

## What You Should Know About Workplace Laws

### What Are The Workplace Disability Laws?

During the last few years, employees have been exposed to many new laws, regulations, and acronyms. The Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), and Occupational Safety and Health Act (OSHA) impact upon the workplace. These are different laws enacted at different times with different purposes, and are not totally uniform. You should know about these.

**The Americans with Disabilities Act (ADA)**-The ADA is a federal anti-discrimination statute designed to remove barriers for individuals with disabilities. The ADA seeks to ensure equal access to employment opportunities regardless of whether someone has a disability. Title I prohibits discrimination against any qualified applicant or employee with a disability in all aspects of employment.

**Family and Medical Leave Act (FMLA)**-FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours during the previous 12 months, and if the company employs at least 50 people within a 75-mile radius. There are some areas of interaction between FMLA and ADA. These areas include medical conditions and reasonable accommodations.

A condition that qualifies as a serious health condition may or may not satisfy the ADA definition of disability. Temporary impairments of short duration constitute a serious health condition, but are not disabilities. Conversely, being a person with a disability (e.g., quadriplegia) does not necessarily constitute having a serious health condition.

The concept of reasonable accommodation under the ADA and FMLA are different. For example, an employee undergoing chemotherapy for cancer may request a modified work schedule as a reasonable accommodation under the ADA; it must be provided unless the employer can prove it would create an undue hardship. The same employee could request time off as FMLA leave. The employer must grant an eligible employee up to 12 weeks of unpaid FMLA. There is no undue-hardship exception.

**Occupational Safety and Health Act (OSHA)**-The OSHA Reform Act requires an employer to furnish a work environment that is free of recognized hazards causing or likely to cause death or serious injury, as well as to comply with government safety and health standards. There are some areas of interaction between OSHA and ADA. These areas include standards and

reporting requirements. In complying with specific OSHA standards, employers may want to consider incorporating ADA reasonable accommodation concepts. For example, OSHA requires employees to label, in writing, certain toxic materials and give written materials explaining their potential dangers to employees. An ADA reasonable accommodation could be also using the universal symbol for poison, and providing verbal warnings of the potential danger of certain toxic materials.

Workers' Compensation Laws-Each state has its own workers' compensation laws and second injury fund. The employers' return-to-work policies and procedures for an employee who is injured or disabled must be consistent not only with state workers' compensation laws, but also with ADA, FMLA, and OSHA regulations. It is important to remember that the ADA does not distinguish between reasonable-accommodation requirements for employees with work-related injuries and illnesses as opposed to non work-related injuries and illnesses.

#### What Are Some Suggestions For Dealing With The Different Workplace Laws?

In a large company, these issues are often handled by the Human Resources, Legal, and Risk Management Departments. Following are some suggestions for small business owners:

1. Keeping Informed is the first step in understanding the current laws, regulations, benefits, and other employee-related information that may impact the workplace. This information is available from the State/Federal Departments of Labor, the EEOC, your attorney, accountant, trade associations, and/or insurance agent.
2. Documentation and Recordkeeping are the most important protective steps an employer can take. Document in writing all employee performance and problems.
3. A Company Manual outlining policies and procedures should be presented to every employee with a "sign off" sheet. There can be less of a chance of misinterpretation when the rules are spelled out on paper.
4. A Written Job Description is another essential tool for avoiding misunderstanding of expectations and ultimately discrimination suits. Job descriptions show that the employer has identified the essential job functions and given every applicant the same information and opportunity for the position. With precise explanations of duties and responsibilities, employees know what is expected of them. Employers have the guidelines needed to hire, supervise, evaluate, and promote with maximum effectiveness.
5. A Corrective Action Plan is the best way to handle problems. In the event of problems, several warnings may eliminate the need for drastic

action. Warnings will help justify the corrective action if the warnings are not heeded. Tell the employee what is wrong, what needs to be done to remedy the problem, and what will happen if the problem is not resolved. Document by including a specific time frame for the employee to remedy the problem; confer with the employee regularly to evaluate progress.

6. A Safety Management Program is important in preventing workplace injuries. Studies show that safety and prevention programs, along with a carefully designed work environment, reduce accidents and time off due to sick days.

7. Communication and Common Sense should be underlying principles for dealing with employees. Open, honest, and ongoing communication will resolve many problems. The employer and employee working together can develop creative, flexible strategies to meet the goals of the laws and regulations. Use common sense.

8. Use Outside Professionals if you are unsure. There are many professionals who can provide human-resource management advice in areas of employee benefits, safety and risk management, governmental compliance, personnel research, employee communication, and labor relations.

Where Can I Obtain Additional Information?

President's Committee on Employment of People with Disabilities' Job Accommodation Network (JAN)  
(800) 526-7234 (VOICE/TTY/TTD), (304) 293-5407 (FAX)  
jan@jan.icdi.wvu.edu (e-mail)

Equal Employment Opportunity Commission  
(800) 669-4000 (VOICE), (800) 669-6820 (TTY/TTD),  
(513) 489-8692 (FAX)

Disability and Business Technical Assistance Centers (DBTACs)  
(800) 949-4232 (VOICE/TTY/TTD), (703) 525-6835 (FAX)