

Dear HR Knowledge, what are the major differences between the ADA and FMLA?

The Americans with Disabilities Act (ADA) and Family Medical Leave Act (FMLA) both have some form of unpaid leave protection, but there are differences. Here are five major ones.

1. Employer compliance

Private employers with 50 or more employees for 20 or more weeks in the current or preceding calendar year, public employers regardless of headcount, and elementary and secondary schools are known as covered employers under the FMLA. Employers with 15 or more employees are covered under the ADA.

2. Eligibility

To qualify for FMLA, employees must have worked for the employer for 12 months and 1,250 hours and worked at a location where there are at least 50 employees within 75 miles. Under the ADA, every employee is covered on day one, including job applicants.

3. Reasons for leave

In general, FMLA grants leave to eligible employees who need leave for a qualifying reason as defined by the Department of Labor (DOL). For a quick refresher, qualifying reasons include 1) the birth or adoption of a child, 2) an employee's serious health condition, 3) to care for the employee's qualified family member with a serious health condition, 4) a qualifying exigency for an employee's qualified family member on covered active duty, or 5) to care for a servicemember with a serious injury or illness.

ADA leaves can only be requested for the employee's own physical or medical impairment that substantially limits some major life activity. Nonchronic and temporary impairments would not qualify under the ADA, such as the flu or a broken leg.

4. Leave duration

FMLA is much more definitive than the ADA. Under the FMLA, employees can take up to 12 weeks, which can be used all at once or intermittently within a 12-month period, as defined by the employer. The ADA has no time limitations, as it depends on the circumstances; therefore, each situation can look different for each employee.

5. Effectiveness

Generally, whether FMLA leave will be effective for the employee is irrelevant. It also does not matter if the employer will suffer a hardship because the employee is on a leave of absence. Conversely, the ADA grants leave only if it will be an effective accommodation, that is, the goal is to get the employee back to full duty unless that will result in undue hardship to the business. Undue hardship goes beyond financial difficulty, so the employer would have to prove that the accommodation is unduly extensive, substantial, or disruptive and implementing it would fundamentally alter business operations. Keep in mind that reassignment to another job can be considered a last-resort accommodation under the ADA.



Employer takeaway

Leave laws can be tricky to navigate and each situation often presents its own set of challenges, but nonetheless, assessing and providing such leaves is an employer obligation. In this article, we have synthesized guidance from both the DOL and Equal Employment Opportunity Commission (EEOC), so please contact HR Knowledge with questions or to discuss specific situations.

About HR Knowledge

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