

The
HOSPITALITY LAW
CONFERENCE

Managing the Complex Web of
Leave Laws:
ADA, FMLA and WC

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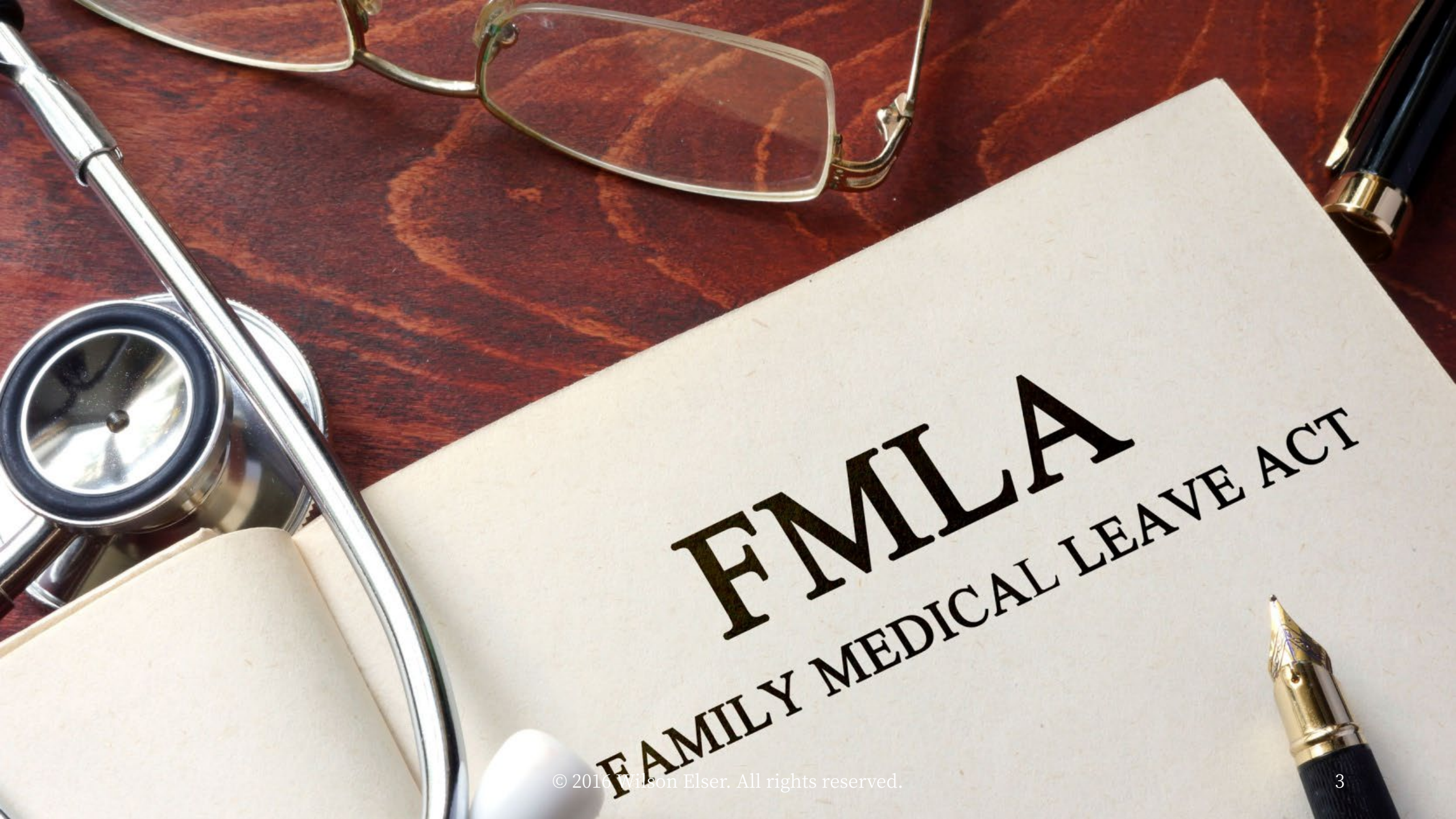
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FMLA

FAMILY MEDICAL LEAVE ACT

Family Medical Leave Act

The Family & Medical Leave Act of 1993

- 29 U.S.C. §§2601 et seq.
- 29 C.F.R. §§825.100 et seq.
- Military Member Amendments
- Family Member Amendment
- Department of Labor (Wage and Hour Division)
Enforcement & Guidance

Family Medical Leave Act

Do you have a qualifying insured/employer
and a qualifying claimant/employee?



Family Medical Leave Act

Basic Questions:

- Has the insured employed at least 50 employees during 20 or more calendar workweeks in the current *or prior year*?
 - Only U.S. Employees Counted
 - Employees On Leave Count
 - Employees Jointly Employed By Two Entities Can Count Twice



Family Medical Leave Act

Basic Questions:

- Has the claimant/employee worked at least 12 months? AND
- Has the claimant/employee worked at least 1,250 hours of service during the 12 months before the leave?
 - Note: 12 Months of Service Need Not Be Consecutive.

Family Medical Leave Act

Basic Questions:

- Did the claimant/employee work at a location where the employer has at least 50 employees within a 75 mile radius?
 - How are remote employees handled?

Family Medical Leave Act

Qualifying Reasons For Leave:

- An employee or family member's serious health condition
- Birth, adoption or foster care placement of a child
- Service member duty
- Covered service member serious injury or illness

Family Medical Leave Act

Triggering Events:

- Employee must provide at least verbal notice sufficient to make employer aware of need for FMLA qualifying leave and the anticipated time and duration of leave

Family Medical Leave Act

Leave Entitlement:

- 12 Weeks of Leave
- Can Be Intermittent Or Reduced-Schedule



The image shows a close-up of a white form titled "REQUEST FOR LEAVE OF ABSENCE" in large, bold, black letters. Below the title, there is a section labeled "Personal Information" with several fields for data entry. A black pen is positioned diagonally across the bottom right of the form, pointing towards the "City" field.

Personal Information	
Name (Last)	(First)
(Mailing Address)	(City)
	(State) (Zip)
	(Middle Initial)
	Home Telephone
	Other Telephone

Americans with Disabilities Act-Title I

Protections

Employers Covered: 15 or more employees

Purpose: prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment

Employee Eligibility: coverage begins first day of employment; employee who is a qualified individual with a disability and can perform the essential functions of job with or without reasonable accommodation

ALL EMPLOYMENT-RELATED ACTIVITIES

General Provisions

Disability Defined:

- A physical or mental impairment that substantially limits one or more major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment

2009 Amendments - ADAAA

Broader Definition of Disability –

- The impairment does not need to prevent or severely restrict a major life activity (MLA).
- More focus is on the merits of claim, not level of disability.
- Employer perception of substantial limiting MLA is not a necessary element.

Reasonable Accommodation

- A change in duties or policies to enable a qualified individual with a disability to perform the essential functions of the job.
- The law requires only that the employer provide a reasonable accommodation, not the optimal accommodation or the employee's preferred choice.
- Cannot be an “undue hardship” on employer.
- Interactive process required.

Workers' Compensation Laws

Workers Compensation

Purpose:

- Workers' Compensation laws provide for payment of compensation and rehabilitation for workplace injuries and minimize employer liability

Enforcement:

- State Workers' Compensation Commissions

Workers Compensation

Employer Coverage:

- Workers' Compensation applies to most, even small employers. State laws govern.

Employee Eligibility:

- An employee who has an injury arising out of the place of employment
- State law exceptions possible
 - willful misconduct or intentional self-inflicted injuries,
 - willful disregard of safety rules,
 - intoxication from alcohol or illegal drugs

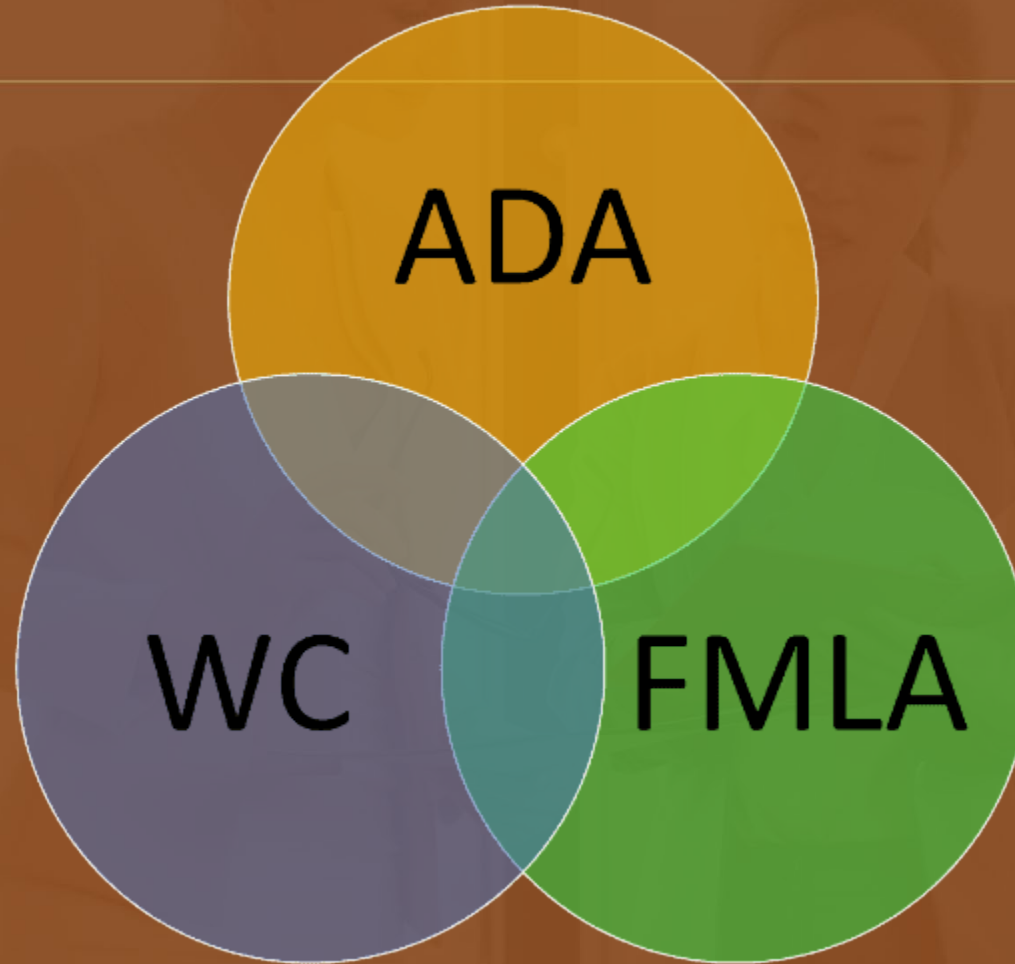


Workers Compensation

Triggering Events:

- On the job injury, and/or notification within the time frame as required by state law

Interplay Among FMLA ADA AND WC



Length and Type of Leave

- FMLA
 - 12 weeks in the 12 month period as defined by the employer
- ADAAA
 - No automatic leave rights under ADAAA
 - No specific time limit for the amount of leave that would be provided as a reasonable accommodation that does not create an undue hardship on the employer. Usually cannot be for an “indefinite period”
- Workers Compensation
 - No specific limit for the amount of leave an injured worker may have





Benefits While on Leave

- FMLA
 - Leave can be unpaid leave, but must provide employee with same level of benefits as if employee was still on the job
- ADAAA
 - No specific requirements, but cannot discriminate and must provide same benefits as those provided to employees on non-ADA leave of absence
- Workers Compensation
 - Not required to be continued unless run concurrently with FMLA leave

Medical Documentation/Medical Exams

- FMLA

- Medical certification of the need for the leave not to exceed what is requested in the Department of Labor Medical Certification Form.
- Return to Work certification can only be required under a policy or practice that requires employees who have been on a similar type of leave of absence

- ADA

- May request medical certification regarding nature, severity, and duration of the condition. Can seek recommendations on the types of accommodations that would suffice. Additional correspondence with the physician is allowed for clarification purposes.
- Return to work certification permitted as long as the medical examination and inquiry is job-related and necessary to determine whether the employee can perform the essential functions of the job.

- Workers Compensation

- Medical information that pertains to the employee's on-the-job injury
- Return to work certification may be (and typically is) required

Restricted or Light Duty Work

- FMLA
 - Cannot be required; employee can reject light duty work
- ADAAA
 - May provide an accommodation that requires employee to remain on the job instead of or in addition to providing leave
 - Importance of engaging in interactive process to determine reasonable accommodation
- Workers Compensation
 - Can be offered if available as may eliminate employee's entitlement to wage replacement benefit



Reinstatement

- FMLA
 - Required reinstatement to the same or an equivalent job (unless key employee or other minor exceptions)
 - No undue hardship exception
- ADAAA
 - Required reinstatement to previous job unless doing so would create undue hardship on the employer
- Workers Compensation
 - No reinstatement rights under most state laws, except for retaliatory discharges





WE APPRECIATE YOUR
TIME AND ATTENTION!

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Thank you!