

## Understand the Employment Law Surrounding Medical Leave and Disability in a Leanly Staffed Medical Practice

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Many medical practices are staffed leanly. As a result, the health problems of just one employee can dramatically affect smooth daily operations. Employees with chronic health conditions can have sporadic or significant attendance problems. When at work, they can have problems with concentration or motor coordination.

For example, a receptionist in a medical practice has daily interaction with patients over the phone when appointments are made, in the reception area when patients arrive, and when patients call with follow-up questions about their medical and financial records.

When a receptionist with a chronic medical problem or disability is often absent, asks for a medical leave of absence, or requests an accommodation in the workplace, the employer is put in a difficult position. So too are co-workers, who may become resentful of these absences or accommodations.

Employers must engage in a delicate balance between the business

needs of the practice and the physical and emotional needs of the employee.

Decisions involving chronic medical problems and disability in the workplace must be addressed within the parameters of the Family Medical Leave Act,

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the Washington Family Leave Act, the Americans with Disabilities Act and other state and federal disability laws.

### **Absences and leave**

Under state and federal leave laws, employers with more than 50 employees within a 75-mile radius must grant up to 12 weeks leave to medically eligible employees. This can be intermittent leave or extended leave.

If the need for leave is foreseeable, the employee must let the employer know at least 30 days ahead of time. When it is unforeseeable, the employee must provide as much advance notice as possible and must also comply with an employer’s uniformly applied policy for reporting an absence.

An employer may require the employee to provide (30 days in advance) medical certification of the need for leave (or for a reduced work schedule) and its expected duration. If the need for leave is not foreseeable, the employer should provisionally designate the leave as approved. The employee then has 15 days to comply with medical certification requirements.

### **Accommodation and undue hardship**

The federal ADA and the Washington Law against Discrimination protect the rights of all qualified disabled employees who can perform the essential function of their jobs – with or without reasonable accommodation.

Both federal and state laws require that employers of 15 or more

**Continued on next page**

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Continued from prior page

individuals provide reasonable accommodations for the known physical or mental limitation of an otherwise qualified employee, unless doing so would result in an “undue hardship.” An extended unpaid medical leave of an indefinite duration may be considered a reasonable accommodation if it does not impose an undue hardship on the employer.

Undue hardship refers not only to financial hardship for an employer who has been asked to or is considering making accommodations, but also to accommodations that are overly extensive or disruptive or that would change the nature or operation of a business.

It is easier to make a case for undue hardship in a small practice than a large one. Nonetheless, any refusal to grant an accommodation based on undue hardship will be closely scrutinized.

An employer cannot claim undue hardship based simply on the fears or prejudices of co-workers or patients toward the ill or disabled employee – unless the employee in fact poses a “direct threat” to the health and safety of others.

## Interactive process

To determine which accommodations are needed and reasonable, an employer and a disabled employee must engage in an ongoing “interactive process.” This process (and any accommodations

made as a result) should be documented in detail by an employer – as a defense against possible future claims.

An employer must make reasonable accommodation only for known disabilities. Generally, it is an employee’s responsibility to request accommodation. However, when the employer knows that an employee has a disability, that the employee is experiencing workplace problems because of the disability, or that the disability prevents the employee from mak-

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ing the request – it becomes the employers’ responsibility to initiate the interactive process.

An employee who refuses an employers’ request to participate in the interactive process forfeits any right to reasonable accommodation.

## Privacy

Family medical leave, disability law and privacy law limit the scope of medical information that may be obtained from employees.

Any information obtained as part of this process must be treated and protected as a confidential medical record.

Any medical information sought should be limited to the condition for which the employee is requesting leave or accommodation, or related to the specific tasks and safety issues that concern the employer.

Under the FMLA, employers may never contact an employee’s health care provider. With the employee’s permission, a health care provider representing the employer may make this contact – only to clarify information and confirm authenticity. Under the ADA, employers may contact the employee’s health provider with the employee’s written permission.

By paying careful attention to the requirements of the law, employers in small medical practices can meet their business needs and avoid undue hardship – while at the same time protecting the rights of employees with chronic health problems and disabilities.

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