



Understanding Family & Medical Leave Act & Americans with Disabilities Act

Alex Teodosio & Colleen Tremblay

Objectives

- ☐ Review the Legislative intent of FMLA
- ☐ Understanding FMLA Legal Requirements
- ☐ Commonly Asked FMLA Questions
- ☐ How FMLA is Administered at John Carroll University
- ☐ Review the ADA requirements and definitions
- ☐ Understanding the ADA accommodation process
- ☐ Discuss how the ADA and the FMLA interact

Family Medical Leave Act

Legislation

- Legislation was enacted by Congress on February 5, 1993
- FMLA became effective on August 5, 1993
 - Amendments in 2008, 2013 and 2015
- **Legislative Intent:** Job Protection: Allow employees to balance work and family life by taking reasonable unpaid leave, up to 12 weeks* / 12 month period, for certain family and medical reasons.
- Administered by the U.S. Department of Labor's **Wage and Hour Division**

Family Medical Leave Act

Eligibility

Eligibility Requirements for FMLA Leave include:

1. Have worked for the employer for a minimum total of **12 months**; AND
2. Have worked at least **1,250 hours over the previous 12 months**

Family Medical Leave Act

Common Definitions

- **Family:**
 - Spouse as recognized by respective State
 - Son, Daughter
 - Parent, Guardian
- **Personal Medical:**
 - Serious health condition of employee
- **Family Medical:**
 - Serious health condition of employee's family member

Family Medical Leave Act

Qualifying Reasons

- The **birth and care of a newborn** child of the employee (*must conclude within 12 months after birth*);
- For placement with the employee of a child for **adoption or foster care** (*must conclude within 12 months after placement*);
- To **care for an immediate family member** (*spouse, child or parent*) with a serious health condition;
- The **employee's own serious health condition**.

Note: Spouses employed by the same employer may be limited to a combined 12 workweeks of family leave.

Family Medical Leave Act

Additional qualifying reasons for Family of Military Personnel

FMLA extended to leave for **family of military personnel**:

1. Up to 26 weeks for **spouse, son, daughter, parent or next-of-kin** to care for **covered service member** *who is*:
 - undergoing medical treatment, recuperation or therapy; or
 - on outpatient status; or
 - on temporary disability retired for a serious injury or illness.
2. Up to 12 weeks for **spouse, son, daughter, or parent** related to impending deployment, or to care for the **military member's parent or spouse**.
 - Includes leave for military events & related activities; childcare & school activities; financial & legal arrangements; counseling; rest & recuperation and post-deployment activities.

Family Medical Leave Act

What is a Serious Health Condition

- An illness, injury, impairment or physical or mental condition that involves either:
 - any period of incapacity or treatment connected with inpatient care; or
 - continuing treatment of a healthcare provider which includes any period of incapacity due to . . . → →

Family Medical Leave Act

Serious Health Condition

- (1) A health condition lasting more than 3 consecutive **full calendar** days **AND** any subsequent treatment or period of incapacity relating to the same condition **that also involves:**
- a). treatment two or more times under the supervision of a health care provider; **or**
 - b). one treatment by a health care provider with a continuing regimen of treatment.

(e.g. an in-person visit within 7 days of the first day of incapacity)

Family Medical Leave Act

Serious Health Condition

- (2) Pregnancy or prenatal care; **or**
- (3) A chronic serious health condition extending over a period of time; **or**
- (4) A permanent or long-term condition where treatment may not be effective; **or**
- (5) Any absences to receive multiple treatments for a condition which would likely result in a period of incapacity of more than 3 days if not treated.

Family Medical Leave Act

Intermittent Leave

Reduced Schedule Leave

- Intermittent leave: Leave taken in increments of time of an hour or more vs. continuous leave time
 - JCU must track intermittent leave by the hour
- Reduced schedule leave: Leave taken as a reduction in hours
 - i.e. part-time
- Must be provided for serious health condition of employee or for serious health condition of family member
- Subject to employer's approval for to care for a newborn or newly placed adopted or foster care child
 - Unless child has a serious health condition

Family Medical Leave Act

Substitution of Paid Leave

Employees must take accrued paid leave to cover some or all of the FMLA leave taken before taking unpaid FMLA leave.

(i.e. paid sick, vacation and/or personal leave)

Family Medical Leave Act

Maintenance of Health Benefits

- University is required to maintain group health insurance coverage for an employee on FMLA
 - Arrangements are made for employees to pay **their share** of health insurance premiums while on leave.
 - University will continue to pay employer's share of health care benefits.

Family Medical Leave Act

Job Restoration

Returning from FMLA Leave

- Employee must be restored to his / her original job, or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment;
- Special provisions for “key” employees:
 - “key employees” are salaried and among the **highest paid ten percent** of all employees;
 - Not have to hold position if would pose a “substantial and grievous economic injury” to business operations.

Family Medical Leave Act

Notice

- Employees seeking FMLA leave are required to provide 30-day advance notice when need is foreseeable and notice is practicable.
 - If not foreseeable, notice does not have to be in advance.
- Employers obligated to inform employees whether they are eligible for FMLA leave and their rights and responsibilities under FMLA.

Family Medical Leave Act

Medical Certification

The University requires employees to provide:

- Medical certification and re-certifications;
 - The University must allow the employee at least **15 calendar days** to obtain the initial medical certification.
 - The University may request certification no more often than every 30 days or the length of the leave certified in the form, whichever is longer.
 - The University may request certification more often if there is a change in circumstances or new information.
- Second or third opinions are permissible (at the employer's expense);
- Fitness for duty/return to work authorization can be required.
 - * Human Resources, and not a direct supervisor, should make all contacts regarding medical certification.

Family Medical Leave Act

Record Keeping

- Failure to provide designation and rights notices may be considered interference with FMLA leave.
- Employers must track FMLA leave of each employee, including intermittent leave by the hour.
- Employers must keep records of FMLA leave dates and notices provided for 3 years.

Family Medical Leave Act

Unlawful Acts

- Employer may not interfere with, restrain, or deny the exercise of any right provided by FMLA.
- Employer may not discharge or discriminate against any individual taking FMLA leave or anyone involved in any proceeding **related** to FMLA.

Family Medical Leave Act

Unlawful Acts

Employers cannot use the taking of FMLA leave as a negative factor in employment actions:

- *Examples: hiring, promotions, disciplinary actions and/or performance evaluations.*
- FMLA can not be counted as an attendance issue.
- FMLA leave should never be considered in evaluating an employee's performance.

Family Medical Leave Act

Common Questions

Q: Does the law guarantee paid time off?

No. FMLA only requires unpaid leave. However, the employee may elect, or the employer may require the employee, to use accrued paid leave such as vacation or sick leave for some or all of the FMLA leave period.

Q. Can workers' compensation leave run concurrently with an employee's FMLA entitlement leave?

It can. FMLA leave and workers' compensation leave can run together, providing the reason for the absence is due to a qualifying serious illness or injury and the employer **properly notifies the employee in writing** that the leave will be counted as FMLA.

Family Medical Leave Act

Common Questions

- Q. If an employer fails to tell employees that the leave is FMLA leave, can the employer count the time they have already been off against the 12 weeks of FMLA?
- A. Depends. In most situations, the employer cannot count leave as FMLA leave retroactively. Remember, the employee must be notified in writing that an absence is being designated as FMLA leave.

The employer and employee can mutually agree that the leave will be retroactively designated. Retroactive designation cannot cause harm to the employee.

Family Medical Leave Act

Common Questions

Q. Who is considered an immediate “family member” for purposes of FMLA Leave?

A. An employee’s spouse, children (son or daughter), and parents are immediate family members.

The term “parent” does NOT include a parent “in-law.”

The term son or daughter does not include individuals age 18 or over unless they are “incapable of self-care” and needs assistance or supervision in 3 or more daily living activities.

Family Medical Leave Act

Common Questions

Q. Does the 1,250 hours worked requirement include paid leave time or other absences from work?

A. No. The 1,250 hours include only those hours **actually worked** for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

Q. Can a supervisor make inquiries to a health care provider about an employee's FMLA leave?

A. No. Only Human Resources or a designee are permitted to make inquiries of a health care provider in certain circumstances.

Family Medical Leave Act

Common Questions

Q. Can the University require an employee to return to work before the employee exhausts leave?

A. Subject to certain limitations, the employer may deny the continuation of FMLA leave due to a serious health condition if the employee **fails to fulfill any obligations to provide supporting medical certification.**

The employer may not, however, require the employee to return to work early by offering a light duty assignment.

Family Medical Leave Act

What Do You Think?

- You hired a full time employee, Burt, in February and he has a heart attack. Is Burt eligible for FMLA leave?
- Your other employee, Betty, was hired 5 years ago. She is pregnant and due in March. Is Betty eligible for FMLA leave?
- If Betty was hired in February, would she be eligible to take a leave of absence?

Family Medical Leave Act

How is FMLA Administered at John Carroll University

- Step 1:** Employee completes “Request for Leave” form. This form is to be returned to a HR Representative;
- Step 2:** The HR Representative will provide a “Notice of Eligibility and Rights and Responsibilities” as well as the “Certification of Health Care Provider” form to the employee;
- Step 3:** The Employee is responsible for providing the “Certification of Health Care Provider” form to the Health Care provider(s). This form must be returned to the HR Representative within 15 calendar days from the date received by the employee unless extenuating circumstances exist;

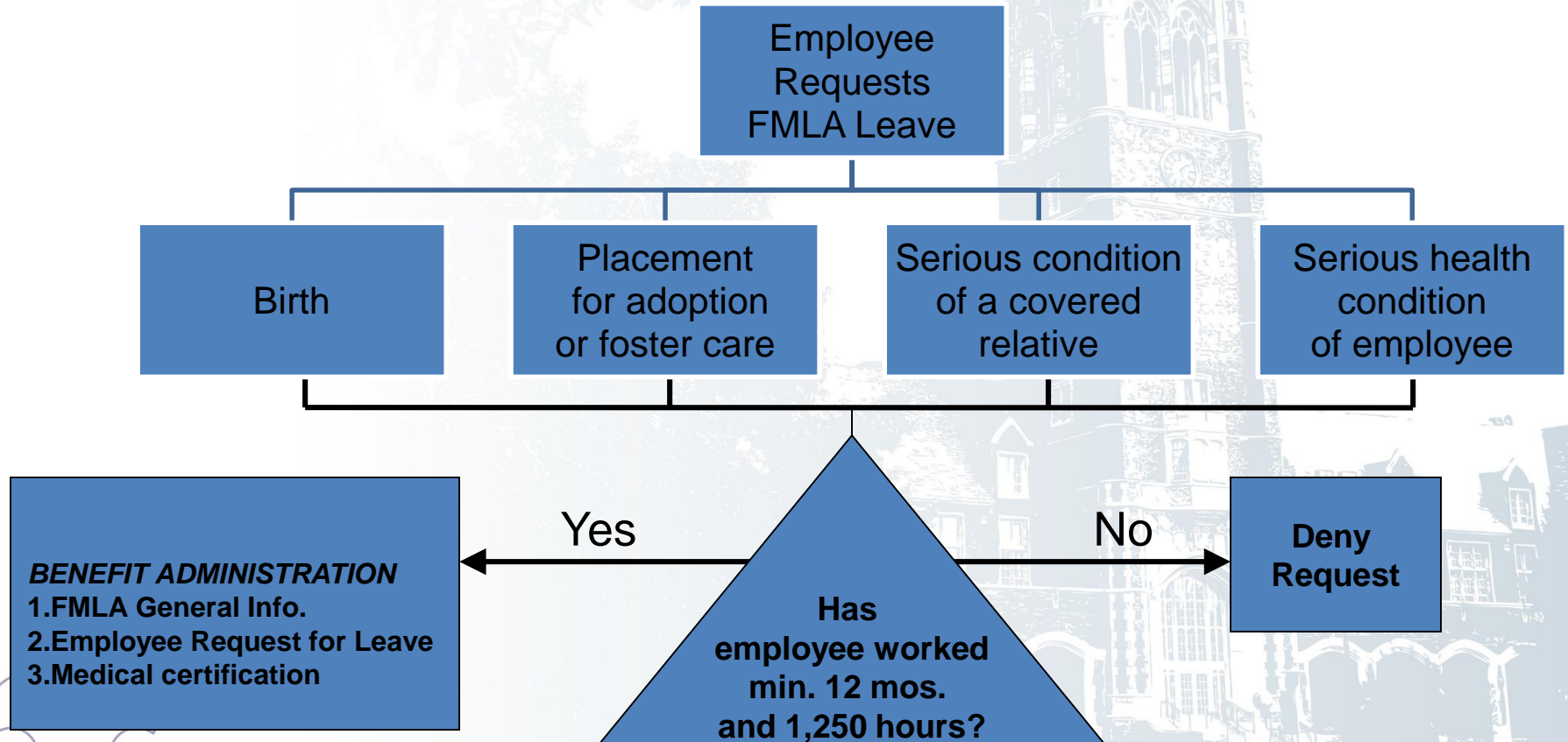
Family Medical Leave Act

How is FMLA Administered at John Carroll University

- Step 4:** Human Resources sends the “Designation Notice” to the employee. This notice will serve to inform the employee if the leave has been approved or not;
- Step 5:** Human Resources will notify the employee’s direct supervisor whether the employee’s request for FMLA has been approved. Only the details regarding the type of leave and length will be provided.

Family Medical Leave Act

How is FMLA Administered at John Carroll University



Family Medical Leave Act

How is FMLA Administered at John Carroll University

All completed forms need must be sent to:

John Carroll University
Human Resources Department
124 Rodman Hall
University Heights, 44118

or fax to: 216-397-4933

Questions may be directed to Ryan Armsworthy, ext. 1576

Family Medical Leave Act

JCU Leave Policies

Absences & Leaves: “Policies” section of HR
webpage

www.jcu.edu/hr

KEY: Supervisors should contact Human Resources if an employee indicates a need for time off related to a medical condition.

FMLA Summary



Section II

Americans with Disabilities Act

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What is the ADA?

- Americans with Disabilities Act (ADA) is a federal law enacted in 1990, amended several times including 2009 ADA Amendments Act
- Now referred to as ADAA
- The law gives protections and rights to individuals with disabilities and guarantees equal opportunity for these individuals
- Employers cannot
 - Discriminate against applicants or employees based on a disability
 - Retaliate against applicants or employees related to a disability
 - Fail to provide reasonable accommodations for an applicant's or employee's disability
 - Fail to provide a barrier-free work environment

Americans with Disabilities Act

Supervisor's Obligation

- Supervisors should not try to determine if an employee is disabled or provide accommodations for a disabled employee.
- Contact Human Resources to discuss any disability issue or request for accommodation.

Americans with Disabilities Act

Disability Definition

A disability is defined as:

1. A physical or mental impairment that *substantially limits* a major life activity, or
2. A *record* of a substantially limiting impairment (e.g. history of cancer), or
3. *Regarded* as having a substantially limiting impairment (e.g. speaks slowly, cosmetic issues).

Americans with Disabilities Act

Disability Definition

- “Substantially limits” is read less strictly than before
- Employees with chronic conditions or with conditions in remission can be considered disabled

Note: *The disability does not have to substantially limit an activity related to work (i.e. insomnia – may substantially limit sleeping although not related to a job function directly)*

Essential Functions of the Job

- An individual with a disability must be qualified to perform the essential functions of the job, with or without reasonable accommodation, in order to be protected by the ADA.
- The applicant or employee must:
 - satisfy the job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related, and
 - be able to perform those tasks that are essential to the job, with or without reasonable accommodation.
i.e. an assistant who cannot type vs. an assistant who cannot run errands in a short period of time

Covered Employment Practices

- Recruitment
- Pay
- Hiring (job application)
- Promotion
- Job assignments
- Training
- Leave
- Termination
- Lay-off
- Benefits
- *All other employment-related activities*

Hiring

Discussing Disability with the Potential Employees

- The ADA prohibits employers from asking questions that are likely to reveal the existence of a disability before making a job offer.
- This includes written questionnaires and inquiries made during interviews, as well as medical examinations.
- Questions and medical examinations can be permissible after extending the job offer, but before the individual begins work.

Hiring

Prohibited Interview Questions

During a job interview, employers *cannot* ask:

- Have you ever been hospitalized?
- Have you ever been treated for a mental disorder?
- How many days were you absent last year due to illness?
- Do you have any known physical disabilities?
- Are you taking any medications?
- Have you ever been treated for alcoholism or drug addiction?
- Do you have any physical or mental impairments that would affect your job performance?
- How many days were you sick last year?
- Have you ever filed a workers' compensation claim?
- Do you have a heart condition?

Hiring

Acceptable Interview Questions

During a job interview, the employer *can* ask:

- Do you have the ability to perform the job functions related to an essential duty of the job?
(i.e. Can you lift 20 pounds? Can you type 50 words a minute?)
- Describe or demonstrate how you will perform the job-related functions that are essential duties of the job.

Hiring

Accommodations for Applicants

- An employer may tell all applicants what the hiring process involves (for example, an interview, timed written test, job demonstration, post-offer medical examination) and then ask whether they will need a reasonable accommodation for this process.
- The key is that the employer must not ask such questions only of those who have obvious disabilities.

Hiring Scenario

Barriers

Scenario:

- A supervisor conducts job interviews in a second floor office. There is no elevator in the building.
- The company calls Sue, the applicant, to arrange for an interview for a secretarial position. She indicates she uses a wheelchair and wants the supervisor to be sure there is no issue with that for interviewing.

Question:

- What reasonable accommodation would the employer be required to provide to Sue, if any?

Answer

- Installing an elevator would be an undue hardship (cost), but the employer could conduct the interview in a first floor office. The employer must move the location of the interview as a reasonable accommodation to Sue.
- The employer could not decide not to hire Sue because she could not work on the 2nd floor. A reasonable accommodation would need to be provided.

After a job offer is made...

Employers *can*:

- Require that an applicant take a medical examination if everyone in a job category must take one.
- Condition the job offer on the results of the medical examination.
- *However*, if the individual is not hired because the medical examination reveals the existence of a disability, the employer must:
 1. be able to show the reasons for exclusion are job related and necessary for conducting the work of the organization, *and*
 2. Be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential functions of the job.

After employee is hired...

- The employer cannot require a medical examination or ask an employee questions about a disability, *unless* employer can show the requirements are job related and necessary for the work of the University, or the employee poses a direct threat to self or others.
- Employers may also conduct voluntary medical examinations that are part of an employee health program.

Reasonable Accommodation Requests

- Employers must provide reasonable accommodations (changes to job duties or work environment) so that qualified applicants or employees may:
 - Apply for jobs
 - Perform essential functions of the job
 - Enjoy equal benefits and privileges of employment

What are Reasonable Accommodations?

Reasonable Accommodations may include:

- Acquiring or modifying equipment or devices (i.e. installing a ramp or modifying a workspace)
- Job restructuring
- Part-time or modified work schedules; extensions of leave
- Reassignment to vacant positions
- Adjusting examinations, training materials, or policies (i.e. training and written material in Braille, audiotape or computer disk)
- Providing readers or interpreters
- Making the workplace readily accessible and usable by individuals with disabilities

Requesting an Accommodation

- It is the responsibility of the applicant or employee to inform the employer if an accommodation is desired.
- Request can be made by the applicant or employee either verbally or in writing. (employer may require a physician certification)
- An applicant or employee can request an accommodation at any stage of employment, including:
 1. Application process
 2. Interview process
 3. Hiring process
 4. During ongoing employment

Can an employer refuse an accommodation because it is too difficult or expensive?

- An employer need not provide a specific accommodation if it would cause an “undue hardship.”
- An employer cannot refuse to provide an accommodation because it entails some costs.
- If the requested accommodation causes an undue hardship, the employer still would be required provide another accommodation that does not.

Confidentiality

- The ADA contains strict confidentiality requirements. Medical information revealed by an applicant or employee must be kept confidential.
 - Disability and FMLA records must be kept in a separate file from other personnel documents.
 - These documents should not be in supervisor's files.
- The ADA's confidentiality requirements protect both information voluntarily revealed as well as information revealed in response to an employer's written or oral questions or during a medical examination.

Exception to Confidentiality

- An employer may share medical information with others in certain instances (i.e. hiring decision makers where medical information is related to essential functions of job, health and safety personnel for safety planning, government officials investigating compliance with ADA, etc.)
- Information shared should only be used to make decisions consistent with the ADA.

ADA Enforcement

- The ADA provisions which prohibit job discrimination are enforced by the U.S. Equal Employment Opportunity Commission.
- Any individual who feels that they have been discriminated against on the basis of disability can file a charge with the EEOC.
- Individuals also may file lawsuits under state or federal law.

Campus Contact Information

- **ADA Coordinator** (Garry Homany)
 - Faculty & staff complaints and compliance requests for accommodation
- **Services for Students with Disabilities** (Allison West Kaskey)
 - Student complaints and compliance request for accommodation and classroom instruction issues
- **Facilities** (Carol Dietz)
 - Design of new, accessible buildings

Interaction of FMLA and ADA

- FMLA leave request may trigger ADA accommodation process
- Employee does not have to say “FMLA leave” or ADA accommodation is needed.
 - Can say need “time off” or “need more time” to return to job
 - Third person can make request
- If both apply, follow both processes and document both
- Before any employee is terminated for exceeding leave limit, consider whether ADA accommodation applies

FMLA and ADA

Hank's Hospitalization

- Hank, an employee, told his supervisor that he was getting treatment for cancer and needed to take several weeks off. The supervisor agreed for him to do this on an informal basis. Hank gave the supervisor a medical note that she stuck in his department file.
- The day Hank was to return to work, Hank's wife calls the supervisor to say that he cannot work for a while because he has been in a car accident and is in the hospital, and he is still having cancer treatments.
- What should the supervisor do?

FMLA and ADA

Hank's Hospitalization

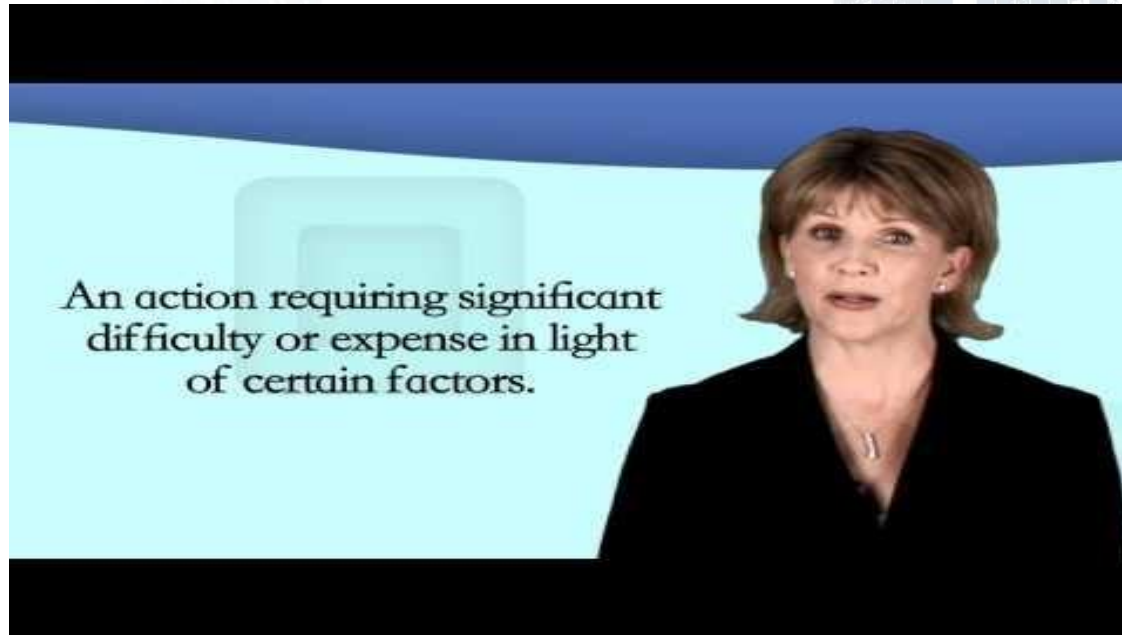
- First request would have been FMLA leave since cancer can be a “serious health condition” if causes incapacity with continuing treatment or is a chronic condition.
- Hank also may be disabled due to cancer and entitled to ADA accommodation, which may include leave.
- Documentation needs to be properly handled under FMLA and ADA.

FMLA and ADA

Hank's Hospitalization

- Car accident likely a “serious health condition” under FMLA since he is hospitalized & unable to work.
- No FMLA required notices or documentation of informal leave provided, so employee will likely be entitled to 12 weeks of FMLA leave now.
- Request for leave also may be ADA accommodation request.
- If after this leave and the employee exhausts FMLA leave, the employee can still request additional leave extension under ADA.

ADA Summary



Questions?

Thank you

