



---

## Brown & Carlson Insight

---

### **WHEN OTHER LAWS APPLY: The Intersection of Workers' Compensation, FMLA and ADA Law.**

By Erica A. Weber

---

Questions often arise for injured workers regarding concurrent application of the Family Medical Leave Act (FMLA) and Americans with Disability Act (ADA). While the following is not an exhaustive list, it can generally be noted that:

**FMLA:** Workers' Compensation injuries which require time away from work would be covered by FMLA. Therefore, *if your company has a written policy allowing/requiring FMLA and Workers' Compensation to run concurrently*, then the FMLA certification process should be required for those workers' compensation employees whose restrictions require no work or reduced work hours.

**PRACTICE TIP:** Do not forget that Employees who are medically returned to work from a work comp standpoint may have other/concurrent reasons for FMLA leave. If properly certified through the company's process, the Employee could still be eligible for ongoing leave for a separate FMLA-qualifying condition.

**PRACTICE TIP:** Wage loss under workers' compensation cannot be terminated simply because an Employee exhausts FMLA leave. Instead, look to the requirements under workers' compensation rules and laws for the ability to terminate any temporary disability.

**ADA: Not all injured workers are automatically deemed "disabled" under the ADA.** The ADA specifies that an injury must substantially impair a major life function. Therefore, an Employee whose arm is broken would not necessarily be considered to have a "qualifying" condition covered by the ADA. [There are exceptions! For example, a broken arm which results in permanent restrictions and an inability to feed/dress oneself *would* become ADA qualifying. Qualification is on a case-by-case basis, depending on circumstances.]

**PRACTICE TIP #1:** Unless the injury is truly ADA qualifying, be careful of addressing or documenting any "accommodation discussion" with an injured worker when discussing their return to work. By classifying any such discussion as an "accommodation chat", it could make the Employee eligible for ADA protections, even though he/she would not otherwise be qualified.

A General BEST PRACTICE With Injured Workers:

- Always, ALWAYS follow the state's worker's compensation requirements;
- Follow Collective Bargaining Agreement terms (if applicable);
- Run FMLA leave concurrently for any Employee missing work for a workers' compensation injury (there must be a written policy of this practice);
- Employers should have policies requiring that the Employee keep the Employer informed frequently of his/her status and condition (and should check in on those Employees who are out on leave);
- Consider the ADA requirements once permanent restrictions are assigned for work

injuries, and if the Employee qualifies, do not forget (and be sure to follow!) the ADA's interactive process for those qualifying Employees.

If you have any questions, please feel free to call Erica Weber at (763) 252-6373.

---

[Erica A. Weber](#)

763-252-6373

[eweber@brownandcarlson.com](mailto:eweber@brownandcarlson.com)



Visit our Website

Brown & Carlson, P.A.  
300 Highway 169 S.,#500  
Minneapolis, MN 55426-1113  
763-591-9950  
F: 763-591-9202