



ADA Policy Guide Series #6 Coordinating Reasonable Accommodation with the FMLA, VSDP and Workers' Compensation

In accordance with the Americans with Disabilities Act, as amended (ADA), employees who are substantially limited in one or more major life activities due to a physical or mental impairment have rights under the ADA to include the right to an accommodation (a change in the workplace policies, facilities, or how work is done).

An employee may be protected by both the ADA and the Family Medical Leave Act (FMLA) and must be afforded the rights and privileges established in both Acts. This may mean providing up to twelve weeks of job-protected leave under the FMLA **and** a reasonable accommodation to allow the employee to perform essential job functions in accordance with the ADA or additional leave. Additionally, Virginia's Workers' Compensation laws provides leave for injuries sustained in the workplace. For example, a work-related injury requiring out-patient surgery and a recovery/treatment of more than three consecutive days (which qualifies as a serious health condition under FMLA) will overlap both FMLA and Workers' Compensation requirements.

In these overlapping circumstances, agencies must consider the employee's preferences. For example, if an employee is qualified for FMLA leave but prefers to work with an accommodation, the agency must provide the accommodation. Likewise, if an employee could work with an accommodation, but elects to take FMLA leave, agencies must allow the leave.

Leave as an Accommodation	<ul style="list-style-type: none"> • Agencies shall grant unpaid leave as a form of reasonable accommodation unless doing so would cause them undue hardship. Employees will be permitted to use their paid leave during this leave. • Leave taken as an accommodation under the ADA is not intended to be indefinite and must include an anticipated return to duty target date (with or without accommodation.) • As with all accommodations, the amount of leave granted depends on the job and the disability as defined by the ADA and must be determined on an individual case-by case basis. • Approved family medical leave or leave used to accommodate a disability must not be counted in agency's attendance policies as unplanned leave.
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Coordination with FMLA, VSDP, and Workers' Compensation

Agencies shall coordinate as needed with Family Medical Leave (FML), extended medical leave through the Traditional Sick Leave plan and approved claims filed under the Virginia Sickness and Disability Program and/or Workers' Compensation.

<p>FMLA</p>	<ul style="list-style-type: none"> • State Employees may have rights under both the ADA and the FMLA if they meet the definition of “disability” (ADA) and “serious health condition” (FMLA). • Employees who have exhausted their FMLA leave (12 weeks or 480 work hours) will still have rights under the ADA if they meet the ADA definition of a person with a disability. The additional leave beyond the FMLA leave is considered an accommodation under the ADA. • Agencies must provide FMLA notification to eligible employees and track FMLA hours for leave usage related to an accommodation for a disability. See DHRM Policy 4.20, Family Medical Leave.
<p>Virginia Sickness and Disability Plan (VSDP)</p>	<ul style="list-style-type: none"> • Approved disability claims under the VSDP may be considered an accommodation for an employee with a disability as defined under the ADA. FMLA will also be applied during Short-Term Disability claims. • Prior to the employee’s return to work from Short-Term Disability, agencies shall engage in an interactive process with employees to determine if a reasonable accommodation is needed to enable the employee to perform the essential job functions. • The interactive process should begin prior to the employee’s completion of the 125-day period of short-term disability and before long-term disability is approved for the employee. If the interactive process is not concluded before long-term disability is in effect, agencies shall place the employee on Leave without Pay (conditional).
<p>Workers’ Compensation</p>	<ul style="list-style-type: none"> • Employees who are in the VSDP, may be approved for a Short-Term Disability claim associated with their on-the-job injury. Agencies shall follow the VSDP processes as outlined in Policy 4.57, Virginia Sickness and Disability Plan. (link) • Employees who are in the Traditional Sick Leave program who are absent more than seven calendar days: <ul style="list-style-type: none"> ○ shall be provided additional supplemental benefits for the initial seven days and an additional 85 calendar days equal to a total of 92 calendar days. ○ the 92-day supplemental pay amount is the difference between payments required by the Workers’ Compensation Act as detailed in DHRM Policy • Transition Duty assignments involving light-duty or other job modification are one area where FMLA and Workers’ Compensation differ. Under the FMLA, an employee is

	<p>entitled to 12 weeks of leave and does not have to return to duty in a different position or “light-duty” work. However, under Workers’ Compensation, if the company offers light - duty work that the employee is medically capable of doing, the employee generally must accept the transitional position or job modification or risk losing benefits under Workers’ Compensation. Importantly, an employee who accepts a light-duty position as opposed to remaining on FMLA leave does not give up their right to be reinstated to their former position.</p> <ul style="list-style-type: none"> • Leave taken for Workers’ Compensation shall be counted towards the employee’s FMLA available balance. Additional leave without pay may be provided on a limited basis as an accommodation for a disability that may occur because of the workplace injury.
<p>Notifications & Communications</p>	<p>Agencies shall ensure that employees are provided with clear and concise communications regarding their use of protected leave benefits to include:</p> <ul style="list-style-type: none"> • The required FMLA notifications of eligibility, available FMLA leave hours, approval of FMLA and the intersection between FMLA and VSDP claims. • Workers’ Compensation communications concerning the use of traditional sick leave (as applicable to the employee) or coordination with a VSDP claim and income replacement. • Required notifications to employees outlining the transition from Short-Term Disability to Long-Term Disability. Such notification shall outline the Agency’s offer to consider requests for reasonable accommodation to facilitate the employee’s return to duty.