

## Test Your Knowledge of FMLA/ADA

### Answer Key

1. What are the requirements for an employee to be eligible to take FMLA leave?
  - **Employed for 12 months**
  - **Worked at least 1,250 hours in past 12 months**
  - **Employer has at least 50 employees in 75 mile radius**
2. How much leave can an employee take under the FMLA?  
**Up to 12 weeks in a 12 month period (26 weeks for military leave entitlements)**
3. Can you deny an employee FMLA leave if the request comes at the busiest time of the year, you're short-staffed, and having another person off work would pose an undue burden on the operations of your department?  
**No. there is no undue burden exception in the FMLA**
4. Can supervisors or HR professionals be named as defendants in FMLA lawsuits?  
What about under the ADA?  
**FMLA - yes**  
**ADA - no**
5. If an employee is on worker's compensation leave and receiving TTD benefits through insurance, can you still put the employee on FMLA leave?  
**Yes**
6. Can you require an employee to take FMLA if the employee would prefer to first use up paid sick/vacation/comp time and then go on unpaid leave, if necessary?  
**Yes**
7. Under the FMLA, are employers allowed to require employees to schedule doctors' appointments at times that are not disruptive to the operations of your department, if possible?  
**Yes**
8. What should you do if an employee is on unpaid FMLA leave and has not paid her share of the monthly health insurance premiums owed to her employer?  
**Wait until employee returns for leave and work out payment plan. You are not required to do this, but it is recommended.**
9. Once you learn that an employee may need FMLA leave, how much time do you have to send paperwork to the employee?  
**5 business days**

10. What is the minimum amount of time that you must give an employee to return the medical certification from a doctor?  
**15 days**
11. Under the FMLA, can a direct supervisor call an employee's doctor with questions about the employee's need for leave or the medical certification?  
**No. It must be done by HR or someone above direct supervisor.**
12. If the employee's doctor charges a fee to fill out any FMLA paperwork, does the employer have to pay that fee?  
**No. The employee must pay the fee.**
13. Once you get the FMLA certification back from the doctor, what should you do?  
**Send the Designation Notice to the employee within 5 business days.**
14. Can you still designate an employee's absence as FMLA leave if you didn't let the employee know ahead of time?  
**Yes as long as the employee is not prejudiced by the late designation.**
15. When an employee has been approved for intermittent FMLA leave, can a supervisor request a doctor's note to support each absence to verify that the employee actually needed the time off and that the absence was FMLA-related?  
**No. Recertification can be requested every 30 days, unless the original certification indicates more than 30 days and in the case, an employer cannot seek recertification until that time expires. Exceptions for change in circumstances or requests for extension of leave. For lifetime conditions, can get recertification every 6 months.**
16. Can you require that employees be 100% healed or have no job restrictions in order to return to work?  
**No.**
17. Can you fire an employee who runs out of FMLA leave and can't come back to work?  
**Not necessarily. Must consider if employee has disability and go through ADA interactive process.**
18. Is an employee with a work comp injury resulting in missing time disabled?  
**Probably.**
19. If a job description identifies the need to have a CDL license and ability to drive a truck as job requirements but many employees with that job title don't actually drive trucks, can you terminate an employee who loses his CDL and can no longer drive a truck?

**Probably not.**

20. Does an employee have to request FMLA leave or an accommodation under the ADA for the employer to have a duty to potentially allow the leave or accommodation?

**Not always. Where the need is obvious, the employer learns of the need through another source, or there is a sudden change in behavior of the employee, the employer may be deemed to have notice of the need for leave/accommodation.**

21. Can you send a job applicant for a pre-employment physical?

**Yes.**

22. Is mandatory drug testing a medical exam under the ADA?

**No.**

23. What is the interactive process under the ADA?

**A discussion between employee and employer regarding the employee's ability to perform job functions, need for accommodation, and the most effective accommodation to allow the employer to perform his job duties.**

24. Is there a maximum amount of time off that you must give an employee off work under the ADA before you can terminate?

**No. There must be an individualized determination.**

25. Under what circumstances can you deny an employee's request for accommodation under the ADA?

**Undue hardship or direct threat.**

26. Do you need to consider reasonable accommodations for an employee who you do not believe is disabled?

**Yes. You should err on the side of caution because even if you deny the request, if a court finds that the employee is not disabled, you cannot be liable because there is no duty to accommodate someone who is not disabled.**

