



imagine HR

NEWS

NAVIGATING EMPLOYEE LEAVE LAWS – FMLA & ADA

Can You Imagine A Better Workplace?

FAMILY & MEDICAL LEAVE ACT (FMLA)

The FMLA is a federal labor law that guarantees eligible employees up to 12 weeks of unpaid, job-protected leave for reasons related to pregnancy, childcare, serious health conditions, and military-related leaves. This law only applies to employers with more than 50 employees and contains other eligibility requirements. The biggest impact to businesses is that they must hold the employee's job and continue to provide health benefits.

AMERICANS WITH DISABILITIES ACT (ADA)

The ADA prohibits discrimination against individuals with disabilities. This law has been on the books since 1990 when George H.W. Bush signed it into law to address issues of widespread discrimination against people with disabilities. Today, it is more relevant than ever since employees are requesting time off and other flexible work arrangements in record numbers as accommodations under this law for medical conditions.

MANAGING FMLA AND ADA LAWS

Trying to manage these leave laws can be extremely challenging and tricky. Employers often struggle to understand how these laws interact and what their legal obligations are under these laws. Some basic understanding is necessary to avoid legal troubles, particularly in today's day and age when serious health conditions, disabilities and mental health issues continue to rise among our workforce.



PAID LEAVE LAWS

While employers with over 50 employees must provide unpaid leave under the FMLA, there's no federal paid sick leave law that requires a private employer to pay for medical leave. However, there is a growing movement of laws being created at state and local levels to provide paid sick leave. Right now, private employers in more than a dozen states, plus 2 dozen municipalities across the U.S. are required to provide some form of paid sick leave to eligible employees. There is no such requirement in Ohio (at least not now) – employers here can still choose whether they want to provide paid time off when an employee is off on FMLA leave.

Meet Scott Bauchmoyer!

Managing Wealth with a Personal Touch



“The two most important things to have when it comes to your finances are to have a plan, and a trusted planner,” states Scott Bauchmoyer, a financial planner with Merrill Lynch.

Scott focuses his practice around his clients, not the markets. “It’s my job to know each person, their goals, dreams and worries as well as possible in order to create a plan that addresses every issue.”

He does that by leveraging Merrill Lynch’s award-winning research along with the power of Bank of America. That allows him to provide comprehensive financial solutions such as investments, retirement, insurance, lending, trust services and banking. The goal is to simplify his clients’ lives and maximize their assets.

“I strive to combine the power of Merrill Lynch’s world-class research with the personal touch of a small boutique practice,” he continued. “While my profession is to help people with their finances, my passion is helping people in any way possible. I take pride in solving problems for others or helping personally whenever I can. I am constantly networking in order to strengthen my contacts and establish resources for my clients. Whether they may need to remodel their home, find an attorney, buy a new car, or hire an accountant, I want to be the one to make the introduction to the right professional for their needs.”

Scott became a financial advisor after seeing numerous families fall victim to poor planning without the guidance of a dedicated financial advisor. “So many people worked so hard throughout their careers without being able to enjoy the fruits of their labor,” he explained. “I want to make sure that my clients make the most of their hard work and live the best life possible with the assets that they have.”

After working for 15 years in various roles in the financial world, Bauchmoyer realized he could make the greatest impact by being a financial advisor. He is a sole practitioner but partners with over a dozen specialists at Merrill Lynch and Bank of America. Merrill Lynch has been in business for 108 years as of January 2022.

Scott was born in Cleveland, raised in Fairview Park, and now lives in Avon with his wife, Sadie, son, Dean, and Golden Retriever, Murphy. He sits on the Board of Directors at Fedor Manor, a senior living facility in Lakewood. In his free time, he enjoys cooking, cars, fitness and sports.

More information about Scott and his financial planning services can be found at <https://fa.ml.com/scott-bauchmoyer>. He can be reached at 216-363-6617 or by emailing scott.bauchmoyer@ml.com. His office is located at 1375 East 9th St Suite 1400 Cleveland, OH 44114.



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SPOTLIGHT ON BRIAN BOFF

Brian Boff is a Major Accounts Executive at Alliance Human Capital Management. Not only is he a good friend and a great person, he is a highly accomplished sales professional with 20 years of sales management and management experience.

AllianceHCM is a best-in-class solution to an employer's payroll and HR needs. Their human capital management software is a "one platform, one login, one database" system that makes employee onboarding simple yet powerful. The AllianceHCM suite of services modernizes and simplifies every aspect of employee management - from recruiting, onboarding and training to the way you pay employees and retain them.

I love working with Brian because he is truly passionate about working with companies who want to maintain a strong company culture and he always ensure the best customer service with his personalized approach to helping clients from the needs assessment phase to the implementation phase.

If you are considering transitioning to a new payroll/HRIS provider, reach out to Brian and he'll help you get started!



Brian Boff

Major Account Sales Executive

O: 440-554-3813

Great Lakes Region

LEAVE AS A REASONABLE ACCOMMODATION CONTINUES TO CONFOUND EMPLOYERS

If you are in business, you most likely have dealt with this scenario - an employee needs time off from work because of a medical issue. You may or may not have to provide FMLA depending on your size and whether an employee has worked the requisite 1,250 hours within the prior 12-month period. If you are not obligated to provide FMLA legally, you still may be legally required to consider a request for time off due to a medical issue under the ADA.

The confusing part - what if an employee wants to take one month, six months or a one year leave of absence because of their medical issue? Are you obligated to keep their job open? The issue of leaves of absence as a reasonable accommodation under the ADA continues to trouble employers. In comparison to FMLA, which provides fairly bright lines regarding when leave is required and how much leave is permitted, the ADA's lines are blurry when it comes to leave as a reasonable accommodation.

In a recent decision (April 2022) the Sixth Circuit Court of Appeals found in *King v. Steward Trumbell Memorial*

Hospital that Jeanne King, who worked as an RN for the hospital, was unlawfully denied a reasonable accommodation under the ADA when the hospital terminated her employment after she had missed five weeks of work due to severe asthma-related symptoms. The hospital argued that she was not eligible for FMLA because she had not worked the requisite 1,250 hours and that her request for five weeks off was unreasonable because "in-person attendance was an essential function of an RN's job." The trial court agreed. However, the court of appeals disagreed and reversed the decision in favor of the hospital, stating that the request was reasonable because the leave requested "enables the employee to return to work following the period of leave requested as an accommodation - i.e. it enables the employee to perform her essential functions."

Given that request for leave may be considered reasonable under law, the next question becomes, how much leave is reasonable? This is where things get tricky and most courts will weigh many factors, such as the criticalness of the role, the size of the business, what the company has done in the past (did they provide

Continue on page 4...

Continued from page 3...

other comparable employees time off for a lengthy period?), if there is a company policy regarding extended leaves, whether granting the leave would medically allow the employee to recover and return to work, etc. In the case above, Ms. King requested five weeks of medical leave, which the appeals court found to be reasonable after weighing many factors.

What we know from reviewing the cases – while the reasonableness of a leave of absence oftentimes depends on the circumstances, generally speaking a leave request of 30 days or less is likely to be reasonable. It would likely take an employer about that long to fill the position anyway; so up to 30 days may be okay.

Tips and takeaways – (1) if an employee requests leave as an accommodation (and is not FMLA eligible), the employer should request medical information from the employee’s healthcare provider; (2) if the provider states that the employee’s leave should be indefinite, then it can be denied as unreasonable; (3) if the provider states an expected return-to-work date, then the employer should determine whether the amount of leave is “reasonable” (considering many factors); (4) if the employee is unable to return to work and requests no other extensions, then the employer can safely terminate employment.

Bottom line – don’t just say “no, that’s not reasonable” when an employee requests time off for a medical issue – simply ask for documentation from the healthcare provider and work cooperatively and in good faith to see if there is a reasonable middle ground. You don’t have to provide leave for an inordinate period of time if there are business-related reasons that necessitate filling the position but be fair and logical in deciding what will work for both the employee and employer.

Because of the lack of clear lines in what constitutes reasonableness under the ADA, it’s never easy dealing with ADA leave requests. The best you can do is listen, ask for medical information to understand the scope of the medical issue and show good faith in working with the employee to determine a win-win for all.



MENTAL HEALTH AND THE FMLA AND ADA

Most people easily recognize that a physical illness or disability may require a reasonable accommodation under the ADA or time off under the FMLA; but many do not realize that mental health issues can also be considered a “qualified disability” or “serious health condition” under these laws.

With 1 in 4 adults in the U.S. experiencing a mental health impairment and suicide rates continuing to climb, chances are that an employer at some point will have an employee struggling with mental health. Think about these important points the next time an employee openly shares their mental health issues with you:

Continue on page 5...

Continued from page 4...

1. Once an employee puts the employer on notice of a possible health concern, HR should be contacted to begin having communications with the employee to ascertain whether the condition warrants FMLA leave or an ADA accommodation.
2. Train managers and supervisors on how to respond once they realize an employee is struggling with mental health issues or is requesting time off to deal with the matter. An employee who meets the eligibility criteria of these laws may be entitled to take consecutive or intermittent time off (i.e., to attend appointments, therapy, counseling sessions).
3. Employers can (and should) ask for medical verification of the issue; they should not try to make their own diagnosis. Instead, leave any diagnosis to the medical professionals and then work with the employee and their healthcare provider to determine the best course of action moving forward.
4. The ADA requires that an employer engage in an "interactive process" with the employee – this simply means that an employer has the obligation to engage with and talk to the employee about potential accommodations (i.e., temporary leave of absence, schedule flexibility, job reassignment) that can be made in order to get the employee back to performing the essential functions of the job.
5. And don't forget that substance abuse addiction can be considered a qualifying disability or serious health condition under these laws, giving employees job protections when they are seeking treatment or having to take time off for rehabilitation.

Best practice tip – have a process in place for evaluating accommodation requests. Don't just wing it. With a consistent process, you will send the message that you take all employee medical issues/requests for accommodations serious and will work cooperatively with the employee to find the best solution – making sure the employee is receiving adequate care and treatment while also ensuring the business is still operating as smoothly as possible.

Employees should know that having a medical issue does not give them free rein to come and go as they please and not to perform their job up to expected standards. Let the employee know that you will work with them by providing a reasonable accommodation and in return, you expect that they also do their part in cooperating with the company to find an accommodation that does not place an undue burden on the company, nor cause safety risks to others at the company.

If someone with a mental health condition starts to act volatile during work or struggles keeping up with performance, an employer can take action and does not have to outright accept this. However, there is a balance in how to deal with these situations and it's best to reach out to an HR professional or employment law expert for assistance.



Thank you for taking the time to read my newsletter. I will continue to share important information on relevant workplace topics and spotlight businesses and consultants here in Northeast Ohio making a difference. Feel free to reach out anytime at stella@imaginehrconsulting.com or 440.897.1991 for more information.

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"Despite the workplace challenges that we all deal with every day, I hope everyone is having a great and productive summer! There is so much to think about when it comes to workplace issues and it's important to have solid policies and practices in place to keep things consistent and to make sure everyone is hearing the same message. ImagineHR is always here to help – whether it's navigating the murky waters of employee requests for time off or coming up with a plan of action when an employee is going through a rough time emotionally or mentally. There are always legal considerations as well as a common sense approach to handling employment matters. There is never a dull moment in the world of work!"