "faking it," "should already be back at work," or make any other statement that could be considered retaliatory.

- Determine whether the FMLA and/or the ADAAA apply and act accordingly.

- Review past claims at your worksite to determine the problem areas or issues that need to be addressed. Where do most injuries occur? Why do they occur? Are proper safety procedures followed? What have you done to prevent injuries? If you can prevent the injury, then you prevent the claim. That's a win.

Conclusion

In addressing the issues in any work-related injury, all three of the laws discussed must be kept in mind. Each may have a role to play and failure to comply with the obligations each one imposes can lead to possible legal action and damaged employee relations. The goal is to properly address work-related injuries and have employees back to work when they are medically cleared to resume their duties.

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Richard D. Alaniz is a partner at Cruickshank & Alaniz, a labor and employment firm based in Houston. He has been at the forefront of labor and employment law for over forty years, including stints with the U.S. Department of Labor and the National Labor Relations Board. Rick is a prolific writer on labor and employment law and conducts frequent seminars to client companies and trade associations across the country. Questions about this article, or requests to subscribe to receive Rick's monthly articles, can be addressed to Rick at (281) 833-2200 or ralaniz@a-c-law.com.

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