

Ethics & Compliance Monthly Education Series

Family and Medical Leave Act and The Americans with Disabilities Act

Presented by: Molly Freeman & Lauren Schipper



University of Colorado **Boulder**

Our Offices

- Employee Relations (ER)

- Performance Management
- Progressive Discipline
- Leave and the FMLA
- Reasonable Employer
- Leave Sharing

- ADA Compliance

- Equal Access
- Employment
- Pregnancy
- Training



Case Study



John is an accounting technician and has been with the University for three years. Over the last two months, Sally, John's supervisor, begins to notice that John is arriving to work late and has been making mistakes in the database system. Sally decides to address the performance issues with John. In doing so, he discloses he's having difficulty concentrating at work because he isn't getting much sleep. He also explains to Sally that the deadlines he has to meet are causing anxiety. John promises Sally he will work on correcting his mistakes.

- As a supervisor, how would you respond to this?
- What campus resources come to mind as a referral for John?
- Would you reach out to anyone on John's behalf?



Supporting Our Strategic Imperatives

- Shape Tomorrow's Leaders → Student Experience & Retention
- Be the Top University for Innovation → Employee Relations and ADA Collaboration, FMLA Centralization, Streamlined Process
- Positively Impact Humanity → Commitment to our Employees



Family and Medical Leave Act

The Family and Medical Leave Act is Federally mandated, requiring eligible employers to provide eligible employees the right to take job protected and unpaid leave for qualifying Family and Medical reasons.

Eligibility:

University Staff/Faculty/Research Faculty:

- 12 months of service and 1,250 hours worked in previous 12 months

Classified Staff:

- 12 months of State service

The Basics:

- Leave runs concurrently with other types of paid leave (sick, vacation, short-term disability and Parental leave)
- Leave is unpaid
- Benefits continuation
- Job restoration to the same or equivalent position



Qualifying Conditions

- The birth and care of newborn child
- The placement and care of a child from adoption or foster care
- To care for a spouse, civil union partner, domestic partner, child, or parent with a serious health condition
- For employee's own serious health condition
- For an employee to care for a parent, spouse, civil union partner, domestic partner, child or next of kin who is an injured service member (26 weeks)
- Due to a qualifying exigency when a parent, child, spouse, civil union partner, or domestic partner is called up for active military duty



Medical Documentation & Certification Process

	Employee	Employer
Request for Leave	X	
Notice of Eligibility Rights & Responsibilities		X
Medical Certification	X	
Designation Notice		X
Fitness to Return	X	

Note:

University Staff/Faculty/Research Faculty employees use

Department of Labor FMLA Forms

Classified Staff employees use State of Colorado Forms



Parental Leave

- University of Colorado Regent Administrative Policy Statement 5019
- University staff and faculty who have been employed with CU continuously for one year are entitled to take up to six months of unpaid Parental Leave following the birth or adoption of a child
- Any accrued sick and vacation leave (and unpaid leave) may be used during this time
- Parental Leave must be taken within twelve months of the birth or adoption of child
- Parental Leave runs concurrently with FMLA



Americans with Disabilities Act

- Prohibits discrimination against individuals with disabilities
- Defining a disability
 - Major Life Activities
 - caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working
 - Duration, Severity
 - Generally 3-6 months minimum
 - Substantially limiting



Interactive Process

- Opportunity to identify limitations to assess accommodations
 - Self report
 - Medical documentation
- Engage supervisor and employee separately
 - Allows for open, honest discussion
 - ADA Compliance neutral party
- Notice of Determination
 - Accommodation outcome
 - Modified Work Schedule
 - Technology
 - Leave
 - Ergonomics
 - Modification of how and when duties are performed
 - Needs to remain separate from personnel file
 - Legitimate business need to know



Supervisor Role

As a Supervisor **Look & Listen** for:

- Out of the office for more than 3 consecutive days due to sick leave
- Pain, fatigue or headaches
- Lack of concentration
- Changes in behavior or mood
- Change in attendance or patterns of leave
- Performance issues
- Emotional outbursts
- Change in grooming habits
- On the job injury



Questions you can ask:

- Is there something we can do to help you in your job?
- Do you have a need for leave? If yes, refer!
- Was your absence related to your FMLA approved reason? (Clarifying questions)



Supervisor Role

Your Responsibilities

- Refer the employee to campus resources (Employee Relations, ADA Compliance, FSAP)
- Do not discuss medical information with the employee
- Do not deny or interfere with an employee requesting or engaging with the FMLA or ADA process
- Be supportive
- Outreach on their behalf



Team Morale - When other employees ask questions

- You would do the same for them
- We have obligations to follow as a university
- Keep them updated where reasonable to do so
- Do not discuss any medical information with the employees asking questions



Responses

Employee: “I noticed John is not at work anymore. I keep getting his e-mails and am having to pick of his slack. I shouldn’t have to do his work, I am getting behind on my projects.”

Incorrect Response:

- Supervisor: “John had back surgery last week and he is out on FMLA. It sounds like he might be out for a few weeks to recover. You will be doing John’s job while he is out.”

Correct Response:

- Supervisor: “John has been approved for leave and will be out of the office for 4 weeks. Is there anything I can do to support you? We are a team and I want to make sure all of our tasks get done. Our team would support any employee who has a need for leave.”



Return to Work



Employee Relations and Department Role

- Fitness-to-Return Form (FTR) – Completed by the health care provider
- Only necessary for an employee's own serious health condition
 - Required before employee can return to work
 - Notifying employee early mitigates delay in return
 - Employee provides FTR to FMLA Administrator
 - Additional FMLA leave requires updated medical certification (if applicable)

ADA Compliance Role

- Informed if FTR has restrictions or identifies need for accommodations
- Employee is contacted and interactive process is engaged
- Additional medical documentation may be required during this step
- Determination for accommodations relayed back to department and ER



Now That We Know More...



John is an accounting technician and has been with the University for three years. Over the last two months, Sally, John's supervisor, begins to notice that John is arriving to work late and has been making mistakes in the database system. Sally decides to address the performance issues with John. In doing so, he discloses he's having difficulty concentrating at work because he isn't getting much sleep. He also explains to Sally that the deadlines he has to meet are causing anxiety. John promises Sally he will work on correcting his mistakes.

- As a supervisor, how would you respond to this?
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Possible Solution

Assume you called Employee Relations to discuss John's case. Upon hearing about his medical condition, anxiety, ER connected with John and went through the process to designate him for intermittent FMLA as he articulated a need for therapy to work through his anxiety. Based on John's discussion with ER, and his mention of difficulty concentrating, he was referred to ADA Compliance to engage in the interactive process. Upon doing so, ADA Compliance determined a reasonable accommodation for John would be to provide two additional 30 minute breaks throughout the day so that John could use that time to regain his focus. ADA Compliance also determined that the mistakes John was making were coming from not remembering details his supervisor provided in 1:1 meetings. Using this information, and discussion from the supervisor, it was determined a reasonable accommodation would be for the supervisor to put 1:1 discussions in writing in a follow up email.



Questions?



Contact Information

Molly Freeman

Molly.freeman@Colorado.edu

303-492-1107

Lauren Schipper

Lauren.schipper@Colorado.edu

303-735-7519



University of Colorado
Boulder