



The Legal Trifecta: Navigating the Intersection of ADA, FMLA, and Workers' Compensation

Susan W. Brecher, Esq.

Judy Young

Overall Goals

- Provide an overview of ADA, FMLA, and Workers' Compensation
- Analyze the interplay and implication of these three laws through a case study presentation
- Explore best practices and strategies for optimizing productivity and maintaining morale



Part 1: Case Study

- Mavis has been working 2 years as a research analyst at XYZ
- Prior to coming to the organization, she injured her back in a car accident
- Mavis slipped in the office bathroom and hurt her back
- She left work immediately to see her doctor

What laws apply – FMLA? ADA? Workers' Comp?

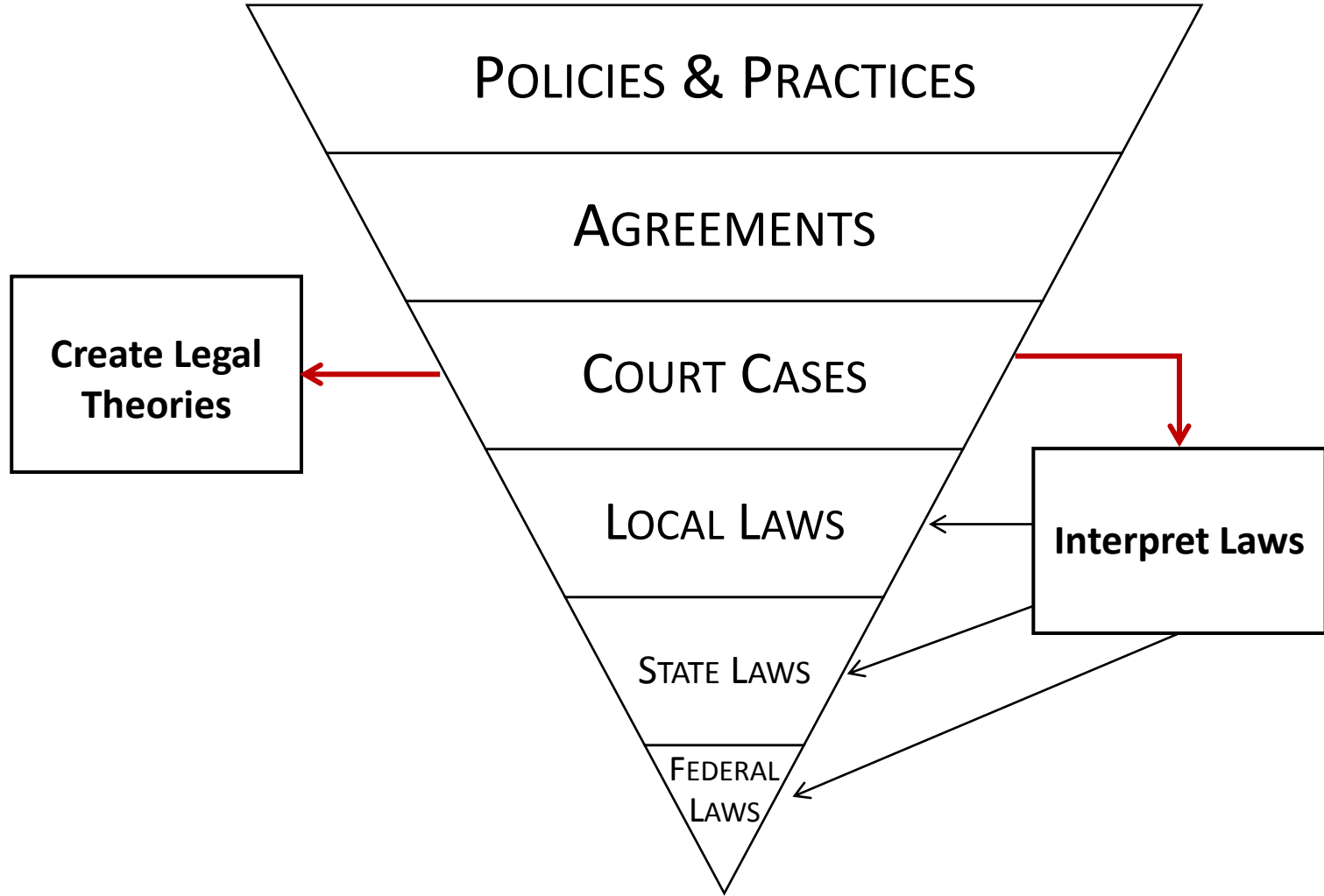


SALSA
Strategy, Access, & Leadership in San Antonio



Layers of Employee Rights

The Relationships Between Laws, Court Cases, Agreements and Policies



ADA/FMLA/Workers' Comp for Employee Medical Conditions

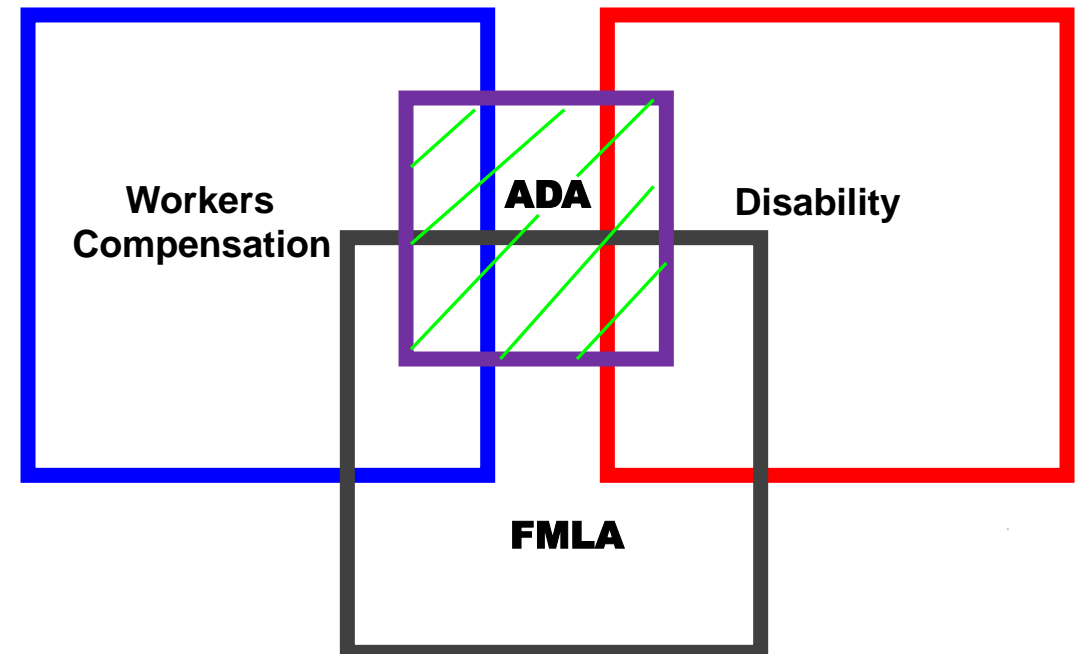
Federal

- **ADA:** Employee with a covered disability
- **FMLA:** Eligible employee with a serious medical condition

State and Local

- **WC:** Employee injured at work
- **Disability:** Employee with a covered disability (e.g., pregnancy)

The complexity of the interplay requires legal advice



Relevant Overview Information

- FMLA is an employee benefit
 - Must be eligible
 - Allows leave for serious medical condition of an employee
 - Leave limited to 12 work-weeks within 12 months
 - Includes intermittent leave which can be taken in short intervals
 - Restores employee to same or equivalent job
 - Maintains same health benefits

Relevant Overview Information

- ADA is an employee right
 - Disability
 - Mental or physical impairment that substantially limits a major life activity including major bodily functions
 - Person has a record of the disability
 - Person is regarded as having a disability
 - Applications
 - Interprets definitions of disability broadly
 - Focuses on nondiscrimination and reasonable accommodations (RA)
 - Requires an interactive process

Relevant Overview Information

- Workers' Compensation—is an employer insurance
 - Determined by individual state laws
 - Covers employees injured at work
 - Provides percentage of wage replacement
 - Pays for medical treatment and rehabilitation
 - Minimizes employer's liability



Part 2: Case Study

- Mavis slipped in the office bathroom and hurt her back
- She left work immediately to see her doctor
- **Mavis called her manager the next day and said she would be out for a week to rest her back because she fell in the office bathroom**

What steps should be taken?

Practical Application

Steps to Take – Manager

- Send employee to HR
- Explain to the employee
 - Thank you for bringing this to my attention
 - Your request for time off relates to policies that should be discussed with HR
 - I am going to advise HR that you will be contacting them



Practical Application

Steps to Take – HR

- Advise the employee in simple language about
 - Work-related injuries including reporting requirements
 - Leave, accommodations and flexible opportunities
 - Required medical documentation
- Explain to managers that employees may not use “magic words” that trigger laws related to medical conditions
- Advise managers and employees about the “go-to” person
- Seek legal advice, where appropriate

Practical Application

Steps to Take – HR

- Explain the employee's Leave of Absence (LOA) responsibilities
 - We will need your doctor's appropriate medical documentation
 - Our leave policy would entitle you to take time off as needed
 - If appropriate, it will be designated as FMLA
 - You will be advised when close to using up leave entitlement

Practical Application

Steps to Take – HR

- Ensure the Manager understands
 - Not to make comments about the employee taking time off
 - There cannot be any discrimination, retaliation or interference
 - What to communicate with the employee's co-workers
 - Not to discuss the employee's medical condition with the employee or co-workers
 - To seek advice from HR before taking any actions or if there are any concerns

Part 3: Case Study

- During the week she was out, Mavis provided a note that she could return to a “light duty” assignment
- HR asked Mavis to request clarification with regard to her specific limitations
- In the new note, the HCP indicated:
 - Mavis could only work 3 days a week because she needed physical therapy
 - On the days she worked, she needed breaks to rest her back

What does “light duty” mean?

What guidance should be given to the manager?

Light Duty

- Light duty has various meanings and implications in relation to employee's specific limitations
 - Restricted duties
 - Entirely different job
 - Reduced schedule
 - Modified schedule
 - Job sharing
 - Reassignment of marginal duties

Conditions for Light Duty

- FMLA
 - Intermittent leave unless it unduly disrupts operations
 - If it disrupts the operation, continued full time leave for remaining period
- Workers' Comp
 - Employer's option to provide light duty
 - If employee refuses, will lose WC benefits
- ADA
 - Engage in the interactive process
 - Review the essential functions of the position
 - Consider RA unless it creates an undue hardship

Part 4: Case Study

- HR notified Mavis of her FMLA expected end date and that she would need to work 5 days a week
- Mavis provided HR with a note from her HCP that she could only work 3 days a week and would continue to need breaks

What are the implications of return-to-work?

Reasonable Accommodation

- RA is an ongoing obligation
- Employees are not entitled to the RA of their choice
- Leave or flexible scheduling can be an RA when the employee has exhausted FMLA
- Engage in the interactive dialogue to determine the best option for the employer and employee

Interactive Process

- HR can discuss with the manager options and effective solutions to consider to meet business needs
- Only provide managers with work related limitations, not medical information
- The employee has the right to select medical leave or a flexible schedule RA, if it is not an undue hardship
- Good faith efforts are the responsibility of the employee and employer

Part 5: Case Study

- Mavis complained to HR:
 - My manager told everyone about my bad back
 - My co-workers keep making comments to me about getting time off during the busy season
 - They also make jokes about “lazy sick” people

What steps should be taken?

Practical Application

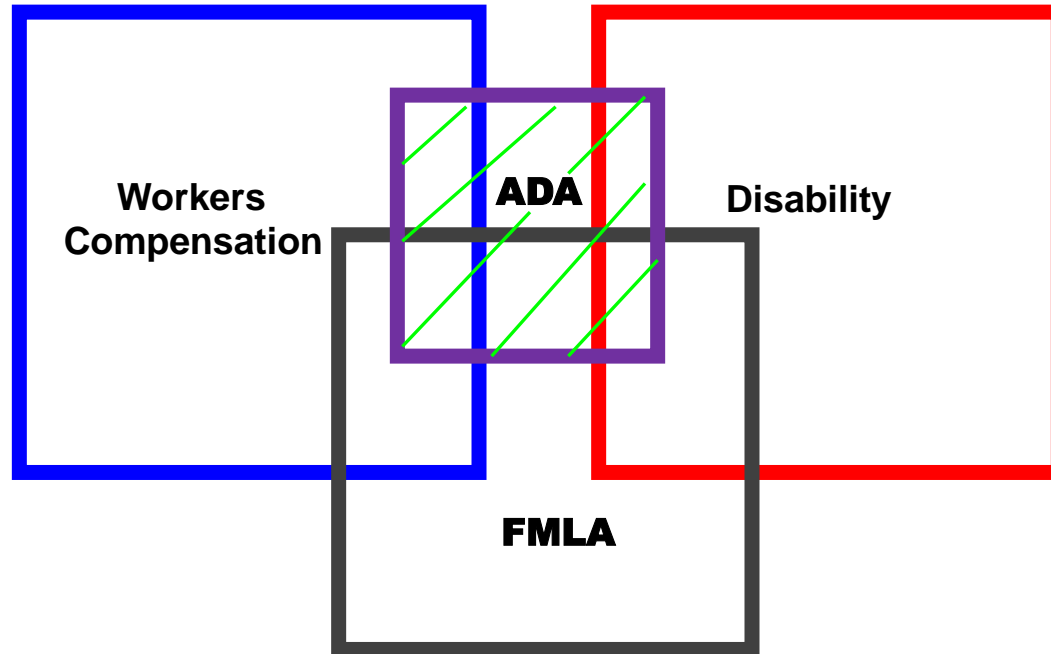
- In response to co-workers' questions, managers can explain
 - We help all our employees to be as productive as possible and are willing to provide the tools needed to do so
 - Employees have different working styles and needs
 - We have good business reasons for the actions taken
 - We are following our policies (compliance requirements)

Employer Responsibilities

- Managers should not discuss the employee's medical condition with employee or co-workers
- Advise employees that medical information will be kept confidential
 - Managers will have limited knowledge about reasons for medical leave or RA
 - You can consider what information you may want to share with others
- Employers have the obligation to address employees' inappropriate behaviors and get the conduct to stop

Summary

- State and local laws can provide additional rights
- Employees are entitled to the most generous rights provided under the law
- Collective Bargaining Agreements and policies can give employees greater rights
- Employees do not need to use “magic words” to invoke rights



Learning Points

- Analyze each law separately and determine which law(s) apply to the employee's request
 - Work-related injury (Workers' Comp)
 - Serious health condition (FMLA)
 - Disability covered by ADA and/or state/local laws
- When more than one law applies, provide the one that offers the greater rights and benefits
- The same terminology may be used for different laws and the meanings can vary
- Employers and employees often use words without regard to the legal definitions

Learning Points

- HR should partner with legal and any other experts, where appropriate
- Ensure that there is coordination among all departments and third-party vendors that manage employee medical and leave requests and information
- Managers need to know to inform HR about requests relating to medical conditions
- Ensure that managers understand how timing of employment decisions may be viewed in the context of medical leaves, light duty and RA

Learning Points

- Ensure that the managers understand
 - There cannot be
 - Interference with approved medical leave
 - Discrimination based on medical leave or RA
 - Retaliation based on medical leave or RA
- Ensure that employees understand that they cannot make inappropriate comments about medical conditions





The Intersection of ADA/FMLA/Workers' Comp

- Key questions about a medical condition:
 - Is it a work-related injury?
 - Is it a request for a leave of absence?
 - Is it a request for a reasonable accommodation?
 - Is there potential discrimination?
 - What policies apply?
 - What other departments need to be contacted?
 - What advice is needed?
 - What information needs to be provided?



Questions?

Thank You!

Susan W. Brecher Esq.

Cornell University, ILR School
swb6@cornell.edu

Judy Young

Cornell University, ILR School
jy335@cornell.edu

Resources

EEOC

- EEOC Enforcement Guidance: Worker's Compensation and the ADA:
<https://www.eeoc.gov/policy/docs/workcomp.html>
- Requests for Medical Information in Procedures for Providing Reasonable Accommodation for Individuals with Disabilities in Section D
http://www.eeoc.gov/eeoc/internal/reasonable_accommodation.cfm
- Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the ADA
<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>
- Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the ADA
<http://www.eeoc.gov/policy/docs/accommodation.html>

Resources

DOL

- Employment Laws: Medical and Disability Related Leave
<http://www.dol.gov/odep/pubs/fact/employ.htm>
- Protection for Individuals under the FMLA
<http://www.dol.gov/whd/regs/compliance/whdfs77b.htm>
- FMLA Forms
<http://www.dol.gov/whd/forms/>

HR Daily Advisor

- Interplay Law Chart: FMLA, ADA, & Workers Comp
<http://hrdailyadvisor.blr.com/resource/leave-maze-fmla-ada-compensation/>