

THE BERMUDA TRIANGLE COMPARISON CHART

ADA	FMLA	WORKERS' COMP
Reinstatement		
1. Must be able to perform essential functions of job with or without a reasonable accommodation.	1. Must be able to perform functions of job.	1. Must be qualified to perform the job.
2. May be restored to the same position if available or similar one or different position if offered as an accommodation.	2. Must be restored to the same or an equivalent position.	2. Must be restored to same or similar job (if available).
3. Can require a fitness for duty examination if required of all employees and is part of written policy.	3. Can require certificate from health care provider that employee is able to perform functions of job. Must provide written notice of requirement.	3. Can require certification that employee can perform job.
4. Need not reinstate if employee poses a direct threat or in undue hardship.	4. Need not reinstate if key employee (10% of highest paid within 75 mile radius), employee receives written notice of the basis as soon as the determination is made, and there would be a documented substantial or serious economic injury to the employer's operation if employee reinstated.	4. Need not reinstate if job was eliminated, employee does not return to work, employee cannot perform job (direct threat or not qualified).
5. Only have to hold job open if reasonable accommodation.	5. Job (same or equivalent) must be held open.	5. Must hold job open unless cannot for legitimate business needs of employer (depends on duration of leave, nature of job, availability of someone to fill position.)
Absenteeism		
1. Employer must make an attendance policy accommodation (e.g., flex schedules) unless there is an undue hardship. If attendance is an essential job function, employer does not have to alter job functions.	1. Intermittent or reduced work schedule leaves are permissible up to 12 weeks, and for serious health condition. (Can require employees to take foreseeable leave so as to not disrupt the employer's operations as long as the health care provider approves.)	1. Cannot discipline for absenteeism in retaliation for filing a worker's compensation claim, or even the appearance of retaliation.
2. Absences that are a result of a disability should not be subject to discipline unless regular attendance is essential to performing the job and a reasonable accommodation was attempted.	2. Can discipline an employee who fails to provide proper notice of leave and/or requested medical certification. (Should not discipline if employee is using accrued vacation or other leave.)	
	3. Employer cannot count FMLA leave against an employee when enforcing an absentee policy.	
Light Duty		
1. May be a reasonable accommodation but light duty positions need not be created. If non-essential job functions can be transferred to other workers, employers are required to restructure jobs as a reasonable accommodation.	1. Employer cannot offer light duty position in lieu of requested FMLA unless the employee is on concurrent FMLA and WC leave and is certified to return to work in a light duty position.	1. Employer need not offer light duty assignment but is suggested to reduce workers' compensation payments.
	2. Under FMLA, the employee is not required to accept the light duty position. If accepted, the light duty is considered FMLA leave until the 12 weeks is exhausted. After or during the 12 weeks, the employee has the right to be restored to original or equivalent job. (Applies to restricted hours only.)	2. Employer does not have to convert a temporary light duty position to a permanent position.