

— ADA ACCOMMODATION —

INADVERTENT LEAVE LAW

FAST FACTS



15

Employers with 15 or more employees are subject to ADA



\$135.2M

Record ADA monetary benefits procured by EEOC in 2017



38%

Of Employers do not have legally correct language in their policies



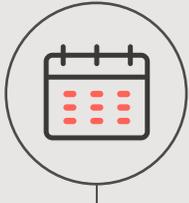
2.5

2015 there were approximately 2.5 important legal developments per week



91%

EEOC litigation success rate for employment discrimination suits



17

One court found 17 months to be reasonable accommodation



24%

Of employers find it extremely challenging to ensure consistency in their decision making process



11,754

Charges filed with the EEOC in 2017 for Reasonable Accommodation

\$2.1 M

Estimated exposure for noncompliance

69%

Of employers say ADA leave is challenging to manage

1 OUT OF 5



Americans is living with a Disability

EEOC ADA Settlements

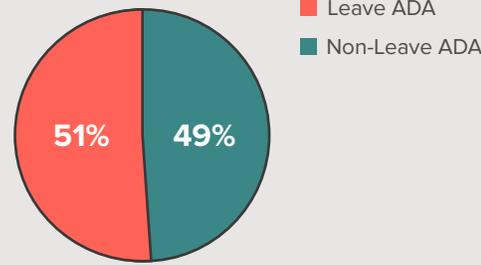
- Mueller Industries - **\$1M**
- UPS - **\$2M**
- Lowe's - **\$8.6M**
- Sears - **\$6.2M**
- Pactiv - **\$1.7M**



ADA ~~≠~~ FMLA

A leave request that may not be eligible for FMLA may still be eligible under ADA! An employee who is not yet eligible for FMLA, or who has exhausted their FMLA, may still be eligible for leave under ADA.

ADA Accommodations



REASONABLE ACCOMMODATIONS?

- Job restructuring? Yes
- Unpaid leave? Yes
- Modified/Part-Time Schedule? Yes
- Reassign to a vacant position? Yes
- Workplace modification? Yes
- Changing Supervisors? No
- Provide personal use items? No
- Telecommuting? Sometimes

UNLESS IT POSES AN UNDUE HARDSHIP

UNDUE HARDSHIP

ADA requires employers to provide reasonable accommodation for a qualified applicant or employee with a disability unless the employer can prove any such accommodations would impose an undue hardship on the business.

UNDUE HARDSHIP

What does this mean?

The accommodation poses significant difficulty or expense when considering the nature and cost relative to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a **case-by-case basis**. What is considered an undue hardship for one location or company may not be for another.

That sounds confusing.

Exactly. Determining an undue hardship is one of the leading points of confusion and concern among HR professionals given its vague definition.

If it is an undue hardship?

The employer must first try to find another option that will not impose a hardship. If the cost is the burden then the employer should offer the employee the option of paying the portion of the cost that constitutes the undue hardship.

DO ✓

- Review each leave request separately for FMLA and ADA reasonable accommodation
- Proactively engage in an interactive review process with the employee
- Adjudicate each case individually and on its own merits
- Document EVERYTHING that went into the final decision

DON'T ✗

- Have bright line rules or rigid leave policy
- Have an "automatic termination" or "no fault termination" provision
- Require employees to return to work with no restrictions as a condition of employment
- Expect the employee to explicitly state they need ADA leave – burden is on the employer to recognize when ADA is applicable

Aldrich is a West Coast based regional firm of advisors, independent CPAs, and Employee Benefits Consultants. We are known as trusted advisors, helping our clients solve problems, recognize opportunities, streamline processes, and better utilize their resources so that they can best manage their growth and achieve their goals. Our firm is built on close personal and professional relationships nationwide.

Aldrich's broad depth of resources and vast set of tools help our clients navigate through the complex landscape of healthcare compliance, legislation, regulation, and reform. We work proactively on your behalf to stay abreast of the most important issues impacting your employee benefit programs. Our five step approach, **with a focus on consulting, compliance and education, data analytics, employee advocacy, and employee wellness**, allows our team to serve you holistically with expert knowledge and best in class resources.

(Information provided by ADA National Network, EEOC.gov, Employee Benefits Adviser, ComPsych, Sun Life, IBI, Prudential)