
Employer-Provided Leave and the Americans with Disabilities Act (Part 1 of 4)

Equal Access to Leave Under an Employer's Leave Policy

Employees with disabilities must be provided with access to leave on the same basis as all other similarly-situated employees. Many employers offer leave -- paid and unpaid -- as an employee benefit. Some employers provide a certain number of paid leave days for employees to use as they wish. Others provide a certain number of paid leave days designated as annual leave, sick leave, or "personal days."

If an employer receives a request for leave for reasons related to a disability and the leave falls within the employer's existing leave policy, it should treat the employee requesting the leave the same as an employee who requests leave for reasons unrelated to a disability.

Employers are entitled to have policies that require all employees to provide a doctor's note or other documentation to substantiate the need for leave.

Granting Leave as a Reasonable Accommodation

The purpose of the ADA's reasonable accommodation obligation is to require employers to change the way things are customarily done to enable employees with disabilities to work. Leave as a reasonable accommodation is consistent with this purpose when it enables an employee to return to work following the period of leave. Under the ADA, an employer must also consider providing unpaid leave to an employee with a disability as a reasonable accommodation if the employee requires it, and so long as it does not create an undue hardship for the employer. That is the case even when:

- the employer does not offer leave as an employee benefit;
- the employee is not eligible for leave under the employer's policy; or
- the employee has exhausted the employer-provided leave (including leave exhausted under a workers' compensation program, or the FMLA or similar state or local laws).

Reasonable accommodation does not require an employer to provide paid leave beyond what it provides as part of its paid leave policy. As is the case with all other requests for accommodation, an employer can deny requests for leave when it can show that providing the accommodation would impose an undue hardship on its operations.

What This Means for Counties

For more information, please contact CTSI at 303-861-0507. "Undue hardship" will be explained in the final part of this series.

U.S. Equal Employment Opportunity Commission. (5/9/2016). *Employer-Provided Leave and the Americans with Disabilities Act* [Press release]. Retrieved from <https://www.eeoc.gov/eeoc/publications/ada-leave.cfm>