



## NAVIGATING THE CHALLENGES OF ADA AND PWFA COMPLIANCE

When an employee exhausts their 12 weeks of Family and Medical Leave Act (FMLA) but requires additional time, organizations can face a myriad of questions. These include determining if additional unpaid leave is required under the Americans with Disabilities Act (ADA), how health insurance coverage is impacted, and whether the Pregnant Workers Fairness Act (PWFA) applies. Companies navigating these complex scenarios must strive to balance compliance with federal regulations while maintaining operational efficiency and avoiding penalties, disputes, or costs.

This situation is becoming more common. The implementation of the PWFA in 2023 has introduced new complexities, while enforcement by the Equal Employment Opportunity Commission (EEOC) intensifies. Additionally, stop-loss carriers are scrutinizing leave decisions more closely than ever before. For HR leaders and CFOs, understanding the nuances of providing accommodation beyond FMLA has become a critical part of workforce management.

### The Challenge of Transitioning from FMLA to Accommodations

When employees are unable to return to work after exhausting their protected leave, employers must navigate a web of federal laws. The ADA mandates “reasonable accommodations” for qualified individuals with disabilities, which may include additional unpaid leave. However, determining what constitutes “reasonable” versus “undue hardship” is not straightforward. Meanwhile, the PWFA created an entirely separate accommodation framework for pregnancy-related conditions that often don’t meet the ADA’s disability threshold.

The importance of compliance is growing. According to Mercer’s 2024 Absence and Disability Management Survey, ADA compliance has nearly doubled as a top priority for employers, increasing from 15% in 2021 to 27% in 2024.<sup>1</sup> Additionally, 72% of employers have reported adding resources to address state and local paid leave mandates, while 66% have identified improving leave administration as a critical concern.<sup>1</sup>

The impact of these challenges affects different workforces in various ways. Hourly employees in sectors such as manufacturing, retail, hospitality, and healthcare can create immediate coverage gaps and lead to increased overtime costs when they are unable to return from leave. Smaller organizations without dedicated leave specialists often struggle with inconsistent policy application. Self-funded employers face scrutiny from stop-loss carriers, who review leave decisions for compliance before covering claims.





## Rising Numbers and Increased Enforcement

EEOC charges related to ADA accommodations consistently rank among the top discrimination claims filed. In the last fiscal year, the EEOC received over 29,000 charges of disability discrimination, marking a 25-year high.<sup>2</sup> This trend is likely to continue as employees become more aware of their rights and regulatory scrutiny intensifies. Ambiguous policies and reactive decision-making can lead to costly litigation and reputational damage.

Recent enforcement actions highlight the risks of non-compliance. Employers in industries such as hospitality, manufacturing, and food production have faced lawsuits for failing to provide simple accommodation: a stool for a hotel host with a knee condition, protective equipment for a manufacturing team lead with hearing loss, and a walker for a bakery employee. In these cases, employers opted for termination or demotion over accommodation, resulting in federal litigation and negative publicity.

## Growing Urgency of Leave Management

The factors converging to make leave management a pressing issue for organizations:

- + **PWFA implementation is a game-changer:** Unlike the ADA, the PWFA doesn't require a condition to qualify as a disability. Pregnancy complications, postpartum recovery, and lactation needs may all trigger accommodation obligations separate from disability protections. As HR teams continue to decipher and incorporate these distinctions, existing policies may not clearly address PWFA requirements.
- + **Enforcement is intensifying:** While regulatory agencies, like the EEOC, increase scrutiny of leave management practices, they're not alone. Stop-loss carriers are also closely examining whether employers properly managed leave before transitioning employees to COBRA or terminating coverage. Compliance gaps can result in denied claims and unexpected financial liabilities.
- + **Employee expectations have evolved:** Employees now expect greater flexibility and legal protections during health-related challenges. How organizations handle these situations can significantly impact employee retention, trust, and the ability to attract top talent.

## Solutions for Effective Leave Management

Working with experienced consultants, like an insurance broker, can provide comprehensive guidance and support that help organizations navigate the complexities of leave management.

### Services to consider include:

- + **Policy review and design** to identify gaps in existing policies and creating clear guidelines for transitioning to ADA or PWFA accommodations tailored to specific workforce needs.
- + **Workflow support** that guides HR teams through the interactive process required by the ADA and PWFA, including:
  - Initiating conversations
  - Requesting appropriate medical documentation
  - Coordinating with employees, providers, and managers
  - Evaluating accommodation options
  - Documenting decisions to withstand scrutiny
- + **Benefits alignment** to clarify decision points for maintaining active coverage or transitioning employees to COBRA, ensuring organizational alignment with plan documents and legal requirements.
- + **Risk reduction** that provides real-time legislative updates and expert guidance to ensure compliance with evolving regulations and mitigate risks associated with EEOC scrutiny, legal challenges, or stop-loss carrier reviews.
- + **Strategic consulting** that undertakes a comprehensive review of current practices, benchmarking against industry standards, and developing customized strategic plans to address workforce-specific needs.

## Preparing for the Future

The number of ADA and PWFA cases is expected to rise as employees increasingly demand accommodation beyond FMLA. Stop-loss carriers are likely to tighten eligibility enforcement, making compliance even more critical. Organizations that succeed in this evolving landscape will be those with clear leave policies, well-documented workflows, and trained teams capable of confidently managing complex situations. Organizations that prepare for these leave scenarios will be better equipped when they happen.

Proactive planning and expert guidance are essential to navigating these challenges effectively. By investing in robust leave management practices, organizations can reduce risk, ensure compliance, and foster a supportive workplace culture that enhances employee satisfaction and retention.

### SOURCE

<sup>1</sup>Fuerstenberg, R. (2024, September 18). *As leave programs grow more complex, so does compliance and administration*. Mercer. <https://www.mercer.com/en-us/insights/us-health-news/as-leave-programs-grow-more-complex-so-does-compliance-and-administration/>

<sup>2</sup>U.S. Equal Employment Opportunity Commission. (2024, August 29). *EEOC Sues Three Employers for Disability Discrimination*. U.S. Equal Employment Opportunity Commission. <https://www.eeoc.gov/newsroom/eeoc-sues-three-employers-disability-discrimination>

This material is for general information only and should not be considered as a substitute for legal, medical, tax and/or actuarial advice. Contact the appropriate professional counsel for such matters. These materials are not exhaustive and are subject to possible changes in applicable laws, rules, and regulations and their interpretations.

NPN 1316541 | IMA, Inc dba IMA Insurance Services | California Lic #0H64724

©IMA Financial Group, Inc. 2026

CT-TL-IMA-EB-031826

IMACORP.COM