

Human Resources

By Stephanie Ramsey



HR Reality Check: *Yep, the Stories are True!*

HR CASE STUDY #3

SCENARIO: Barliabov-Water Funeral Home is a small family-owned funeral home with only five employees. The firm's licensed embalmer recently broke his wrist while playing softball at a family reunion. When the employee reported to work on his next regularly scheduled workday, he provided a note from his doctor advising that he could not lift more than 15 pounds for the next two weeks or he would risk the bone not setting properly. The employee asked for an accommodation by the employer that would allow him to work his normal schedule. Barliabov-Water informed him that they could not make an accommodation and that he was free to use his sick leave and vacation time to cover the two-week period he was unable to lift more than 15 pounds. The firm also requested he bring back a note from his doctor indicating removal of the weight restriction before returning to his regular position. The employee was disappointed as he felt that he could do other work in the business during this time.

What are the rules? There are three rules that may be applicable to this situation: the Americans with Disabilities Act, the Family Medical Leave Act and state Workers Compensation Act.

First, the ADA became law in 1990 and was amended in 2008. At its heart, the ADA is a law that prohibits discrimination against individuals with disabilities. The ADA consists of five separate sections with the most critical in this situation being Title I (which addresses employment practices of private employers with 15 or more employees). Title I requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship.

Next is FMLA (29 CFR Part 825) which became effective Aug. 5, 1993, for most employers and employees. The intent of FMLA is to provide employees a method that allows them to take reasonable unpaid leave for certain family and medical reasons. This law applies to certain employers and affects employees who are eligible for the protections of the law. Specifically, FMLA applies to all:

- Public agencies, including state, local and federal employers.
- Private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year.

And finally, state workers compensation. Workers compensation is basically a type of insurance that helps replace lost wages and provides medical benefits to employees injured while performing their jobs. Each state has its own specific workers compensation laws while federal workers compensation only applies to federal employees and other specific classifications of employees.

Did the employer make any mistakes? No. When looking at this situation, one must determine if any

of the rules of law apply. Looking first to the ADA, the employer does not meet the requirement of 15 or more employees, and therefore, that law does not apply. Moving on to the FMLA, the employer once again does not meet the guidelines of a private sector employer as it has fewer than 50 employees. And then there is workers compensation, which applies to employees injured while performing their jobs. In this

on the employee that prevent him from performing the majority of the daily tasks required by his position he can return to work. The employer was not obligated to provide another position for the employee during this time. In fact, doing so may have been a financial hardship as the business likely needed to pay for a licensed embalmer to perform the injured employee's role while he healed, which was not an anticipated cost.

Having a well-written employee handbook that addresses not only vacation/sick leave and how it can be used but also a medical leave policy and a return to work policy would be beneficial to the employer. This information may have helped the employee understand his options and the requirements to return to work following an injury.

situation the employee was hurt on his personal time participating in a family event. None of these laws are applicable to this situation.

Resolution of the issue: Barliabov-Water was correct in its decision. It communicated to the employee that the business was not able to meet his requested accommodation. Further, it offered the employee the choice to take the next two weeks off using his accrued vacation and/or sick leave time to compensate him during this time. Once the employee provides a doctor's note that has no limitations

Preventive Measures: Having a well-written employee handbook that addresses not only vacation/sick leave and how it can be used but also a medical leave policy and a return to work policy would be beneficial to the employer. This information may have helped the employee understand his options and the requirements to return to work following an injury. As an employer, if you are not certain of your legal obligations in a situation such as this, reach out to an employment law attorney or an HR specialist for some direction. •

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