

	ADA	WC	FMLA
Ability to Request Medical Information	<p>Yes</p> <p>If employee asks for accommodation</p> <p>If employee needs extended leave (past WC or FMLA).</p> <p>If disability not obvious to see if employee disabled.</p> <p>To see if employee needs accommodation.</p> <p>To see if certain accommodation will work and permit employee to perform job.</p> <p>Can require employee to submit medical excuses for all absences.</p> <p>Can require IME to see if can perform essential functions or to ascertain type of accommodation or to see if employee poses "DIRECT THREAT" to themselves or others (employer pays for exam)</p> <p>If employee refuses generally will defeat ADA claim</p>	<p>Yes. Will get Drs. Notes for WC information. Also can request IME from employer doctor .</p> <p>Employee must cooperate or benefits cut off during time they do not comply.</p> <p>Can also ask doctor if employee can perform essential functions of position upon release to return to work. (if not look to ADA. If not disabled then employer can terminate)</p>	<p>Yes</p> <p>DOL form</p> <p>Get certification at start to see if there is serious medical condition</p> <p>Recertification every 30 days</p> <p>Can require IME –employer pays for examination</p>
Health Benefits	Not required to maintain if employee on leave	Must maintain while employee on WC leave	Required to maintain while employee on FMLA leave. No need to maintain other benefits

	ADA	WC	FMLA
Notice	<p>Employee obligation to request accommodation However, if employer suspects (FMLA,WC etc) don't wait. Engage in INTERACTIVE PROCESS!!!— * MOST TRICKY: employee out on WC or FMLA leave and returns—may be subject to ADA protection and may need reasonable accommodation—may ask indirectly (I need to be excused from typing, I would like to work less hours etc.). Need to assume this is request for accommodation and inform HR.</p>	<p>1st report of injury must be submitted by employee. If employer aware of injury ensure it is done</p>	<p>Employee obligation to request leave 30 days in advance if doable. Employer can designate leave as FMLA if tells employee doing so in advance (if leave qualifies) and should do so. If employee only asks for FMLA ensure they understand employer may need to look at ADA also in future-if after 12 weeks still have condition (then ADA interactive process if condition is disability)</p>
Leave	<p>Accommodation can be time off, working part-time, etc. Any time off can be unpaid. Analyze under both ADA and FMLA; employee gets greater benefits. If FMLA and WC time off exhausted, additional leave can be reasonable accommodation (if condition is disability). There is no limit to amount of leave that can be “reasonable”. Do not need to give additional leave or can stop leave when it becomes undue hardship (look at needs of business, cost, can you fill in position with someone else etc).</p>	<p>WC leave per statute</p>	<p>Limit 12 weeks: can be done all at once, or in blocks or intermittent. If not at all at once very important to keep records. No requirement to give beyond 12 weeks</p>

<p>Other Position</p>	<p>If exhausted leave under FMLA and WC and it is disability employer can give more leave as reasonable accommodation. If employee cannot do former job anymore if Employer has equivalent position and employee can be reassigned without undue hardship, this is reasonable accommodation. If there is no equivalent position, but lesser one and employee will accept it then Employer must reassign employee. Employer is not required to create light duty position. Employer can ask for medical certification (and information) from physician to ascertain whether or not condition is disability.</p>	<p>Can create light duty positions- but not required. This helps with WC insurance</p>	<p>No</p>
<p>Return to Work</p>	<p>If WC injury, or FMLA and then disability, must accommodate Can only refuse to accommodate (return to work) if employee cannot do essential functions of prior job, if there is no other position that can be accommodation or if the employee is a direct threat to themselves or others.</p>	<p>Employer decides, based on medical information from doctor, when employee needs to return. No need to consider ADA if condition not disability (short term, resolved etc.). If there is continuing condition see if it is disability under ADA. Return to same job under WC (unless accommodation under ADA), only if recovered and job available</p>	<p>After 12 weeks return to original job or virtually identical (pay, benefits, T& C of job). IF can't perform essential functions of job then see if it is disability under ADA and you must offer accommodation. Don't have to reinstate key employee. Key employee: has statutory definition but typically is person co. cannot function without and can't be replaced by temporary person</p>

	ADA	WC	FMLA
Fitness for Duty	<p>IF WC injury that is disability and do fitness for duty evaluation only for essential functions of job if employer reasonably believes employee's injury impairs ability to perform essential functions</p> <p>Can ask for fitness for duty if employer thinks employees disability direct threat to themselves or others and if only related to job's essential functions.</p> <p>IF employee cannot perform essential functions then must see if accommodation</p> <p>Doctor's evaluation must be accepted.</p>	<p>Employer can contact health care provider, see medical records, ask for IME.</p> <p>Can send fitness for duty certifications listing essential functions and have medical provider certify employee can do them.</p>	<p>Can demand physical examination to determine if employee capable of performing essential functions of job but can only relate to medical condition took leave for or that resulted in WC injury.</p> <p>Note from health care provider must be accepted by Employer. So if not just says "employee can return to work" you cannot question that (don't assume they can't or then violate ADA—regarded as disability). Cannot request more details or further medical evaluation.</p> <p>Can't contact health care provider</p>

Reasonable Accommodation	<p>Yes. Employer must offer reasonable accommodation. Employee must request reasonable accommodation: need not be direct request or use of those words. If employer suspects there is a disability (disability not obvious) can request medical certification or can ask employee if they need an accommodation.</p> <p>If employer knows there is disability use interactive process. Ask employee if they need accommodation. If employee asks for accommodation, employer can ask for medical information to establish if disability, what kind and if the accommodation would permit employee to perform essential job functions. Employer can get copies of medical records.</p> <p>Ex. Secretary to two litigation lawyers asks for relief from typing. This essential function—get medical certification, designate as FMLA leave if give time, if carpal tunnel because of work then WC also.</p> <p>Reasonable accommodations can include; leave (full or part time), reduced hours, job restructuring. USE JAN (JOB ACCOMMODATION NETWORK).</p>	No. If injury is disability then see if ADA applies	No.
Termination	Yes but make sure employee cannot perform essential functions of job, with or without reasonable accommodation (so only if not other position, can't restructure job etc), or it would be undue hardship and the employee has exhausted all absences allowed under leave policies.	Yes. Can be terminated if have policy that employees with injuries that cannot come back to original job within ___ days (i.e. cannot perform essential functions of job) will be terminated and co. applies policy consistently. Also must apply to all employees—not just those with WC injuries. Also employee must have exhausted WC leave.	Yes. Leave expired and employee cannot return to former job because cannot perform essential functions. If condition is disability then look at ADA