Narcolepsy and Employment: What are your rights?

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Broad Categories

• Federal, State, and Local Laws
  • Americans with Disabilities Act
  • Family and Medical Leave Act

• Employer Policies

• Judicial decisions concerning narcolepsy
Family and Medical Leave Act

• Requires covered employers to provide eligible employees with up to 12 workweeks of unpaid leave:
  • For a serious health condition that makes the employee unable to perform the essential functions of his or her job.
  • To care for a spouse, son, daughter, or parent with an illness or injury.

• Covered employer:
  • Private-sector employers with 50+ employees.
  • Public agencies (federal, state, and local).
  • Public and private elementary and secondary schools of all sizes.
Family and Medical Leave Act

• Eligible employee:
  • Has worked for covered employer for 12+ months
  • Has at least 1,250 hours of service for the employer during the preceding 12 months before leave.

• Qualifying family members include spouse, parent (biological, adoptive, step, foster, or in loco parentis), or child (same).
Family and Medical Leave Act

• Employers may not interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA.

• Requesting Leave:
  • No magic words necessary. Need only state a qualifying reason for leave.
  • Simply stating FMLA is not enough, must provide reason for the leave.
  • Employers can provisionally designate leave as FMLA leave until they can obtain certification from healthcare provider that it qualifies.
Family and Medical Leave Act

- Basis for Leave: Employee’s own “serious health condition” or a family member’s serious health condition.
  - Serious health condition means that a healthcare provider finds that employee is unable to work at all or unable to perform any of the essential functions of the position.
  - Absence from work to receive medical treatment for a serious health condition means unable to perform the essential functions of the position.
Family and Medical Leave Act

• Taking leave:
  • For serious health condition, up to 12 weeks in a leave year.
  • FMLA can be utilized in blocks, intermittently, or on a reduced schedule, based on medical need.
  • Intermittent Leave: can be used in hourly increments; need not always be predictable.
  • Reduced schedule: leave approved in advance that limits number of days worked or number of hours worked per day.
Family and Medical Leave Act

• Certification
  • When leave is requested, employer may require certification from a health care provider.
  • Employer may require second or third medical opinions (at the employer’s expense) and periodic recertification of a serious health condition.

• Job restoration:
  • Upon return from FMLA leave, the employee must be restored to his or her original job or equivalent (pay, benefits, etc.).
Americans with Disabilities Act

• Federal law passed in 1990 to designate disabled individuals as a protected class with respect to the terms and conditions of employment.

• Covers employers with 15 or more employees.

• ADA protects “qualified individuals with disabilities.”
Americans with Disabilities Act

• “Qualified”: the individual satisfies the skill, experience, education, and other job-related requirements and can perform the essential functions of the position, with or without reasonable accommodation.

• “Essential Job Functions”: the fundamental job duties of the employment position.
“Disability”: defined in general terms, rather than a list of qualifying medical conditions.

- A person who has a physical or mental impairment that substantially limits one or more major life activities.
- A person with a record of such a limitation.
- A person who is regarded as having such a limitation.
Americans with Disabilities Act

• Major life activity?
  • Caring for oneself
  • Sleeping
  • Concentrating
  • Standing
  • Speaking
  • Interacting with others
Americans with Disabilities Act

• Employer is required to provide a reasonable accommodation for employees with disabilities.

• Generally, a change to the work environment or the ways things are customarily done that enables disabled individuals to enjoy equal employment opportunities.

• “Reasonable”: do not include eliminating or removing an essential job function.
Americans with Disabilities Act

- Employers not required to make accommodation where it would amount to an “undue hardship” on the operations of the employer’s business.
- Undue hardships include actions requiring significant difficulty or expense, based on the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer’s operation.
- Determined on a case-by-case basis.
• Interactive process: if employee’s proposed accommodation is not feasible, the employer must try to identify another accommodation that would not pose such a hardship.
Employer Handbooks

• Typically, the source of standard policies for your employer.
• Policies to note:
  • Attendance policies
  • Leaves policies
  • Drug testing policies
  • Meal and rest break policies
  • Performance and discipline policies
Narcolepsy in the Courts

• ADA and Narcolepsy
  
    
    • “For an employer to discriminate against an employee ‘because of’ her disability, the employer must have knowledge of the disability. *** Because C&M’s decision to terminate Spurling was made before it learned of her narcolepsy, Spurling is unable to prove that she was fired ‘because of’ her disability.”

    
    • “What matters for this analysis is that it was essential to Wheeler’s FIW position to be in physical attendance at [the office] and logged into the Queue taking calls, and he could not reliably and predictably do so if *** working from home.”
Narcolepsy in the Courts

• FMLA and Narcolepsy

    • “Waters asserts that Fred Meyer knew *** that she required leave because of her narcolepsy, and therefore that Fred Meyer’s refusal to give her medical leave on those dates was a violation of FMLA and OFLA.”
    • “[A] reasonable jury could conclude that when Waters called in [after her year of intermittent leave expired] Fred Meyer had some obligation to treat the telephone calls in May as requests for discrete instances of FMLA or OFLA leave[.]”
Questions?

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