

Leave Laws: Compliance, Coordination, and Best Practices

Objectives



- Overview of legally required leave policies
- Recent developments in FMLA interpretation and application
- ADA Best Practices
- How the Paid Medical Leave Act interacts with other laws
- Discretionary leave laws

Legally Required Leave Policies

- What are the various leave laws?
 - Family and Medical Leave Act (FMLA)
 - Americans with Disabilities Act (ADA)
 - Michigan Persons with Disabilities Act
 - Michigan Paid Medical Leave Act (PMLA)

Family and Medical Leave Act (FMLA)



- Covered Employer: employs 50 or more employees within a 75-mile radius of the worksite during a 20 week period of the calendar year or the previous calendar year.

Family and Medical Leave Act

- Eligible Employee: works for a covered employer, has worked for at least 12 months and for at least 1250 hours.
 - Michigan has long been a state that applies an equitable test in favor of employees. If an employer who isn't covered by FMLA offers FMLA, it can be bound by FMLA provisions.
 - Important to be aware of when a company becomes a covered employer and offers FMLA benefits at that time.
 - Times may be changing...



Family and Medical Leave Act

- Qualifying Reasons for Leave:
 - Birth or placement of a child for adoption (applies to women and men equally),
 - a serious health condition,
 - to care for certain family members with a serious health condition,
 - qualifying exigency arising out of employee's select family member if a member of the military on covered active duty.

DOL Opinion Letter: Organ Donation

- August 28, 2018 – Organ Donation is a covered Serious Health Condition
- Look to definition of “serious health condition” for determination of eligibility
- Elective nature of surgery is immaterial
- Would this apply to other elective surgery?
Cosmetic surgery?

Notice of FMLA Eligibility

Employer must notify
employee of FMLA
eligibility within 5 days of
acquiring knowledge that
an employee may be
eligible for FMLA leave



Coordination of Other Leaves with FMLA



Return to Work Policy

- Not required under FMLA, but is permitted.
 - Require that prior to returning to work after FMLA leave employee provides a certification from a health provider stating they are able to return to work and perform the essential functions of their job
 - Employers also want to be careful about requiring an employee to obtain a certification to return to “full duty” work
 - If requiring a return to work certification it’s important to apply the policy uniformly to avoid discrimination or harassment claims



Family and Medical Leave Act

- Dobro's v. Jay Dee Contractors, Inc.
- 2009 Michigan Court of Appeals case
- Held that employers can be prevented from challenging eligibility and entitlement to FMLA benefits after offering said benefits
- This holding may be challenged with the DOL Letter



DOL Opinion Letter: Points Attendance Systems and FMLA

- Employers' points-based attendance policies do not violate FMLA
- Must be applied in non-discriminatory manner
- Employees can not be penalized for taking FMLA and using FMLA can not be used as a negative factor in employment actions
- Employees can not be treated more favorably for using FMLA
- Best practice is to simply freeze the points system while an employee is using FMLA

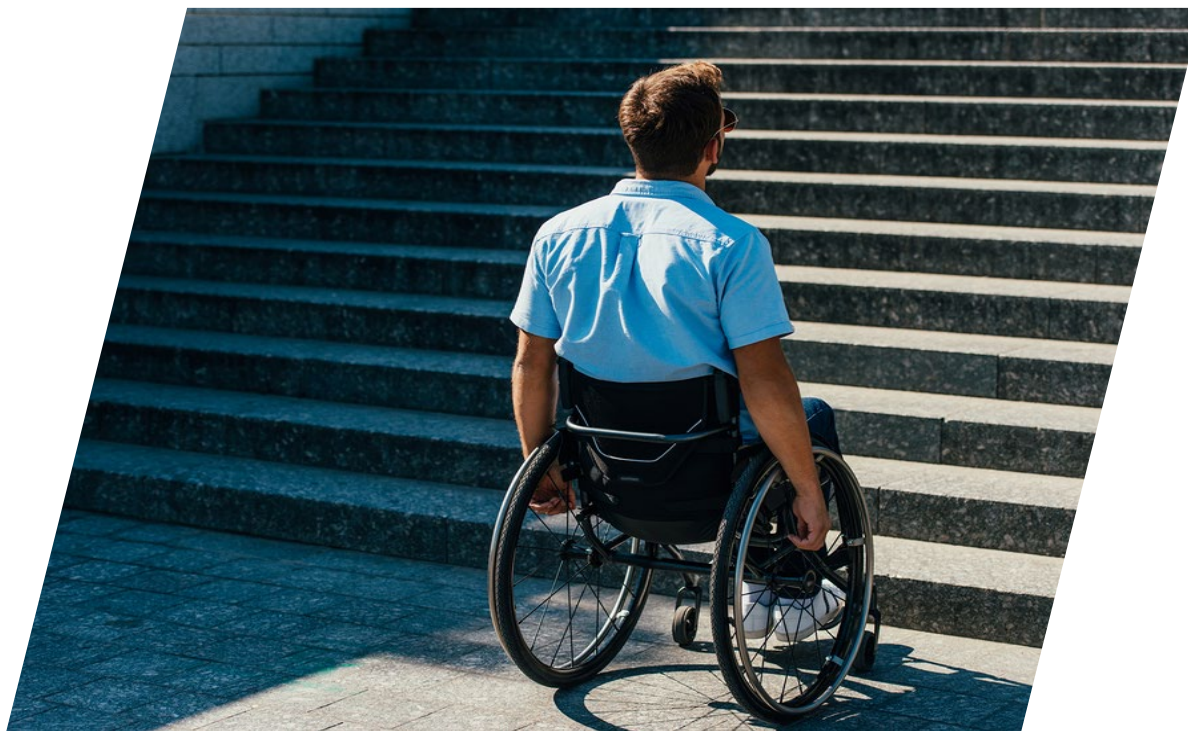
FMLA and Attendance-Based Bonuses



Americans with Disability Act (ADA) & Michigan Persons with Disabilities Civil Rights Act



Essential Functions & Reasonable Accommodations



McDonald v. UAS-GM Center for Human Resources

- Employee requested extended lunch period or an additional break to work out at company gym.
- Employee did not make the request under an accommodation framework.
- Request denied.
- Employee resubmitted request with a note from her physician.
- Before the company could engage in an interactive process the employee resigned after being disciplined for behavioral reasons.
- Employee brought suit against company for failure to engage in interactive process.
- Company prevailed – doctor note that employee provided was too vague and company did not have a chance to engage in interactive process with employee before she resigned.

Hostettler v. Wooster College

- Employee was hired while she was pregnant and negotiated maternity leave since she would otherwise not be eligible for FMLA.
- Prior to returning to work she was diagnosed with PPD and anxiety and received a recommendation for a reduced schedule.
- The employer provided a reduced schedule for a period of time and argued that full-time work was an essential function of the job.
- Court held that an employer cannot deny a modified work schedule as unreasonable unless the employer can show why the employer needs a full-time non-remote schedule.
- Merely stating that anything less than full-time is per se unreasonable does not relieve the employer of ADA responsibilities.

MI Persons with Disabilities Act



MI Persons with Disabilities Act

- Best Practices under the Michigan Persons with Disabilities Civil Rights Act is to:
 - engage in the interactive process
 - document the process
 - be aware that the statute contains clear language on reasonable costs of equipment based on the size of the employer

If challenged, the employee has the burden of proof of first showing that there was a failure to accommodate. After that showing, the employer has the burden of showing an undue hardship.

This is where the cost analysis set forth in the statute would come into play.

Michigan Paid Medical Leave Act



**SICK LEAVE
LAW**

Michigan Paid Medical Leave Act



Discretionary Leave Policies

- What types of policies are out there?
 - Maternity/Parental Leave
 - Leave of Absence
 - Paid Time Off



Discretionary Leave Policies



Leave of Absence

- Outside of legally-required leaves, employers may also provide the benefit of a discretionary leave of absence.
- We often see employers look to their leave of absence policy (if they have one) when an employee has exhausted their 12 week FMLA leave and needs additional time from work.
- A leave of absence policy is an important policy to have in the employee handbook because it will provide guidance when faced with an employee who is seeking more leave.
- The employer must review a request for leave beyond FMLA under an ADA reasonable accommodation framework.

Leave of Absence

- **Severson v. Heartland Woodcraft**

- Employee took FMLA. Employer terminated employee immediately after end of FMLA. Court held that ADA is not a leave of absence statute and extended months-long leave is not a reasonable accommodation. 7th Circuit case, persuasive in MI.

- **Golden v IHA**

- A multi-month leave is not a reasonable accommodation under the ADA.
- Employee needed additional, indefinite time off beyond FMLA, the employer agreed to provide an additional 4 weeks and terminated the employee after the end of the 4 additional weeks of leave. 7th Circuit held that indefinite leave is not reasonable.



Discretionary Leave Policies

- If the failure to provide a reasonable accommodation is the subject of a complaint, the EEOC looks closely at whether the employer was to blame in any breakdown in the interactive process. Best practice is to diligently engage in the process and document each phase of the process to show compliance. And make sure it is an individualized process based on the employee's request, the requirements of the job and the employee's abilities.



Paid Time Off



Paid Time Off

