

FMLA to ADA Checklist

As Family Medical Leave Act (FMLA) protected leave draws to a close, the County should consider additional obligations under the law, including Americans with Disabilities Act (ADA) requirements, when reviewing next steps in the case of an employee with a continuing medical disability. The County should review options that will enable the employee to successfully perform their job, with or without a reasonable accommodation - which may include granting additional leave.

<input type="checkbox"/>	<p>Draft a letter to the employee requesting updated medical documentation.</p> <p>a. The letter should advise the employee to have their medical provider answer certain questions addressing the following:</p> <ul style="list-style-type: none"> • The length of additional necessary medical leave; • What treatment is planned, and how will that treatment assist the employee in being able to perform the essential functions of their job, with or without reasonable accommodations; • The prognosis for the employee to return to work and perform the essential functions of their job with or without reasonable accommodations • If the employee was previously expected to return, why a new projected return date is more accurate. <p>b. A copy of the employee job description should be included with the letter. The letter should advise the employee to provide a copy of the job description to their medical provider to assist in responding to the questions.</p> <p>c. The letter should indicate to whom the medical information should be returned. It is recommended this information be returned to the Human Resources Department.</p> <p>d. The letter should specify a deadline to return the requested information, and the ramifications if the medical information is not obtained by the specified due date outlined in the letter. For example, will the employee be on an unapproved leave of absence if the required information is not received by the deadline?</p>
<input type="checkbox"/>	<p>After you receive the updated medical documentation you will know if leave is likely to continue, or if the employee requires accommodation(s). Go through your ADA analysis.</p> <p>Best Practice Tips:</p> <p>a. In all cases go through the ADA analysis, even if it appears to be a challenging case for the County to accommodate.</p> <ul style="list-style-type: none"> • Does the employee have a serious medical condition which, because of a disability, causes them to be limited in or unable to perform one or more of the essential functions of the job (e.g., shelve the library books, or perform jailer work, onsite)?

b. Engage in the "interactive process" with the employee to seek out and determine if there are alternative accommodations that support the employee, which are reasonable to implement.

- Elicit ideas from the employee and medical representatives. It is recommended that the employer meet and discuss potential accommodation ideas with the employee as part of the interactive process and document these discussions.
- Consider modified duties, alternate duties, purchase of special equipment or supportive software, or additional leave as potential reasonable accommodations.
- Can the employee return on a part-time basis, and gradually work up to full-time hours as the employee recovers?

TIP: The County is not required to provide the employee with their preferred accommodation. The County has to offer a reasonable accommodation which is effective.

- If modifications can't be offered, do you have a vacant position for which the employee qualifies? Tell the employee about the vacancy. Document the County's review and analysis of open positions. You are not required to assign the employee to the vacant position.



After you complete the ADA analysis and have engaged in the interactive process, and the determination is that additional leave of absence is a reasonable accommodation, consider the following:

- Does the employee have available sick leave, vacation, or PTO available to use?
- Does your County offer a leave donation program?
- If the employee has run out of accrued leave to remain in "paid" status, what does the Collective Bargaining Agreement, if any, require you to offer? An unpaid leave of absence (with or without benefit continuation)?
- What do your Personnel Policies, or Rules and Regulations, require you to offer?
 - Can the employee request an unpaid personal leave?
 - What is the maximum amount of time granted? Can it be renewed or extended?
 - Does the employee need to check in periodically? Do you require periodic medical substantiation and status update from the medical provider?
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- Does the employee need to check in periodically? Do you require periodic medical substantiation and status update from the medical provider?

TIP: Remember that you may need to provide additional leave of absence under the ADA, whether or not your policies, rules & regulations, or contract provide for this.

TIP: If approving additional leave as a reasonable accommodation is determined appropriate to the situation, it is recommended to approve in increments of 30 days, and then reevaluate with an updated status report from the employee's medical provider.

- Generally, leave is not considered reasonable when leave requests have been repeatedly granted, yet the employee is continually unable to return to work or needs additional leave soon after returning.
- A leave request may also be unreasonable if the employee has requested a very long leave or has not provided an end-date for the leave.
- Temporary approvals/extensions are appropriate and limit the impression and the appearance of a permanent "light duty" position being created.



Considerations for getting the work done while an employee is on a temporary medical leave of absence:

- Work other employees on an overtime basis
- Hire a temporary worker
- Reassign cases to coworkers
- Re-hire a retiree on an on-call/intermittent basis
- Work another employee "out of classification"

This is also a good opportunity to examine your succession plan and cross-training.