

Interaction Between WC, FMLA and RA



Course Contents

This course will provide a brief overview of the following benefits and potential interaction with workers' compensation:

- FMLA
- Reasonable Accommodation
- Emergency Paid Leave

Administration of the FMLA



- The Family and Medical Leave Act of 1993 provides full and part-time Federal employees who have completed 12 months of service with *up to 12 work weeks of unpaid leave during any 12-month period.*
- The 12-month service requirement does not have to be recent or consecutive.
- FMLA is pro-rated for part-time employees.



FMLA for Part-time Employees

- Part-time employees are eligible for FMLA based on the hours worked per week:
 - 16 hours per week – 192 hours
 - 24 hours per week – 288 hours
 - 32 hours per week – 384 hours
- Fee-basis and Intermittent employees do not have regular scheduled tours of duty, so time served in these appointments is not included when determining whether an employee has 12 months of Federal service.

FMLA 12- Month Period



- The 12-month period for FMLA begins on the date the employee first takes FMLA leave and ends one year from that date. (5CFR 630.1203(c))
- Each 12-month period is independent.
- *Example: An employee begins FMLA leave on June 12th. The 12-month period ends of June 11th the following year.*

Question 1

- A full-time employee can receive how many hours of FMLA in a 12-month period?

Answer

480 hours

Workers' Compensation and FMLA



- Employees who file a CA-2 may need to invoke FMLA until their claim is accepted.
- Employees who file a CA-1 may need to invoke FMLA if their claim is denied.
- Coverage for non-work related conditions.

- IMPORTANT NOTE

- An employee who has an accepted claim and work capacity should not be using FMLA to impede the return-to-work process. If they do, challenge their compensation.

Required Medical Documentation



- The medical documentation is required to state the date the serious health condition began; the probable duration of the serious health condition; and the appropriate medical facts, including a general statement regarding the incapacitation, examination, or treatment that may be required by the health care provider (5 CFR 630.1208(b)(1-3)).
- The employee's health care provider may be required to provide the likely frequency and duration of the employee's incapacity.
- If the frequency and/or duration of an employee's absence(s) differ significantly, the supervisor may request an updated medical certification.

Can FMLA Leave be Used Intermittently?



- Yes. Generally, FMLA leave is used intermittently due to chronic serious health conditions (i.e. migraines), and used when symptoms relating to the serious health condition arise.
- However, it cannot be used to avoid RTW under workers' compensation.
- *Note: When FMLA leave is approved to bond with a child, FMLA leave may be used intermittently only if both the employee and the employee's supervisor agree (5 CFR 630.1205(a)).*

Question 2

Jim has 4 hours of work capacity. You discover he has been using FMLA to not work these hours. What should you do?

- A. Mind your business
- B. Tell ER/LR
- C. Challenge his compensation
- D. Notify the FMLA Coordinator

Answer

C. An employee may not use FMLA to avoid RTW.

What Can FMLA be Used For?



Eligible full-time federal employees are entitled to a maximum of 12 administrative work weeks of unpaid leave during any 12-month period for;

- A serious health condition of the employee
- The care of a spouse, son, daughter, or parent of the employee, who has a serious health condition;
- Any qualifying urgent need arising from a spouse, son, daughter or a parent of the employee being covered on active duty in the U.S. Armed Forces.

Serious Health Condition of the Employee

- Employees may use FMLA for a serious health condition.
- 5 CFR 630.1208 (b)(2) states that the medical certification must clearly identify duration and frequency of episodes of incapacity. Open-ended statements such as “intermittent,” “completely unpredictable,” and “unknown” are not acceptable.



Second Medical Opinions



- The agency may require, **at its expense**, that the employee obtain the opinion of a second health care provider designated or approved by the agency.

FMLA - Care of a Family Member

- Family member is defined as a parent, son, daughter, or spouse.
- Grandparents, siblings, in-laws and parent-in-laws are not included.
- The term son or daughter is defined as biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in “loco parentis” who is 18 or older and is incapable of self-care because of mental or physical disability.
- FMLA entitlements cannot be extended to family members not defined as a “family member” listed above (5 U.S.C. 6381 and 5 CFR 630.1202).



Paid Parental Leave

- Available to any Federal employee who is eligible for Family and Medical Leave Act (FMLA) and has a qualifying birth or placement on or after October 1, 2020.
- Paid parental leave may be substituted for any FMLA unpaid leave granted for birth of a son or daughter, or placement of a son or daughter with the employee for adoption or foster care.
- The amount of paid parental leave that is available for such purposes is 12 administrative workweeks in connection with the birth or placement involved.
- To be eligible for paid parental leave, an employee must meet all FMLA eligibility requirements.



Provisional FMLA

- An employee may request provisional FMLA prior to the provision of medical certification.
- This generally applies to last minute requests or when a supervisor questions the validity of the original medical certification.
- Medical certification must be provided within 15 calendar days.
- Period may be extended to 30 calendar days when the employee has made a good faith effort to obtain the documentation.



Provisional FMLA - Continued

- Failure to provide appropriate medical certification within the requested timeframe will result in one of the following:
 - Approved provisional FMLA changed to AWOL
 - Employee may request that the approved provisional leave be charged as leave without pay (LWOP) or charged to the employee's annual and/or sick leave account, as appropriate.
 - *When charged as LWOP, the absence is not protected by FMLA.*



Question 3

True or False? FMLA can be granted before medical documentation is received?

Answer

True. FMLA can be granted for up to 15 days with an additional 15 days available in extenuating circumstances.



Important WC Interactions

Concurrent benefit, may be used for:

- Unadjudicated CA-2 claims
- Denied CA-1 claims
- Non workrelated conditions

Cannot be used to avoid RTW, avoid working hours that an employee has work capacity, or to abandon light duty that has been provided.

OWCP information should not be shared with the FMLA Coordinator, absent a signed release from the employee.

Questions?



Reasonable Accommodation



What is Reasonable Accommodation?



A “reasonable accommodation” is a change in the work environment or in work processes that enables an individual with a disability to enjoy equal employment opportunities. They may be used to help an employee or applicant:

1. Apply for a job
2. Perform the duties of his/her job
3. Enjoy the benefits and privileges of employment.

The ADAAA requires employers to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense (*“undue hardship”*).

Failure to process the accommodation request timely can be a violation of the Rehabilitation Act

Who is a “Qualified Individual” with a disability?



- An "individual with a disability" is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
- The individual, with reasonable accommodation when requested, can perform the essential functions of the position without being a direct threat to the health or safety of the individual or others.
- The essential duties are those which are the core purpose of the job, the ones for which the individual's education, experience, and/or skills are valued.

What is a “Covered Disability”?



- Does not demand extensive analysis
- Determination made by the Agency’s Reasonable Accommodation Specialist
- The Agency must consider:
 - The nature and severity of the individual’s impairment
 - The major life activity or activities that the impairment limits
 - The extent to which the impairment limits the individual’s ability to perform the activity or activities
 - The individual’s record of impairment, if any
 - Medical documentation which may be required to make this determination

What is a Major Life Activity?



The definition of major life activities is VERY broad.

- Walking, seeing, hearing, talking, lifting, and breathing are major life activities. The ability to work can be considered a major life function.
- Functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.
- any mental or psychological disorder such as post-traumatic stress disorder, traumatic brain injury, severe intellectual disability, organic brain syndrome, emotional or mental illness, and learning disabilities.
- Impairments include conditions that are episodic in nature or in remission, such as cancer or epilepsy.
- Conditions that are in remission.
- Impairment to a single organ.

Who is eligible?



Workers' Compensation

A federal employee who sustains a work-related condition

Must meet five basic elements

Reasonable Accommodation

Employees, or applicants who are a qualified individual with a disability as defined by the ADA, as amended in 2008.

- Disability that substantially affects a major life activity
- Able to meet the essential functions of their position, with or without accommodation.
- Both work-related and nonwork-related disabilities



Examples of Reasonable Accommodation

1. Making facilities readily accessible or usable for individuals with disabilities
2. Restructuring marginal job functions
3. Modified work schedules, telework, alternate work locations
4. Obtaining or modifying equipment or devices
5. Adjusting or modifying examinations training materials to make them accessible
6. Providing readers, interpreters or assistive technologies
7. Non-competitive reassignment to another position

Effectiveness of Accommodation



- Federal Agencies do not have to provide the exact accommodation the employee or job applicant wants.
- Agencies may choose an accommodation that is easier or less expensive to provide.
- If more than one accommodation is effective, the Employing Agency has the discretion to choose between effective accommodations.

BUT

- The accommodation provided must be effective in meeting the needs of the employee or applicant.

Interaction Between WC and RA

Workers' Compensation and Reasonable Accommodation are separate, contemporaneous processes.

- Workers' Compensation claims are limited to work related injuries.
- Reasonable Accommodation claims are for any employee (or applicant) with a qualifying disability regardless of whether a Workers' Compensation claim is approved.



Examples of When A WC Claimant May Need Reasonable Accommodation



- ✓ Pending adjudication of a CA-2
- ✓ When a CA-1 claim has been denied
- ✓ If they have nonwork-related conditions
- ✓ To obtain specialty equipment, chairs or ameliorative equipment

It is important to note that an employee cannot use Reasonable Accommodation to obtain light duty or PJO based on their personal preferences.

Question 4

True or False? Reasonable Accommodation is not available for employees with active workers' compensation claims. They are required to use the FECA benefits.

Answer

False. Reasonable Accommodation is available for applicants and employees regardless of whether their disability is work-related or nonwork-related.

Lost Time

Workers' Compensation

- Time off due to medical appointments or disability may be covered by COP or compensation, with appropriate medical documentation.

Reasonable Accommodation

- Absences to attend medical appointments or related to the disability are allowable.

Medical Documentation

Workers' Compensation

- Required to establish causal relationship for all cases
- Ongoing documentation is necessary to support continued benefits or payment of compensation.
- May include review by the DME, examination by OWCP SECOP or Referee physicians.
- May contact treating provider in writing (only) with employee in CC.

Reasonable Accommodation

- Only required when disability and/or need for accommodation is not obvious
- May not request medical information where (a) both the disability and the need for reasonable accommodation are obvious; or (b) the individual has already provided the agency with *sufficient information* to document the existence of the disability and his/her functional limitations.
- Limited release of medical Information may be required when the disability is not apparent. Extensive medical documentation should not be required.
- Medical from prior FFD may be used.

Physical Inability

Workers' Compensation

- Can provide light duty for any restriction short of total bedrest.
- All employees with work capacity should be returned to work.

Reasonable Accommodation

- Can provide a temporary or interim workplace adjustment, when feasible.

Reasonable Accommodations Decisions

- Decisions are made by a designated agency official.
- Individualized assessment to review essential and marginal job functions, the employee's limitations, and possible accommodations
- Failure to engage in the interactive process is a violation of the Rehabilitation Act of 1973, as amended





Accommodation Funding for Technology, Equipment or Modifications

- DoD's CAP program provides assistive technology for Federal employees and Workforce Recruitment Program interns.
- [Computer/Electronic Accommodations Program \(cap.mil\)](https://www.cap.mil)
- Federal Agencies fund remaining accommodations

Permanent Reassignments

Workers' Compensation

- At MMI
- Can modify the employee's position, modify an existing position or create a position
- Employee can remain on light duty until a permanent position is identified

Reasonable Accommodation

- Employee must be able to perform the essential functions of his/her position, with or without accommodation
- Accommodation of last resort
- Vacancy search is for a limited amount of time

Question 5

True or False – An employee's current position cannot be modified for workers' compensation to accommodate restrictions.

- A. True
- B. False

Answer

A. True



Undue Hardship

The following criteria is used to determine undue hardship:

- (1) Nature and cost of the accommodation
- (2) Overall size of the organizational unit with respect to the number of employees, facilities, and size of the budget
- (3) Type of operation, including composition and structure of the workforce
- (4) The impact of the accommodation on the operation of the organization, including the impact on the ability of other employees to perform their duties and the impact on the organization's ability to conduct business

Pay Retention for Reassignment



Workers' Compensation

Can provide pay retention or LWEC to avoid loss of pay to the employee.

Reasonable Accommodation

The employee will be placed at the closest possible pay; however, loss of pay is not covered.

Privacy

Workers' Compensation

- Absent a routine use under DOL GOVT-1, FECA information can only be released with the employee's written consent.
- Case files must be maintained in locked, dedicated file cabinets.
- The existence of a claim is covered by privacy.

Reasonable Accommodation

- The disability, and any medical information obtained in the accommodation process or via other channels, must be kept confidential.
- The Agency may not share the name or the particulars of the disability, or any medical information.
- Medical information or accommodations may not be shared with co-workers or other employees

Question 6

True or False? The Workers' Compensation Specialist and Agency Reasonable Accommodation Specialist can exchange medical information and discuss mutual claimants.

Answer

False. The information maintained by both programs is highly confidential and cannot be shared without a written release of information.

Records

Workers' Compensation

- Must be kept separate from employee's official personnel folder
- Secure, locked cabinets - not accessible by others
- All records must be maintained for three years after case closure; ink signed CA-1, CA-2 and CA-7 forms must be maintained for 15 years

Reasonable Accommodation

- Must be kept separate from employee's official personnel folder
- Maintained securely – not accessible by other staff.
- Must be maintained for at least one year after the individual separates

Governing Regulations

Workers' Compensation

- 20 CFR, Part 10
- 5 USC, Chapter 84

Reasonable Accommodation

- The Rehabilitation Act of 1973
- Americans with Disabilities Act Amendments Act (ADAAA) of 2008
- 29 CFR 1630
- Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA



Questions?

