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# What Small Businesses Need to Know about the ADA and FMLA

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Supervisors occupy a far more demanding and consequential position in today's workplace given ever increasing regulation. Supervisors are the trainers of new employees, the employees' primary contact with the company, as well as the employer's eyes and ears on the production floor or around the office. Perhaps a supervisor's most significant role is serving as the employer's first line of defense against the incidence and continuation of regulatory non-compliance. The result of the patchwork of regulation, in which federal, state, and even local governments have the authority and inclination to issue rules and regulations that impact the workplace, is a complex web of rules.

Violation of any part of this hodgepodge of often overlapping rules can result in substantial legal liability. Ensuring that your supervisors are able to recognize circumstances that could violate these legal standards or entitle an employee to certain rights in the workplace should be a priority. Unfortunately, far too few employers undertake the necessary effort to effectively prepare their supervisors for one of their most critical roles.

While some of the laws that apply to the workplace address issues with which supervisors are rarely involved, some of the more significant rules involve matters that are common and can arise daily. Among the most significant laws that regularly require a great deal of supervisory involvement to ensure compliance are the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA).

Both relate to the employees' health or to that of a family member. Both laws also have strict provisions and timelines for certain actions to be taken by the employer, such as providing notice of employees' rights or providing required forms. All too often supervisors fail to recognize the circumstances presented by an employee require employer action, and at times quite promptly.

For example, the FMLA, which provides up to 12 weeks of unpaid leave for an employee's serious illness or that of a family member, requires that employers provide employees formal notice of their rights and responsibilities under the law within 5 days of the employee informing management of circumstances that could qualify for FMLA leave. No specific words are required from the employee and the request need not be in writing to trigger the obligation – or even be a request at all. An employee simply mentioning qualifying circumstances may suffice.

A supervisor might easily consider an employee's comments regarding a personal or family illness nothing more than a casual sharing of a personal concern. However,

failure to comply with formal notice requirements in a timely manner in such a circumstance could result in employer liability.

The ADA may result in even greater liability to the unwary employer. Many employees today are working well beyond retirement age, with economic realities forcing some older employees to significantly delay their departure from the workplace. While an aging workforce can offer the benefit of experienced employees, unfortunately, it could also mean more medical issues, some of which may be debilitating.

Most employers are aware that the ADA protects disabled employees in all aspects of the employment relationship. What may be less clear are what medical conditions qualify as a “disability,” and what precisely an employer is obligated to do. A disability is defined as a physical or mental impairment that substantially limits one or more major life activities. The term is defined quite expansively, and almost any limiting medical condition qualifies. In fact, if a medical impairment is more than temporary, it is likely to be considered a disability.

The real issue is how the medical condition affects the employee’s ability to perform the essential function of their job. As used in the definition of disability, “significantly limits one or more life activity” includes such things as caring for ones’ self, performing normal tasks, walking, seeing, hearing, speaking, breathing, eating, drinking, sitting, standing, reading, writing, thinking, learning, and numerous other physical and mental activities.

An employer’s obligations under the ADA are typically triggered by notice to the employer of a medical condition (disability) that limits the employee’s ability to perform the essential function of his/her job. Most commonly, employees will provide the relevant notice to HR or the *employee’s supervisor*. Once notice is received, the employer is obligated to engage in what the ADA terms the “interactive process” to determine whether the employer can provide the employee a “reasonable accommodation” that would permit the employee to perform the essential functions of their job.

This, of course, makes knowing the essential functions of the job is critical. Supervisors are likely the most knowledgeable of what constitutes the essential functions of a given job, especially if an employer does not have written job descriptions, as is the case with many employers. As an aside, while there are many reasons to have good job descriptions and keep them current, their value in addressing ADA issues is among the most compelling.

The interactive process, referred to above, is essentially an individualized assessment of the impact of the employee's disability on his/her specific job, and how the employer and employee might work around or alleviate the limitation. Peripheral or non-essential functions of the person's job may be assigned to another employee or simply not performed. However, if the disabled employee is unable to perform one or more of the essential functions, he/she is deemed unqualified for the job. Well-trained supervisors often prove critical in arriving at the the correct and defensible analysis of performance limitations and offering appropriate accommodation recommendations.

Many of the violations of the FMLA and the ADA are the result of supervisory inaction. The failure to comprehend the significance of information an employee communicates relating to the ADA or FMLA, whether purposefully or in passing, and promptly taking appropriate action, is a good example of the imperative of well-trained supervisors.

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