

# HR Brief

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## FMLA and Workers' Compensation Working Together

The Family and Medical Leave Act (FMLA) and workers' compensation serve different purposes, but the job leave provided by the two may overlap in some cases, affecting employment decisions on issues such as light duty.

FMLA provides employees with unpaid, job-protected leave for certain qualifying reasons, such as a serious health condition that makes the employee unable to perform the functions of his or her job. FMLA generally applies to employees of businesses with at least 50 employees, and, under FMLA, employees are entitled to 12 weeks of job-protected leave for qualifying circumstances.

Workers' compensation offers medical coverage and income replacement following a work-related injury. Workers' comp laws often vary from state to state. If an injury that qualifies for workers' compensation also falls

under FMLA-protected health conditions, leave for the two can overlap.

If an employer is covered by FMLA, it should take the time to determine if workers' compensation leave would also qualify under FMLA as leave for a serious health condition. If it does, the employer should begin the FMLA process immediately and run the FMLA and workers' comp leave concurrently.

If the employer does not begin the FMLA leave immediately, the employee may end up entitled to more leave than he or she otherwise would have been if the two had run concurrently. In addition, if the employee is away from work for more than 12 weeks under workers' comp, he or she no longer has job-protected leave after the 12 weeks of FMLA leave end. However, the Americans with Disabilities Act (ADA) may apply, so employers should be careful about automatic termination after 12 weeks of leave.

Another issue that is affected by FMLA and workers' comp overlap is the possibility of the employee returning to light duty. If an employee who has both leaves running concurrently declines light duty under workers' comp, he or she may lose those benefits, but the employee would continue to have job-protected leave under FMLA.

When an employee suffers a serious health condition that qualifies him or her for both workers' compensation and FMLA leave, employers should make sure to consider requirements under both to avoid potential problems.

## DID YOU KNOW?

Skilled employees can be difficult to find in many industries. However, apprenticeships can be a practical way to train and assess potential job candidates instead of committing to fill a position with an untested candidate.

Apprenticeship programs can benefit both workers and companies because workers receive on-the-job training and employers do not have to pay them the full wages of a professionally skilled worker while they are still learning.

Check state and federal laws for wage, hour and other rules before implementing an apprenticeship program.

## U.S. Supreme Court to Rule on Same-sex Marriage

On Jan. 16, 2015, the U.S. Supreme Court agreed to take on the issue of whether same-sex couples have a constitutional right to marry or whether states are permitted to ban gay marriage.

The Supreme Court is expected to hear oral arguments in April 2015. The decision is expected to be issued before the current term ends in late June 2015.

The Supreme Court agreed to take the case after the 6th Circuit reached a decision that conflicts with other circuit court rulings. The Supreme Court decision will resolve the split and will rule on two issues: the power of the states to ban same-sex marriages and the power of the states to refuse to recognize same-sex marriages performed in other states.

Currently, 36 states and the District of Columbia allow same-sex marriage. The Supreme Court's opinion has the potential to impact the legality of same-sex marriages throughout the United States, either by legalizing gay marriage or by overturning court decisions that have invalidated state bans on same-sex marriage.

