

Dear HR Knowledge, do both the FMLA and ADA offer job protection to the employee?

Yes. The Family Medical Leave Act (FMLA) provides up to 12 weeks of job-protected leave. Employers are required to restore the employee to the same or equivalent position and benefits that the employee would have had before taking FMLA leave. Job restoration also applies to employees that take intermittent FMLA leave.

In situations where the employee cannot be returned to the same exact job, they must be given a nearly identical job. This equivalent job must provide the same shift or general work schedule and be at a geographically proximate work site. The job must also involve the same or substantially similar duties, responsibilities, skill, effort, and authority. Additionally, the job must have identical benefits and pay, including overtime and bonus opportunities.

Similarly, the Americans with Disabilities Act (ADA) also provides job-protected leave as a reasonable accommodation. There are few hard and fast rules with ADA leaves, including the length of what constitutes reasonable leave time frames. Therefore, employers should consider any amount of leave that the employee is requesting, if there is medical documentation suggesting so. An indefinite leave of absence; an open-ended schedule; or irregular, unreliable attendance is not a reasonable leave request.

To ascertain how much leave is reasonable, employers should keep in mind that the goal is to get the employee back to full duty or performing the essential functions of the job, with or without accommodation that does not bear an undue hardship to the organization. Under the ADA, employers are obligated to reinstate the employee to his or her original position, barring any undue hardship, once the employee no longer needs the reasonable accommodation. This is stricter than the FMLA, which allows reinstatement to an equivalent position, as described above. If an employer cannot hold the position for the duration of the employee's ADA leave without incurring an undue hardship, then the employer must assess if there is an open position for which the employee is qualified and reinstate the employee at the same level of pay and benefits as the original position. In situations where the employer has exhausted all options, it is the employer's responsibility to bear the heavy burden to prove that no reinstatement options were possible without causing an undue hardship.

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 Department of Labor (DOL) and Equal Employment Opportunity Commission (EEOC), so please contact HR Knowledge with questions or to discuss specific situations.

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