

Injured Employees Present Compliance Juggling Act for Employers

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When an employee suffers an injury, employers must navigate a complicated web of rules to determine what their obligations are under state and federal law. The laws most frequently implicated by an employee's injury are workers' compensation, the Family and Medical Leave Act, the Oregon Family Medical Leave Act, Oregon Sick Leave, the Americans with Disabilities Act and Oregon disability laws. Employers have concurrent responsibilities under these laws, and it is a common pitfall for an employer to dutifully manage their obligations under one law, but fail to address their obligations under another.

Workers' Compensation

Work-related, on-the-job injuries — referred to as "compensable injuries" — may result in an employee filing for workers' compensation benefits and taking a leave of absence, sometimes for an extended period of time. The paramount obligations for an employer whose employee suffers a compensable injury is to avoid any discrimination or retaliation against the worker and to honor any reinstatement and/or reemployment rights.

In Oregon, employers with 21 or more employees generally must reinstate an injured employee to their former position at the conclusion of the employee's leave. If, due to a bona fide business reason, an employee's former position has been eliminated, the employer must offer the worker the most suitable vacant position available.

Employers with six or more employees generally must re-employ an employee who is disabled from performing the duties of their former position at the conclusion of their leave to employment that is both available and suitable.

Family and Medical Leave (FMLA & OFLA)

Generally, FMLA applies to employers with 50 or more employees and OFLA applies to companies with 25 or more employees. Covered employers are required to provide employees 12 weeks of job-protected leave under certain circumstances. In the context of an employee's own injury, the employee may be eligible for protected family leave if they have worked for the employer for a long enough period of time and average at least 25 hours per week during the qualifying period. An employee's leave for a compensable injury would be covered by workers' compensation leave, but also may be covered by FMLA (but not OFLA). A non-compensable injury could qualify an employee for protected time off under both FMLA and OFLA if the injury meets the definition of a "serious health condition." An injury can be considered a serious health condition for many reasons, but this commonly occurs when an employee is unable to work for three or more consecutive days due to their condition.

Oregon Sick Leave (OSL)

An injured employee may qualify for Oregon sick leave. OSL is protected leave, and for employers with ten or more employees, or with six or more employees in Portland, the leave must be paid. Employees accrue at least one hour of paid sick leave for every 30 hours they work up to 40 hours per year. While an employee is



generally eligible for sick leave when they are on OFLA/FMLA leave, the reverse is not always true as an employee may use sick leave while not using OFLA and/or FMLA.

ADA

An injured employee may also be considered disabled under the ADA. Oregon's law that closely mirrors the ADA applies to employers with six or more employees. Because the definition of "disability" is broad under both state and federal law — a physical or mental impairment that substantially limits one or more major life activity — an employee who is receiving workers' compensation benefits or protected medical leave, may also fall under the ADA's protections.

Perhaps the most important obligation for an employer under the ADA and Oregon's disability laws is to provide reasonable accommodations to disabled employees to allow them to fulfill the essential functions of their job. One common (but avoidable) mistake that employers make is to deny leave to an employee who has exhausted or is not eligible for leave under FMLA or OFLA, when leave could serve as a reasonable accommodation.

Counting the number of employees to determine whether one of the above-mentioned laws applies can be tricky as they rely on different methods of counting. Further complicating the analysis is when multiple businesses are considered "integrated" into a single operation, when a business has owners or partners who are classified as employees, and when a business utilizes independent contractors that could be considered employees.

Another common pitfall employers face with injured workers is addressing performance issues or moving forward with a termination around the same time that an employee invokes their rights (generally referred to as engaging in protected activity). When an employee engages in protected activity and then suffers an adverse employment action such as a termination, discipline, or reduction in pay, they may claim discrimination or retaliation. While an employer may have legitimate business justifications for taking the adverse employment action, when the timing of the action and the employee's protected activity are closely connected, the employer will have to carefully consider how to reduce legal risks.

Navigating the laws implicated by an injured worker can present a juggling act. Once an employer becomes aware that they have an injured employee — no matter the cause of the injury — the employer should engage with an employment attorney to ensure that the proper steps are taken to remain in compliance with all applicable laws.

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