

THE FMLA, THE ADA AND WORKERS' COMPENSATION LAWS

Primary purpose of the Act	FMLA	ADA (Title I)	Workers' compensation.
Primary purpose of the Act.	To balance the competing obligations of the workplace and family. Provides unpaid leave to an employee to care for a new child, a family member with a serious health condition, or the employee's own serious health condition for up to 12 weeks in a 12 month period. ¹	To eliminate the stereotype that the disabled cannot perform in the workplace in the same manner as non-disabled employees. Prohibits discrimination against "qualified" individuals with a disability who can perform a job with or without a reasonable accommodation, unless the employer can show that the accommodation imposes an undue hardship or the person poses a significant risk of substantial harm to himself or others.	Pays benefits and medical expenses to or on behalf of an employee who suffers an illness or injury at work.
Conditions triggering coverage	Birth, adoption or foster placement of child and first year care of the child; Serious health condition of employee; Serious health condition of immediate family member.	An applicant for employment or an employee who: (1) has a physical or mental disability; (2) has a record of having had a physical or mental disability; or (3) is perceived or regarded as having a physical or mental disability	Accidental injury, illness, disability or death arising out of and in the course of employment.
Covered individuals	Eligible employee	Employees or applicants for employment who request accommodation in the application process	Every employee in pay status (unless the employee signs a release statement refusing workers' compensation benefits)
Individuals eligible	Current employee who has been	Job applicants or employees – no	All employees – no minimum time

¹ An employee who is the immediate family member of a military service member is entitled to 26 weeks of unpaid leave in a 12 month period to care for a covered service member with a serious injury/illness. In addition, employees who are National Guard/Reserves members can use FMLA leave for "qualifying exigencies" arising out of active duty or call to active duty status.

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for protection	employed at NCSU for at least 12 months and worked at least 1250 hours during the previous 12 months.	minimum time requirements.	requirements.
Definitions	<p>“Serious Health Condition” (“SHC”) is an illness, injury, impairment or physical or mental condition that involves in-patient care OR continuing treatment by health care provider.²</p> <p>MAY also constitute a disability under ADA (e.g., most cancers, serious strokes).</p>	<p>An individual is considered to have a “disability” if he/she has a physical or mental impairment that substantially limits one or more major life activities; a record of having such an impairment; or is regarded as having such an impairment.³</p> <p>An impairment is a physiological disorder affecting one or more of a number of body systems or a mental or psychological disorder.⁴</p>	Disability under the workers’ compensation law can differ from disability under ADA. The Workers’ Compensation Act uses the term “disability” to refer to the loss of earning potential, not physical infirmity.
General obligation of the individual	<p>Employee must provide notice of the need for leave.</p> <p>To provide medical certification if requested by employer.</p> <p>To cooperate with employer in arranging leave period.</p>	Applicant or employee must inform employer of disability if seeking an accommodation.	Employee must notify employer immediately of a work related illness or injury.
General obligation of the employer	To provide leave for employees who qualify, and return employee to same or	To engage in individualized interactive process regarding an	To provide compensation through insurance benefits for employees who

² SHC characterized by more than 3 consecutive, full calendar days of incapacity plus two visits to a health care provider or a regimen of continuing treatment.

³ However, individuals covered only because they are “regarded as disabled” are not entitled to a reasonable accommodation.

⁴ Under this definition, pregnancy is *not* a disability because it is not a physiological disorder.

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	similar position at the conclusion of the leave period.	individual's request for accommodation. To provide reasonable accommodation that enables an employee to perform the essential functions of a job, unless the accommodation creates an undue hardship.	are injured at work.
Leave from work	An eligible employee is entitled to take up to 12 weeks of unpaid leave from work.	Leave may be, but is not necessarily, a reasonable accommodation.	Absence from work may be necessary due to a work related illness or injury but the employer may provide light duty to keep the employee at work.
Intermittent leave or part-time work	Intermittent leave or a reduced leave schedule is available if the leave is requested due to a serious health condition of the employee or a qualified family member of the employee. Not available for the birth or adoption of a child, unless employer agrees.	May be a reasonable accommodation.	Not required, but may be used as a form of light duty with the intention of restoring employee to full duty.
Return to work	Employee must be returned to the same or a substantially similar position with equivalent pay and benefits, unless the employee would not be entitled to return to the job is he or she had been working. An employee who cannot perform the essential functions of the position that he left to take leave cannot be required to return to a "light duty" position if	Employer who has provided leave to an employee due to a disability is expected to return the employee to the same position with the same benefits, unless the employee can no longer perform the essential functions of the position, in which case the employer has the obligation to consider transfer to other vacant positions that the employee can perform with or without reasonable	No guaranteed job privileges. However, an employee may not be terminated for filing a workers' compensation claim.

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	leave has not yet been exhausted.	accommodation.	
Medical certification or "fitness for duty examination" upon return to work	Permitted for employee who was on leave due to own serious health condition. ⁵ Examination limited to fitness for performance of essential functions of employee's job.	Permitted. Examination limited to fitness for performance of job duties.	Permitted. Examination limited to fitness for performance of job duties.
Benefits during leave	Group health coverage must be continued through leave.	Continued coverage during leave not required if employer does not provide continuation of benefits to non-disabled employees on leave.	Group health coverage must be continued through leave.
Medical inquires	Inquiries limited to condition for which leave is requested.	No inquiries pre-offer. Post-offer inquiries must be job related and consistent with business necessity. Employer cannot inquire of workers' compensation history at application stage.	Employer generally has access to medical records for current condition. Employer may have access to medical records of prior illness or injury if need justified.
Examination by employer's doctor to confirm employee's condition.	If employer disagrees with certification, employer may obtain a second opinion at its own expense. If results differ, a binding third opinion may be requested, also at employer's expense.	Post-offer physical examination may be required so long as it is job related and is consistent with business necessity, and performed on all new employees in that position.	Employer almost always has a right to a "defense examination" where employer is challenging the employee's right to benefits.
Employee's failure to cooperate or submit to medical examination	Leave is not protected by FMLA.	Employee may be deemed not a qualified individual with a disability.	Employee may reduce or lose benefits.
Medical records.	All medical documentation must be maintained separate and apart from	All medical documentation must be maintained separate and apart from	Medical information can be shared with the Industrial Commission and

⁵ Where reasonable job safety concerns exist, employer may require fitness-for duty exam prior to employee's return to work after taking intermittent leave.

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	personnel files. Supervisor may be informed of employee's medical condition, necessary accommodations or restrictions. NCSU may share medical information with its health care provider.	personnel files. Supervisor may be informed of employee's medical condition, necessary accommodations or restrictions. NCSU may share medical information with its health care provider.	NCSU, and in some cases, first aid and safety workers.
Relationship between the laws	FMLA and ADA both require a covered employer to grant medical leave to an employee in certain circumstances. FMLA and Title VII both have requirements governing leave for pregnancy and pregnancy-related conditions.	Like FMLA, ADA addresses requirements for granting leave to employees in certain circumstances. ADA prohibits employers from discriminating against qualified individuals because of disability in all aspects of employment.	The Workers' Compensation Act is a state law that provides a system for securing prompt and fair settlement of employees' claims against employers for occupational injury and illness.
NCSU Policies	NCSU Family Medical Leave NCSU POL05.30.01 UNC POL Manual 300.2.11[G]	NCSU REG05.00.02 NCSU REG02.20.01	NCSU REG04.20.04
NCSU Resources	Benefits Office (919-515-2151) Office of General Counsel (919-515-3071) Human Resources Information Management (919-515-7929)	Disability Services Office (919-515-7653) ADA Coordinator (919-513-3768) Office of General Counsel (919-515-3071)	Benefits Office (919-515-2151) Office of General Counsel (919-515-3071) Human Resources Information Management (919-515-7929)
Enforcing Agency	U.S. Department of Labor	Equal Employment Opportunity Commission (employees) U.S. Department of Education - Office for Civil Rights (students)	North Carolina Industrial Commission
Internet Resources	http://www.dol.gov/whd/fmla/index.htm	http://www.ada.gov	http://www.ic.nc.gov/