Overview of FMLA, ADAAA, and Job Descriptions

Diana Cecil, SPHR
Human Resource Consultant
Texas Association of Counties
Objectives

1. Discuss the Family Medical Leave Act and how it applies to counties
2. Review the Americans with Disabilities Act Amendments Act and its impact on counties
3. Job Descriptions

TEXAS ASSOCIATION of COUNTIES
Family Medical Leave Act
Family Medical Leave Act (FMLA)

Effective August 5, 1993
FMLA Applies to All Public Agencies

All counties with 50 or more employees employed within 75 miles of the workplace must grant FMLA to eligible employees.

Seasonal and temporary employees count towards the 50, but not elected officials.
FMLA Eligibility

• Employee has worked for county for at least 12 months
  • Break >7 years not counted unless military call up
  • >3 years burden on employee

AND

• Has worked at least 1250 hours during the last 12 months prior to FMLA leave
  • Part-timers and long-term temps might qualify
FMLA Allows 12 Weeks of Leave for:

- A newly born, adopted or foster-placed child
- A spouse, child or parent with a serious health condition
- The employee’s own serious health condition

TEXAS ASSOCIATION of COUNTIES
Military Qualifying Exigency Leave

Qualified employees can receive 12 weeks of leave in a 12 month period if a spouse, child, or parent of the employee is being deployed to a foreign country.

This includes the Reserves, National Guard, and Retired.

DOES NOT EXTEND FMLA 12 WEEKS!
Military Qualifying Exigency Leave
Defined as...

- Short term deployment (7 days)
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation (5 days)
- Post deployment activities (during first 90 days home)
- Any additional agreed upon activities
Military Care Giver Leave

Qualified employees can receive up to 26 weeks of leave in a single 12 month period to care for a spouse, child, parent, or next of kin recovering from a serious injury or illness sustained as a result of active duty in the military.

Veterans are covered.

DOES EXTEND FMLA 12 WEEKS TO UP TO 26 WEEKS!

Leave is applied per-service member, per-injury basis – but no more than 26 weeks in a single 12 month period.
Reasons for Military Care Giver Leave

A member of the military undergoing medical treatment, recuperation, therapy, outpatient treatment or on the temporary disability retired list.

 Certain veterans undergoing medical treatment, recuperation or therapy.
Intermittent FMLA

May be taken when medically necessary to care for a seriously ill family member or because of the employee’s own serious health condition (usually chronic conditions).
FMLA Medical Certifications

County may require (give employees 15 days to obtain)

Can only require intermittent leave recertification every 6 months

Fitness for Duty: must include a copy of the job description or essential functions on or before the designation notice in given to the employee.

Privacy requirements must be met

Supervisor is never allowed to contact the physician to clarify the information provided
FMLA Protections

A covered employee must:

1. Maintain county paid benefits

2. Be restored to their original job
   - Or equivalent job in terms on pay, benefits, and other conditions of employment

3. Be provided proper documentation in writing
   - To include Notice of Eligibility Form WH-381 and Designation Notice Form WH-382
   - If requiring medical certifications, use proper forms

www.dol.gov
If FMLA Is Exhausted, What Next?

- Have a policy in place to offer employees COBRA at the end of their 12 weeks
- Review the employee’s status and condition
- Begin the interactive process to determine and document your actions. Not every leave under the FMLA will have the ADAAA protection but evaluation is important
What Do You Know Now?

- Train supervisors to comply
- Check your policies
- Don’t forget ADAAA
Americans With Disabilities Act Amendments Act
ADA was effective July 26, 1992
Amended in 2008
New regulations effective date was May 24, 2011
ADAAA States That…

“No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment”
ADAAA Key Changes

Expands the definition of disability

Employee now only has to prove the condition “substantially limits them”

Introduces 9 rules of construction

You must use the 9 rules of construction to determine whether an impairment substantially limits a major life activity

The term “substantially limits” will now broadly be interpreted
ADAAA Key Changes Continued

More activities added to the list of “major life activities” that create a disability when people cannot perform them.

A new category of major life activities was added to include “major bodily functions”.

A health condition that amounts to a disability now counts as a disability even if the individual takes medicine or uses a device that limits the disability’s impact (hearing aids, insulin, drugs, etc).

A medical condition may still qualify as a disability even if it is episodic or in remission.
ADAAA Key Changes Continued

Makes it easier for employees to sue under the “regarded as” section

If an employer wrongly considers an employee or applicant as disabled when they are not – they can sue and win, even if the impairment that caused them to view them as disabled was not a disability.
ADAAA: Who is Covered?

- ADAAA applies to all local government employers with 15 or more employees.

- Employees who meet the definition of “qualified individual with a disability” who, with or without a reasonable accommodation, can perform the essential functions.
What Makes a “Qualified Individual”?

ADAAA states that an individual with a disability is qualified when:

- They satisfy the requisite skill, experience, education, and other job related requirements of the position
- With or without reasonable accommodation
- And can perform the essential functions
What Is a Disability?

- A physical or mental impairment that “substantially limits a major life activity” of an individual
- A record of such an impairment
- Being “regarded as” having such an impairment

Regulations state the term “major” does not create a demanding standard for disability and should not be interpreted strictly.
ADAAA Purpose

To “reinstate a broad scope of protection” by expanding the definition of the term “disability” to include many types of impairments that were originally left out of the ADA.

It is now easier for employees to show they have a disability!
Physical Impairment

Includes any physiological disorder or condition, or anatomical loss affecting one or more body systems such as:

- Neurological
- Musculoskeletal
- Special sense organs
- Respiratory (including speech organs)
- Cardiovascular
- Reproductive
- Digestive
- Genitourinary
- Immune
- Circulatory
- Hemic
- Lymphatic
- Skin
- Endocrine
Mental Impairment

Includes any mental or psychological disorder such as:

- Intellectual disability (formerly known as mental retardation)
- Organic brain syndrome
- Specific learning disabilities
## Major Life Activities

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Sitting
- Reaching
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Interacting with others
- Working
Record of Disability

This is a history of a mental or physical impairment that substantially limits a major life activity, or has been misclassified as having such an impairment.

Employers are required to provide a reasonable accommodation of needed and if related to the past disability.
Regarded As

An applicant or employee who is subjected to an action prohibited by the ADAAA because of an actual or perceived impairment will meet the “regarded as” definition of disability.

This is only used for discrimination purposes because if the actual or perceived impairment.
## Major Bodily Functions

<table>
<thead>
<tr>
<th>Functions of the immune system</th>
<th>Brain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special sense organs and skin</td>
<td>Respiratory</td>
</tr>
<tr>
<td>Normal cell growth</td>
<td>Circulatory</td>
</tr>
<tr>
<td>Digestive</td>
<td>Cardiovascular</td>
</tr>
<tr>
<td>Genitourinary</td>
<td>Endocrine</td>
</tr>
<tr>
<td>Bowel</td>
<td>Hemic</td>
</tr>
<tr>
<td>Bladder</td>
<td>Lymphatic</td>
</tr>
<tr>
<td>Neurological</td>
<td>Musculoskeletal</td>
</tr>
<tr>
<td></td>
<td>Reproductive functions</td>
</tr>
</tbody>
</table>

* Includes the operation of an individual organ within the body.
Virtually Always Disabilities

Deafness substantially limits hearing

Blindness substantially limits seeing

An intellectual disability substantially limits brain function.

Partially or completely missing limbs or mobility impairments substantially limit musculoskeletal function.
Virtually Always Disabilities

Autism substantially limits neurological function

Cancer substantially limits normal cell growth

Cerebral Palsy substantially limits brain function
Virtually Always Disabilities

Diabetes substantially limits endocrine function

Epilepsy substantially limits neurological function

HIV infection substantially limits immune function
Virtually Always Disabilities

Multiple Sclerosis substantially limits neurological function

Muscular Dystrophy substantially limits neurological function

Major depressive disorder, bipolar, post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia substantially limit brain function
What Does the EEOC Say?

The primary focus in an ADAAA case should be if the employer complied with their obligations under the ADAAA and if discrimination occurred, not if the individual meets the definition of disability.

No extensive demand analysis to determine if disabled.
What Do You Know Now?

- Review job descriptions to ensure regulatory compliance
- Train supervisors to comply
- Assure interactive process in place with documentation
- Check your policies
Job Descriptions
Job Descriptions as Documentation

Well written job descriptions can be a useful tool in helping to ensure ADAAA compliance.

- Identifying the essential job functions
- Specifying physical requirements
- Identifying areas where accommodation may be necessary
<table>
<thead>
<tr>
<th>Key Components</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Position Summary</strong></td>
</tr>
<tr>
<td><strong>Special Conditions</strong></td>
</tr>
<tr>
<td><strong>Essential Duties of the Job</strong></td>
</tr>
<tr>
<td><strong>Working Conditions</strong></td>
</tr>
<tr>
<td><strong>Education Requirements</strong></td>
</tr>
<tr>
<td><strong>Other Additional Duties</strong></td>
</tr>
<tr>
<td><strong>Experience and Skills</strong></td>
</tr>
<tr>
<td><strong>Physical Requirements</strong></td>
</tr>
</tbody>
</table>

**TEXAS ASSOCIATION of COUNTIES**
How To Determine Essential Duties

- Is the employee actually required to perform the duty?
- Does the position exist to perform this specific duty?
- Has the responsibility been shared?
- How much time is spent on the duty?
- Would taking away the function fundamentally change the job?
Essential Duties Documentation

Use an “Action Verb” followed by what needs to be accomplished.

- Types
- Reviews
- Records
- Approves
- Cleans
- Files
- Drives
- Prepares
- Collects
- Operates
- Supervises

...NOT “RESPONSIBLE FOR...”
Physical Conditions Documentation

- **Sit or Stand**
  - Stationary Position
  - Must be able to remain in a stationary position for 50% of the time.

- **Speak**
  - Communicate
  - Must be able to express or exchange ideas by means of spoken word, communicating orally with others accurately, loudly, and quickly.

- **Drive**
  - Motor Coordination
  - Must be able to coordinate eyes, hands, fingers, and feet with each other in response to visual stimuli.
Questions
Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.