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# NEWS from Cigna Leave Solutions



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- Department of Labor issues clarification on how adult children should be viewed under the FMLA
- EEOC focuses on ADA compliance

### DOL Clarifies Employee Leave To Care For An Adult Child

An employee's 25-year-old son shatters his pelvis in a serious motorcycle accident. This injury greatly limits his ability to sit, stand and walk, as well as other activities. After surgery, he has a lengthy rehabilitation period, but is expected to recover within six months. If he needs assistance with three or more activities of daily living (such as dressing, maintaining a residence and bathing), he qualifies as an adult child under the Family and Medical Leave Act (FMLA), since his disability renders him incapable of self-care. Therefore, his parent (assuming they are eligible for FMLA leave) may take leave to care for him .

While Cigna currently evaluates requests like the above example consistent with the Department of Labor's (DOL) view, situations like this continue to present complex eligibility challenges for employers. The DOL recently issued an Administrator's Interpretation in an effort to reduce confusion on how adult children should be treated under the FMLA.

In the past, there has been confusion about whether the adult child had to be disabled prior to the age of 18. The DOL has clarified that an adult child's disability does not have to be diagnosed prior to age 18.

Adult children are considered covered under the FMLA if they are

- 18 years of age or older and
- Incapable of self-care at the time the *leave* is to commence. The presence of a disability alone is not sufficient without being incapable of self-care.

Parents of adult children may be entitled to a leave to care for an adult child if all of the following are met:

- The adult child has a disability as defined by the Americans with Disabilities Act (ADA) (normal pregnancy is not considered a disability under ADA, but complications may be, depending on the circumstances);
- The adult child is incapable of self-care due to that disability; and
- The adult child is in need of care for that serious health condition.

Keep in mind that the adult child must meet the ADA definition of disability, which is broader than the FMLA's definition of a serious health condition.

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### Military caregiver leave

The DOL also clarified how the FMLA's definition of an adult child interacts with FMLA military caregiver leave. Under the FMLA, an employee of a covered service member who sustained a serious injury or illness relating to their military service may be entitled to up to 26 weeks of FMLA leave in a single 12-month period. If an adult child suffers an injury that qualifies the parent to take military caregiver leave and that injury lasts longer than the 26 week military caregiver leave entitlement, the parent can take up to 12 weeks FMLA leave in subsequent years to care for the adult child, provided the other FMLA requirements are met.

### Additional information:

The DOL's Administrator's Interpretation can be found on the DOL's website at: [http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2013/FMLAAI2013\\_1.htm](http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2013/FMLAAI2013_1.htm)



DOL Fact sheet on adult children under the FMLA: <http://www.dol.gov/whd/regs/compliance/whdfs28k.pdf>

DOL FAQs regarding adult children under the FMLA: <http://www.dol.gov/whd/fmla/AdultChildFAQs.htm>



### Here's a real-life example:

A father exhausted his 26 workweeks of military caregiver leave to care for his 20-year-old son, a returning service member who suffered extensive burns to his arms and torso. In the next FMLA leave year, the father sought leave to care for his son, who will undergo surgeries, skin grafts and a lengthy recovery. The father (assuming the FMLA requirements are met) in the subsequent years can take up to 12 workweeks of FMLA-protected leave to care for his son because his son had injuries that substantially limit his ability to perform manual tasks. This is considered a disability under the ADA. The son is incapable of self-care due to a disability; he needs help bathing, dressing and eating. The son's burn injuries are a serious health condition because they require continuing treatment by a health care provider, and the father is "needed to care" for the son.

### EEOC focuses on ADA compliance

#### What is the EEOC?

The U.S. Equal Employment Opportunity Commission (EEOC), is one of the federal agencies that enforces the ADA.

The EEOC has the authority to investigate charges of discriminations and file lawsuits if it feels appropriate to protect the rights of individuals and the public.

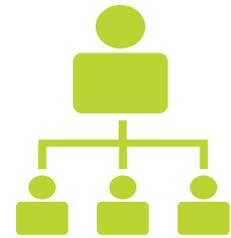
The EEOC has implemented a four year strategic enforcement plan which specifically targets its

efforts on ensuring compliance with the ADA, as amended by the Americans with Disabilities Act Amendments Act of 2008. In carrying out its strategic enforcement plan, the EEOC is focusing on:

- Inflexible leave policies (examples would be terminating employees who are unable to return from leave after a specific time period, such as family medical leave exhaustion); and
- Improper application of ADA defenses, such as undue hardship, direct threat and business necessity.

## Cigna Can Help

We've expanded our absence management and disability capabilities to add ADA administration to make it easier to navigate these complex regulations. Now clients can outsource the administration of their ADA programs – along with FMLA services – all through Cigna Leave Solutions®.



With an increased focus on ADA enforcement, here are some steps employers can take to help ensure they are compliant with the ADA:

- Review workplace policies to ensure ADA compliance
- Train managers and HR staff on the ADA
- Engage in the ADA interactive process when an employee expresses a need for accommodation
- Keep records of meetings including dates and details of conversations
- Request documentation to support the existence of a disability or need for accommodation if it is not readily known to the employer
- Focus on qualifications rather than disabilities when hiring, firing, promoting or granting raises, benefits or other terms of employment to employees
- Document decisions relating to disabled individuals based on job performance versus disability

### Cigna Leave Solutions expands intake service center hours

We know you and your employees don't just work 9:00 am–5:00 pm, so we've expanded our service center hours to fit better with your hours.



Time zone	Hours of operation
EST	8:00 am–10:00 pm
CST	7:00 am–9:00 pm
MST	6:00 am–8:00 pm
PST	5:00 am–7:00 pm

**ADA administration** combines best practices and clinical expertise to help employers use a consistent approach which can help them stay compliant. Cigna Leave Solutions' ADA offering includes:

- Tracking ADA absence and accommodation periods within Cigna's leave management system
- Integrating ADA management and tracking with the other leave types outsourced through Cigna Leave Solutions, including federal and state FMLA and company-specific leave plans
- Managing notifications, reviewing medical certifications and providing clinical guidance
- Providing job accommodation consultation and support, including clinical assessments provided by a vocational rehabilitation counselor



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