

# HR Brief

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**Benefit Controls of South Carolina, Inc.**

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## Employee Leave: Clarifying STD, FMLA, and ADA

In addition to the federal requirements under the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), many states, and even many localities and municipalities, have enacted employee leave laws. Due to the various leave requirements, employers may have a hard time understanding how different leaves coordinate with each other and how wage replacement benefits fit into the equation.

The purpose of this article is to clarify some of the differences between the federal FMLA, the ADA and short-term disability (STD). Employers must keep in mind that state and/or local leave laws may also need to be considered.

STD is **not** a form of job-protected leave with rights to continued health coverage and job reinstatement. STD is merely a wage replacement benefit that employees may receive when they are unable to work for certain reasons. Eligibility for STD benefits has no bearing on eligibility for FMLA leave. Any short- or long-term disability benefit provided to an employee is separate from an employer's obligations under the federal FMLA and other state leave laws. An employee who is eligible

for STD benefits while on federal FMLA leave does not receive any extra leave benefits.

[The FMLA](#), however, is job-protected leave that provides eligible employees with job reinstatement rights and continued health insurance benefits for the duration of FMLA leave (up to 12 weeks in any 12-month period). If an employee on FMLA leave is also receiving STD benefits, it is worth noting that in this situation, [neither the employer nor employee can require the substitution of available paid time off](#). This is because leave under a disability plan, such as STD, is not unpaid leave.

Leave must also be considered as a [reasonable accommodation under the ADA](#). Need for leave under the ADA may arise when a disabled employee exhausts job-protected leave (such as under the FMLA), or when he or she is ineligible for such leave. The amount of time that will be considered reasonable will depend on the specific facts and circumstances of the situation. Leave as a reasonable accommodation includes the right to return to the employee's original position. However, if an employer determines that holding open the job will cause an undue hardship, then it must consider whether there are alternatives that permit the employee to complete the leave and return to work. In addition, group health benefits are not required to be maintained during an employee's leave under the ADA. Therefore, continuation of these benefits is determined based on plan terms.

It may be helpful for employers to think of STD benefits as wages an employee may be eligible for when on leave, but that do not provide for the employee's leave. The ADA comes in when FMLA is exhausted or unavailable to a disabled employee.

## DID YOU KNOW?

Under the Affordable Care Act (ACA), each Exchange is required to send a notice (Section 1411 Certification) to employers regarding any employees who received subsidies to purchase Exchange coverage. These notices will be sent to **all** employers with employees who received subsidized coverage. This includes employers that are **not** applicable large employers (ALEs), as well as ALEs that are subject to the ACA's employer shared responsibility rules.

Therefore, regardless of ALE status, be aware that these notices may arrive. Receipt of a Section 1411 Certification is **not** a pay or play penalty assessment against the employer. The IRS will independently determine whether an ALE is liable for any pay or play penalties.

## The FMLA and Absence Notification: Is Your Policy Being Followed?

In order to operate efficiently, many employers have established procedures that employees must follow when reporting that they will be absent or late for work. The federal FMLA provides that employees using FMLA leave must adhere to the employer's established notice and procedural requirements for requesting leave (absent extenuating circumstances). An employee's failure to do so can result in the FMLA leave being delayed or denied.

A [FMLA interference case](#) against Tyson Fresh Meats, Inc. highlights how an employer's actual practices may trump its written policy when enforcing established call-in procedures relating to FMLA absences.

In the case, an employee was terminated for taking FMLA leave and not **calling** the supervisor to report the absence as the employer's policy required; instead, the employee texted his supervisor. Past rulings have upheld terminations where the employee did not follow the employer's absence reporting procedures. However, in this case, there was a record that the employee communicated via text message with his supervisor regarding being late or absent for work in the past. The case will go to trial.

This case highlights how important it is for employers to ensure their policies are being enforced as written by managers and supervisors in the organization.