

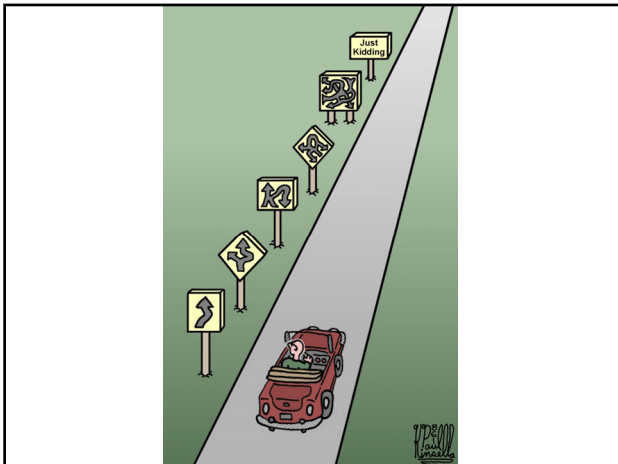
ADA, FMLA and Workers' Compensation – Oh My!

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The contents of this presentation are not intended as legal advice. Please consult an attorney for advice regarding your individual circumstances.

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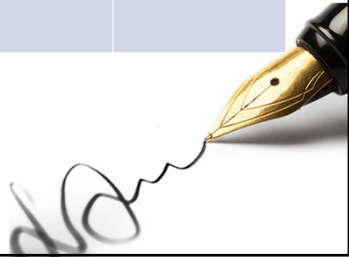
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THE BASICS

Applicable Law

ADA / SDHRA	FMLA	Workers' Compensation
Americans With Disabilities Act & Amendment Act (Federal Law) South Dakota Human Relations Act (State Law)	Family and Medical Leave Act (Federal Law)	South Dakota Workers' Compensation Law (State Law)



Enforcement

ADA	FMLA	Workers' Compensation Law
Enforced by the EEOC or South Dakota Department of Labor or by private litigation after the filing of an administrative charge	Enforced by the U.S. Department of Labor or through private litigation	Enforced by the South Dakota Department of Labor through private litigation

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Purpose

ADA	FMLA	Workers' Compensation
Prohibits discrimination based on disability and requires employers to provide <u>reasonable accommodations</u> to qualified persons with disabilities	Mandates <u>unpaid leave</u> to employees for birth of a child, a serious health condition of an employee, child, spouse or parent and in certain situations involving military duty	Provides <u>medical and lost time benefits</u> to employees who sustain injuries that arise out of and in the course of their employment

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Covered Employers



ADA	FMLA	Workers' Compensation	SDHRA
Employers with 15 or more employees	Employers with 50 or more employees in 20 or more workweeks in year or previous calendar year Public agencies	All employers	All employers

Eligibility



ADA	FMLA	Workers' Compensation
<ul style="list-style-type: none"> (i) Qualified individuals with a disability (ii) individual with a record of a disability (iii) individual who is regarded as having a disability 	<p>Employees who have worked for covered employer for 12 months and for 1,250 hours during the previous 12 months</p> <p>75 miles of 50 employees of employer</p>	All employees

Medical Condition



ADA	FMLA	Workers' Compensation
Disability	Serious health condition	Injury at work

What Medical Conditions are Covered?

- Electromagnetic hypersensitivity?
- Self diagnosed PTSD?
- Sex addiction?
- Stubbed toe on desk at work?



Leave

ADA	FMLA	Workers' Compensation
Unpaid leave would be a <u>reasonable accommodation</u> if designed to allow employee to return to work and perform the essential functions of the job with/without reasonable accommodation	Mandates 12 weeks of unpaid leave during the applicable 12-month period	When medically necessary for the work-related injury

REQUIRED

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Analysis

1. Is employer covered by FMLA?
2. Is the individual eligible for FMLA?
3. Is the reason for leave covered by the FMLA?
4. Is leave mandated under state law?
– Remote employees
5. Is leave required as a reasonable accommodation under the ADA?



REASONABLE ACCOMMODATION ISSUES

What About Indefinite Leave?



What About Remote Work?



What if Employee Asks for Reduced/Part-Time Position?

- Fact specific
- Undue hardship often found if absenteeism excessive or presence at worksite required



What About Light Duty?

ADA	FMLA	Workers' Compensation
If "permanent" light duty positions, then must consider reassigning employee if no other reasonable accommodation allows employee to perform essential functions of job.	Time on light duty does not count toward 12 weeks of leave entitlement.	Not mandated but will reduce entitlement to benefits if bona fide offer of light duty is made.

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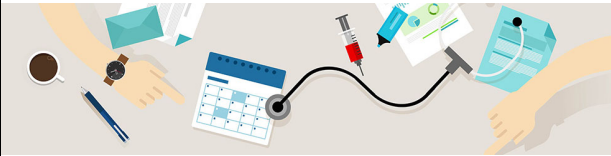
Benefits

	ADA	FMLA	Workers' Compensation
Group Health Insurance and Other	No benefit protections	Group health benefits continue; other benefits need not accrue, but must reinstate upon return from leave. Can require exhaustion of paid leave before taking unpaid leave.	Provides partial income replacement when unable to work

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Health Insurance Trap

- FMLA leave expires and employee not able to return to work.



Reinstatement

ADA	FMLA	Workers' Compensation
Guaranteed Position	Guaranteed same or equivalent position with equivalent benefits, pay and other terms and conditions of employment if able to return to work at or before end of 12 weeks	Silent

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Medical Inquiries

ADA	FMLA	Workers' Compensation
<p>Pre-Offer: No disability-related questions or medical exams</p> <p>Post-Offer: Not limited to job related and consistent with business necessity</p> <p>Post-Employment: Must be job related and consistent with business necessity</p>	Employee must provide a medical certification to obtain leave and can be requested to provide certificate of fitness for duty at conclusion – if certification is uniformly required for all leaves	Medical information must be made available on demand by employer; no physician-patient privilege in connection with treatment

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Retaliation Prohibited?



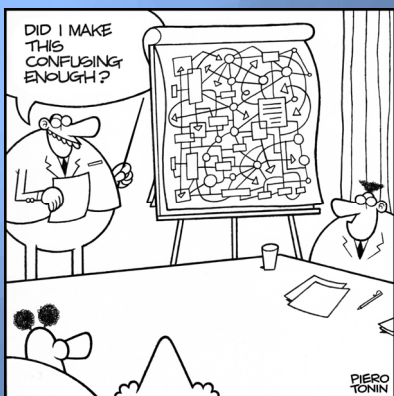
ADA	FMLA	Workers' Compensation
Yes	Yes	Yes

Legal Issues to Watch

1. Remote Work as Reasonable Accommodation
2. COVID-19
3. Managing Intermittent FMLA Abuse



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