



**Leaves of Absence:
Navigating the FMLA & ADA**

Presented by
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Agenda

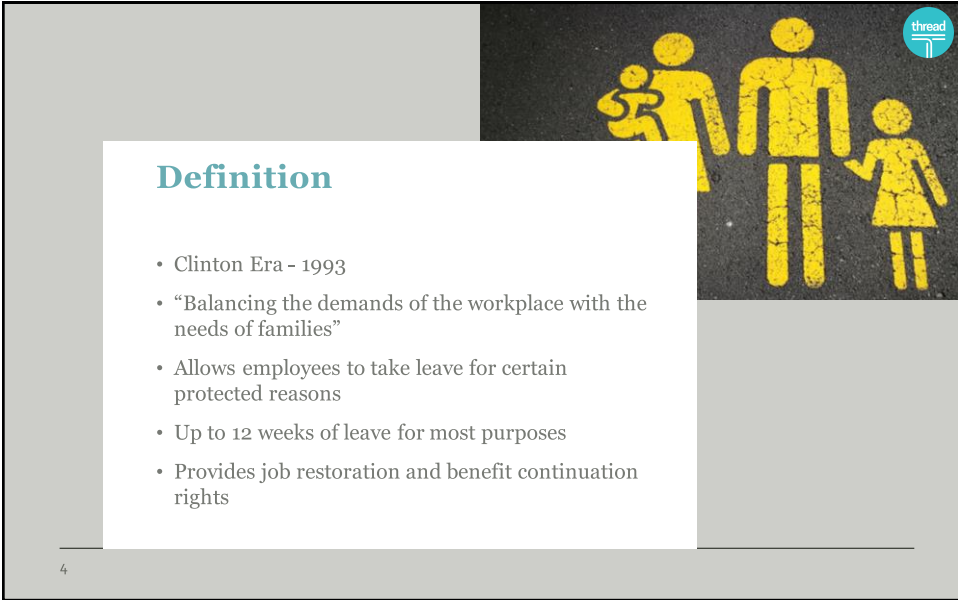
- What is the FMLA?
- What is the ADA?
- Differences and Overlap
- Administering Leaves
- Q & A

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Eligibility

Part I: Covered Employer	Part II: Eligible Employee
<ul style="list-style-type: none">• 50+ employees for at least 20 workweeks in the current or preceding calendar year• All public agencies	<ul style="list-style-type: none">• Work for a covered employer• Worked for employer for 12 months• Worked at least 1,250 hours in the last year• Work at a location with 50+ employees within 75 miles

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Reasons for Leave

- Serious health condition
- Serious health condition of a family member
- Caring for a new child
- Military family exigency
- Military family caregiver (up to 26 weeks)

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Reasons for Leave 1: Serious Health Condition

- Incapacity or treatment involving in-patient care, or requiring an absence more than 3 days under supervision of medical provider
- Absences due to pregnancy/prenatal care
- Absences due to chronic serious health condition (asthma, diabetes, epilepsy, etc.)

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Reasons for Leave 1: Serious Health Condition

- Long term periods of incapacity, *even if treatments are not effective* (Alzheimer's, stroke, terminal illnesses, etc.)
- Intermittent absences for *multiple treatments & recovery time* for conditions that would most likely result in absences of more than 3 days if left untreated (chemo, physical therapy, dialysis, etc.)

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Reasons for Leave 2: Family Member Care

- Same definition of serious health condition
- *Family members are:* spouses, children (biological, adoptive, foster or step-child), and parents (biological, adoptive, step, foster or “in loco parentis”)
- *Family members are **not**:* in-laws, siblings, or grandparents

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Reasons for Leave 3: Caring for a New Child

- AKA Baby Bonding leave
- Covers birth, adoption placement, and foster placement
- Must be taken within *12 months* of birth or placement
- Available to *both parents*

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**Reasons for Leave 4:
Military Family Exigency**

- Employee’s spouse, child, or parent is on active duty or called to active duty; time used for:
 - Attending military events or counseling
 - Arranging childcare
 - Addressing financial arrangements
 - Attending post-deployment activities

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**Reasons for Leave 5:
Military Family Caregiver**

- Spouse, child, parent, next of kin of service member or veteran
- Serious injury or illness was *duty-related*
- Up to 26 weeks of leave *during one 12-month period*

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Pay During Leave

- Unpaid
- Employee may use accrued paid time off
- Temporary disability insurance or paid family leave may apply (state or private plans)

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Benefits During Leave

- Employee may be required to remit payment for their portion of benefits
- Employer may cover benefits and require the employee to reimburse the employer upon return
- Not COBRA qualifying event unless employee resigns or fails to return
- See Benefits Continuation Letter

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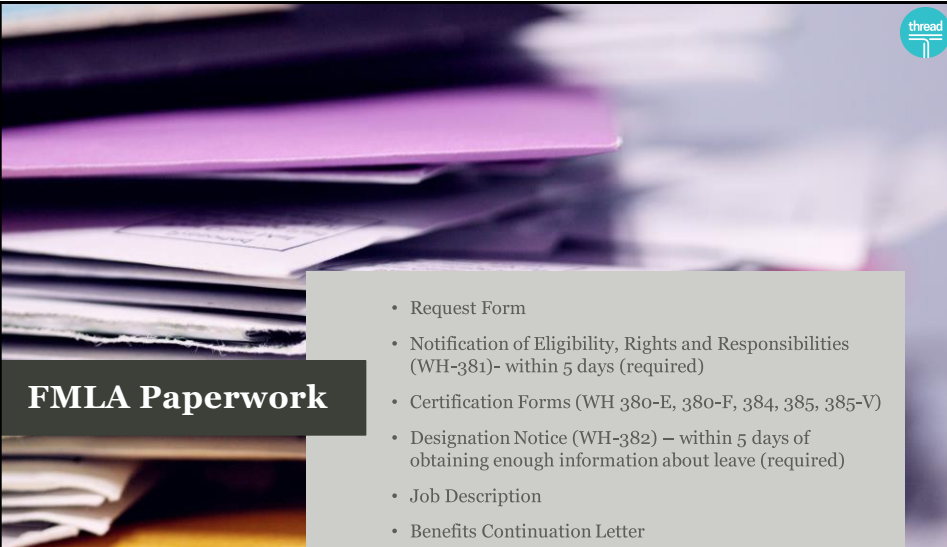



Job Restoration Following Leave

- Complete and absolute job restoration required in most cases
- Same or equivalent position
- Exceptions:
 - Key employee
 - Employee would have been terminated or laid-off regardless of leave
 - Shift eliminated

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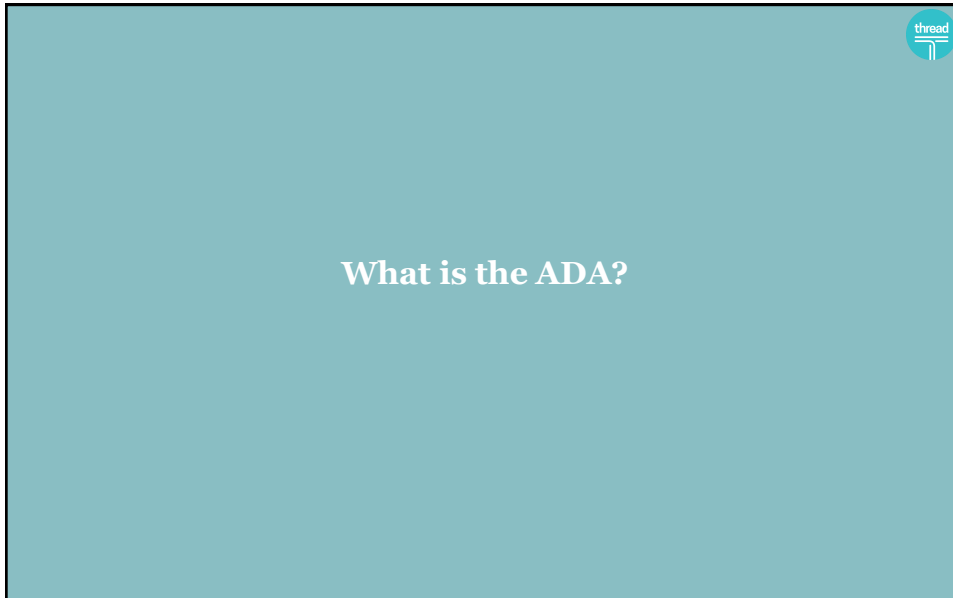


FMLA Paperwork

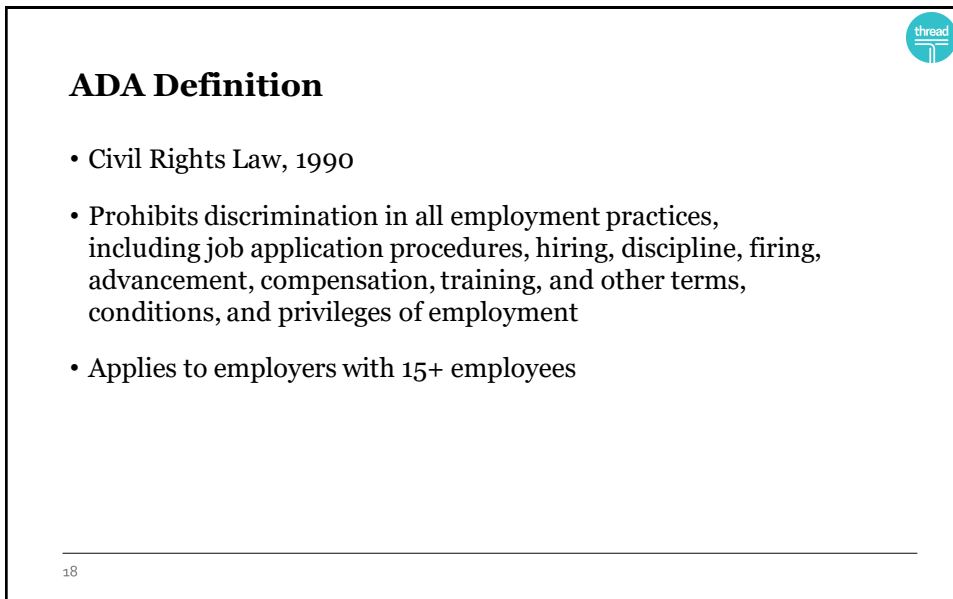
- Request Form
- Notification of Eligibility, Rights and Responsibilities (WH-381)- within 5 days (required)
- Certification Forms (WH 380-E, 380-F, 384, 385, 385-V)
- Designation Notice (WH-382) – within 5 days of obtaining enough information about leave (required)
- Job Description
- Benefits Continuation Letter

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ADA Requirements

- Purpose: to help people with disabilities access the same employment opportunities as those without disabilities
- Requires employers to provide reasonable accommodations to qualified employees or applicants
- Reasonable accommodation: a change that accommodates employees or applicants with disabilities without causing an “undue hardship” to the employer
- Not an accommodation: removing essential job functions, creating new jobs, or providing personal need items

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Disability Defined

- *Disability*: a physical or mental impairment that substantially limits one or more major life activities
- *Major life activity*: a very broad and expansive definition (eating, breathing, talking, thinking, etc.)
- Not mandatory that the impairment be related to the job
- Also covered: those who have a history or record of such an impairment, or are perceived by others as having such an impairment

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Eligibility

- 15 or more employees
- No length of service requirement
- Employee has a disability or perceived disability
- Employer may require certification (ADA Medical Inquiry Form)

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Reasonable Accommodations

- Undue Hardship: "action requiring significant difficulty or expense"
 - Many factors taken into account
 - Case-by-case determination
- Employee does not get to pick most desired accommodation
- Leave is one possible accommodation

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Undue Hardship

Many factors must be considered to determine if an accommodation causes undue hardship, including:

- Type and cost of the accommodation
- Accommodation's effect on resources/operations
- Number of workers employed
- Company's overall financial resources

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ADA: Pre-Hire

- Job description key components:
 - Primary roles and duties, other essential functions
 - Minimum requirements
 - Physical requirements
 - Employer protections (EEOC statements, at will, etc.)
- Applicant accommodations

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ADA Interactive Process

- Balancing employee’s needs and employer’s needs
- Meeting to discuss medical provider’s recommendations, employee’s suggestions, and employer’s suggestions
- Goal: allow the employee to perform their existing job through a reasonable accommodation

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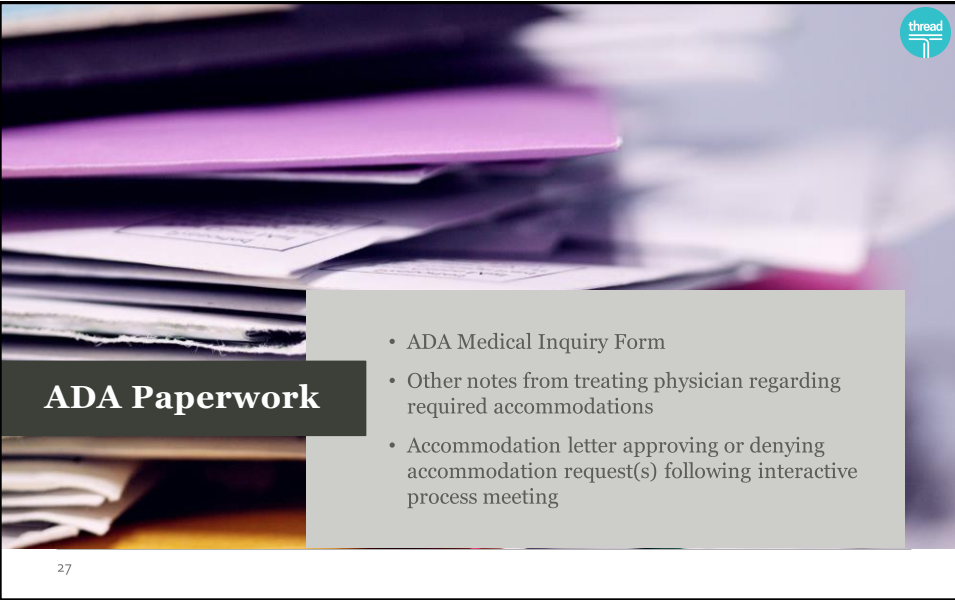


Pay, Benefits, and Job Restoration

- Pay is not required during leave as an ADA accommodation
- Benefit continuation – contact your insurance carrier or broker
- Employer may require the employee to remit payment for both employee and employer portion of benefits
- Job restoration required unless “undue hardship”

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ADA Paperwork

- ADA Medical Inquiry Form
- Other notes from treating physician regarding required accommodations
- Accommodation letter approving or denying accommodation request(s) following interactive process meeting

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Differences and Overlap

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Major Differences

- Eligibility requirements and covered conditions (some will trigger both)
- Definitions in general (make sure you are using the correct one!)
- ADA affects non-leave and accommodation issues (hiring, harassment, etc.)
- Overall, ADA affects more areas of the employee lifecycle but the FMLA grants leave for a broader range of things

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Serious Health Condition vs. Disability

	Serious Health Condition (FMLA)	Disability (ADA)
Definition	Serious health condition	Impairment that substantially limits a major life activity
Examples	Appendicitis, normal pregnancy, minor broken bone	Visual impairment, ADHD, any condition for which no leave is required by treating physician
Examples of Both	Heart disease, cancer, serious strokes, transplant, back surgery, lupus, etc.	
Examples of Neither	Cold, flu, stomach virus, routine dental or orthodontia problems, headaches (other than migraines), etc.	

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Don't Forget State-Specific Leaves!

- Generally overlaps same issues as FMLA and ADA but sometimes are more generous
 - Size of covered employer
 - Length of employment before eligibility
 - Covered conditions and family member definition
- Always apply rules most beneficial to employee

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Administering Leave

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Requests for Leave

- Determine if it is an ADA request, an FMLA request, or both
- When both apply:
 - FMLA should be exhausted first
 - Then ADA Interactive Process should begin regarding additional leave as an ADA accommodation

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During Leave

- Track leave taken
- Continue benefits
- Stay in contact with employee

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Returning from Leave

- Communicate expected return
- Determine if any other leave may apply
- Require Medical Certification prior to Restoration
- Reinstatement to same or an equivalent job

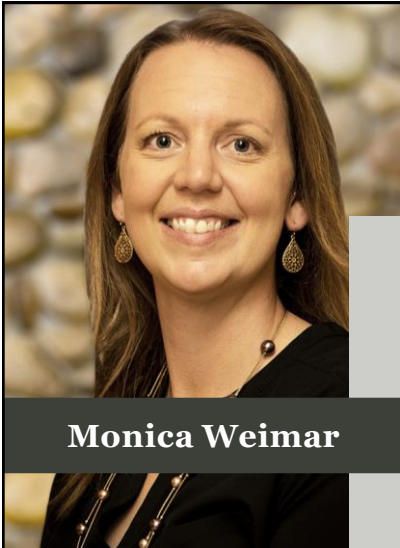

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Q & A

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Monica has held roles as an HR Generalist and Payroll and Benefits manager at a large ski resort, providing HR guidance to more than 500 employees. She also has HR experience in the healthcare field and the non-profit world. Monica holds a Bachelor of Science degree from Linfield College.

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If you attended the full 60-minute webinar, the recertification codes will be emailed to you.

Insight

This program is valid for 1 PDC toward SHRM-CP and SHRM-SCP recertification.

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