

WC, FMLA and ADA Guideline

All termination of employment must be approved by MACo Legal Department.

All medical information must be kept in separate file (from personnel file) and kept locked.

Supervisors should not have unlimited access to medical information but only told what they need to know.

This is only a basic guideline with minimum information. If you need additional information, call MACo Personnel at 406 441-5473.

Which Law Applies?	WC	FMLA	ADA
Notice	<p>1st report of injury must be submitted:</p> <ul style="list-style-type: none"> Employee’s responsibility to report injury to supervisor by the end of shift (“policy”). Employee/employer responsibility to submit first report (preferable within 30 days of occurrence). Employer responsibility to provide medical status form, medical authorization form, and job description with the essential functions of the job to give to an employee when he/she goes to the doctor. Employee responsibility to return the medical status form to employer. 	<p>Employee obligation to request leave 30 days in advance if doable.</p> <p>Employer can designate leave as FMLA if tells employee doing so in advance (if leave qualifies) and should do so.</p> <p>Link to the forms:W381, Notice of Eligibility and Rights &Responsibilities: http://www.dol.gov/whd/forms/WH-381.pdf and Link to form:WH-382, Designation Notice: http://www.dol.gov/whd/forms/WH-382.pdf</p> <p>Check the forms for time requirement of notice.</p> <p>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>	<p>Employee obligation to request accommodation</p> <p>However, if employer suspects (FMLA,WC, etc.), don’t wait.</p> <p>Engage in INTERACTIVE PROCESS!!!</p> <p>* 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>
Leave	<p>WC leave per statute:</p> <p>If employee is injured and receiving W/C Temporary Total Disability (TTD) Benefit:</p> <ul style="list-style-type: none"> Use sick leave for first 32 hours 2/3 of their wages Can use vacation to make up for the other 1/3. 	<p>Limit 12 weeks: can be done all at once, in blocks, or intermittent. If not all at once, very important to keep records. No requirement to give beyond 12 weeks.</p>	<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.</p> <p>If FMLA and WC time off exhausted, additional leave can be reasonable accommodation (if condition is disability).</p> <p>Do not need to give additional leave or can stop leave when it becomes undue hardship to the employer (look at needs of business</p>

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<p>Ability to Request Medical Status Information</p>	<p>Yes Can ask doctor for medical status form and whether employee can perform essential functions of position upon release to return to work.</p> <p>Employee must cooperate or be subject to disciplinary actions.</p> <p>If doctor states employee cannot perform essential functions, the employer needs to look to ADA.</p> <p>Should this be included and where</p>	<p>Yes Link to the Certification of Health Care Provider for Employee' Serious Health Condition form -WH-380-E: http://www.dol.gov/whd/forms/WH-380-E.pdf</p> <p>Get FMLA certification at start to see if there is serious medical condition. Make sure a job description with essential functions of the job is included with the certification form.</p> <p>If necessary, may do recertification every 30 days.</p> <p>Can require Independent Medical Exam (IME) but the employer pays for examination.</p>	<p>Yes If employee asks for accommodation.</p> <p>If employee needs extended leave (past WC or FMLA), then the county can start interactive process to see:</p> <ul style="list-style-type: none"> • If employee needs accommodation. • If certain accommodation will work and permit employee to perform job; or • If the accommodation is unreasonable. <p>Can require IME to see if employee 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>Health Benefits</p>	<p>Must maintain while employee on FMLA leave running concurrently with W/C leave.</p> <p>After FMLA exhausted and still on W/C leave, health benefits can be terminated - Check Policy.</p> <p>If the employee has been terminated, you do not need to pay for health benefits.</p>	<p>Required to maintain while employee on FMLA leave. No need to maintain other benefits.</p>	<p>Not required to maintain if employee on leave.</p>

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Other Position	<p>Yes</p> <p>Under the W/C Return to Work Law, the county should try to provide a temporary light /Modified duty position if possible.</p> <p>This will need to be evaluated on an on going basis.</p> <p>Employee cannot refuse light duty or their W/C benefits will be terminated.</p> <p>Light duty helps keep the cost of the claim down.</p>	No	<p>If exhausted leave under FMLA and WC and it is disability, employer can give more leave as reasonable accommodation.</p> <p>If employee cannot do former job anymore, if employer has equivalent position and employee can be reassigned without undue hardship to the employer, this is reasonable accommodation.</p> <p>If there is no equivalent position, but a lesser one and employee will accept it, then employer must reassign employee. Employer is not required to create light - duty position.</p> <p>Employer can ask for medical certification (and information) from physician to ascertain whether or not condition is disability.</p>
Return to Work	<p>Doctor decides when employee is able to return to work modified/full duty.</p> <p>Evaluate the length of time to heal, may extend beyond FMLA period.</p> <p>If unable to return to the time of injury job after extended time for further healing, then complete an ADA evaluation.</p>	<p>After 12 weeks return to original job or virtually identical (pay, benefits). If can't perform essential functions of job, then see if it is disability under ADA and you must try to offer accommodation.</p> <p>Don't have to reinstate key employee.</p> <p>Key employee: has statutory definition but typically is a person the county cannot function without and can't be replaced by temporary person.</p>	<p>If WC injury, or FMLA and then disability, must try to accommodate.</p> <p>Can only refuse to accommodate (return to work) if employee cannot do essential functions of prior job, if there is no other position that they can perform with or without accommodation, or if the employee is a direct threat to themselves or others.</p>

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Fitness for Duty	<p>Employer can contact health care provider, for a Medical Status update.</p> <p>Can send fitness-for-duty certifications listing essential functions and have medical provider certify employee can do them.</p>	<p>If doctor indicates in medical certification form that he or she needs more time and FMLA is exhausted go to ADA.</p>	<p>If WC injury is disability, then 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 an accommodation can be made. Doctor's evaluation must be accepted.</p>

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Reasonable Accommodation	<p>No May need to look at ADA.</p>	<p>No May need to look at ADA.</p>	<p>Yes. Employer must try to offer reasonable accommodation. Employee must request reasonable accommodation: need not be direct request or use of those words.</p> <p>If employer suspects there is a disability (disability not obvious), can request medical questionnaire or can ask employee if they need an accommodation.</p> <p>If employer knows there is disability use interactive process-Link: http://www.mtcounties.org/sites/default/files/forms-downloads/insurance/personnel-services/interactive-process.pdf</p> <p>If employee asks for accommodation, employer can ask for medical status information to establish if disability, what kind and if the accommodation would permit employee to perform essential job functions.</p> <p>Ex. Secretary to two litigation lawyers asks for relief from typing. This is an essential function of the job—get medical certification, designate as FMLA leave if available. If carpal tunnel is because of work, then it is WC also. Reasonable accommodations can include: leave (full or part time), reduced hours, job restructuring. USE JAN (JOB ACCOMMODATION NETWORK).</p>
Termination	<p>Yes. Can be terminated if employee with injuries cannot come back to original job within a reasonable period. (i.e. cannot perform essential functions of job , FMLA exhausted , and cannot be accommodated under ADA.</p>	<p>Yes. Leave expired and employee cannot return to former job because cannot perform essential functions. And cannot be accommodated under ADA.</p>	<p>Yes But make sure employee cannot perform essential functions of job, with or without reasonable accommodation (so only if there is no other position, can't restructure job, etc.), or it would be undue hardship to the employer and the employee has exhausted all absences allowed under leave policies.</p>

- **RESOURCES:**

- <http://askjan.org>
- <http://erd.dli.mt.gov/human-rights/employer-resources.html>
- <http://www.dol.gov/whd/fmla/>
- www.eeoc.gov
- <http://www.mtcounties.org/insurance/workers-compensation/return-work>
(medical status, authorization form)
- <http://www.mtcounties.org/please-login-access> (Job Description and Manual)