Worker's Compensation (WC), Family Medical Leave Act (FMLA, and Americans with Disabilities Act (ADA)

When an employee is injured at work or becomes ill due to their work, **Workers' Compensation, FMLA, and ADA may all apply at the same time**. Employers should not treat them as separate situations.

1. What each law does

Law	Main Purpose	Key Employer Obligation
Workers' Compensation	Covers work-related injury/illness	Pay medical/wage benefits under state law
FMLA	Provides job-protected leave	Up to 12 weeks of protected leave for eligible employees with a serious medical condition
ADA	Prevents disability discrimination	Provide reasonable accommodation unless undue hardship to the employer's business

Workers' compensation and FMLA may run concurrently when the injury or illness also qualifies as a serious medical condition.

2. Core rules for employers

If an employee is out due to a work injury or illness:

Do all three analyses at once:

1. **WC:** Is the injury or illness work-related?
2. **FMLA:** Is the employer covered, the employee eligible and is the condition serious?
3. **ADA:** Does the condition substantially limit a major life activity, and is accommodation needed?

3. Concurrent leave

If the employee is FMLA-eligible, the employer should usually **designate the workers' comp absence as FMLA leave** when the injury qualifies. This prevents the employee from later receiving an additional 12 weeks of FMLA for the same absence.

Important: If **WC** released the employee to **light duty**:

- The Employer **may offer** a light-duty job (consistent with **WC** rules)
- However, if the employee is on FMLA, the Employer **cannot require** the employee to accept it.

- The employee can choose to remain on **unpaid FMLA leave**
- Refusing light duty **does NOT violate FMLA**

4. What are the consequences of refusing light-duty?

You have a split consequence:

Under FMLA:

- Employee keeps **job-protected leave rights**

Under WC:

- The employee **may lose or reduce WC wage benefits**, depending on state law

So, the employer should:

- Clearly **document the offer of light duty**
- Notify the employee that refusal **may impact WC benefits**
- Continue FMLA designation if applicable

5. What if the employee ACCEPTS light duty?

Important shift:

- FMLA **leave stops** while the employee is working light duty
- Time worked **does NOT count against FMLA entitlement**

However:

- The employee retains the right to be restored to their **original or equivalent position** at the end of the 12-week FMLA period

6. After FMLA is exhausted — shift to ADA analysis

Once FMLA is used up:

You must evaluate obligations under the
Americans with Disabilities Act (ADA):

- Engage in the **interactive process**
- Determine if continued light duty or leave is a **reasonable accommodation**
- No automatic termination just because FMLA is exhausted

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7. Best-practice employer steps (this is what keeps you compliant)

At injury / leave start:

- Issue FMLA eligibility + designation notices
- Track leave concurrently with WC

When light duty is available:

- Provide **written offer** with job description and pay
- Clarify voluntary nature under FMLA
- Explain WC impact if declined

Ongoing:

- Maintain medical documentation
- Track FMLA usage precisely
- Avoid forcing return before medically cleared

8. ADA after FMLA expires

When FMLA runs out, the analysis is not over. The ADA may require:

- additional unpaid leave;
- modified duty;
- schedule changes;
- reassignment to a vacant position;
- equipment or job restructuring.

The EEOC recognizes leave as a possible reasonable accommodation when it helps the employee return to work, unless it creates undue hardship to the employer.

9. Common employer mistakes

- Failing to start the FMLA clock during a workers' comp absence.
- Automatically terminating the employee when FMLA expires.
- Treating "maximum medical improvement" as the end of all obligations.
- Relying only on the workers' comp doctor without doing an ADA accommodation review.
- Offering light duty under WC but ignoring ADA/FMLA rights.
- Asking for overly broad medical information.
- Failing to document the interactive process.

MKRS LAW
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Managing a Florida Workers' Compensation Claim

Frequently Asked Questions

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What is the difference between a medical-only and a lost-time claim?

A medical-only claim occurs when an employee sustains a work-related injury or illness but does not miss more than seven calendar days of work as a result of the injury. In these cases, the employer and its workers' compensation insurance carrier are responsible for paying authorized medical treatment only, and no wage loss benefits are owed.

Even when a claim initially appears to be medical-only, it is important to continue monitoring the employee's condition because medical-only claims can convert into lost-time claims if the employee later misses work due to the injury.

A lost-time claim occurs when the employee misses more than seven calendar days of work due to the work-related injury or illness. When this occurs, the injured employee may become eligible for indemnity benefits, also known as wage loss benefits, under §440.15, Florida Statutes.

How Do Employees Get Paid if They Are Out of Work?

If an authorized treating physician states that an injured employee cannot work due to a compensable workplace injury, the employee may be entitled to Temporary Total Disability (TTD) benefits under §440.15, Fla. Stat.

In most cases, wage loss benefits are paid at 66 2/3% of the employee's Average Weekly Wage (AWW), subject to the statewide maximum compensation rate established annually by Florida law.

Wage loss benefits generally begin on the 8th day of disability. However, if the employee remains out of work for more than 21 days, the first 7 days of lost wages become payable retroactively.

The insurance carrier typically issues benefit checks on a bi-weekly basis once the claim is accepted and disability status is confirmed by the authorized physician.

Do All Injured Employees Receive a Settlement?

No. Under Florida workers' compensation law, settlements are not automatic and are not part of the statutory benefit structure. The workers' compensation system is designed to provide defined statutory benefits, including medical treatment and wage loss, rather than guaranteed lump-sum settlements. Florida's workers' compensation statute does allow settlements, but they typically occur only in specific circumstances, such as when:

- The injured worker is represented by an attorney
- There is a dispute regarding compensability or benefits
- The parties agree to resolve the claim through a negotiated lump-sum payment

Employers should understand that most claims do not result in settlements. Many claims simply resolve once the employee:

- Receives appropriate medical treatment; or
- Returns to work
- Reaches Maximum Medical Improvement (MMI)

Who selects the treating physician?

Unlike some states, Florida workers' compensation law allows the Employer or Carrier to select the authorized treating physician (ATP). The employer must ensure that the injured employee receives treatment from an authorized medical provider approved by the insurance carrier.

Claimants do have the right to request a one-time change of physician, and the carrier must provide an alternate physician within five business days of receiving the written request. The Claimant remains entitled to a single one-time change per date of accident.

If the carrier fails to respond within this timeframe, the employee may select a physician. Likewise, if the Carrier chooses a one-time change but does not proactively schedule an appointment within a "reasonable time" it is possible the right to select the physician was forfeited and the employee is allowed to choose their treating physician.

The Employer/Carrier and Employee are each entitled to one Independent Medical Examination (IME). An IME physician is not an authorized treating provider and performs a one-time evaluation to provide opinions regarding medical treatment, impairment, and work restrictions.

What About Emergency Room Treatment?

If a workplace injury requires immediate medical attention, the employee may seek treatment at the nearest emergency room. Once the emergency condition has been stabilized, the employer or insurance carrier should direct the employee to an authorized workers' compensation physician for all follow-up treatment.

Employers should be notified immediately when an employee receives emergency treatment so the claim can be reported to the insurance carrier and follow-up care can be coordinated with an authorized provider.

What medical treatment is covered?

Florida workers' compensation insurance covers medically necessary treatment that is causally related to the work injury.

Covered medical services may include:

- Physician examinations and consultations
- Hospital care and surgical procedures
- Physical therapy and rehabilitation services
- Diagnostic imaging such as MRIs and X-rays
- Prescription medications
- Prosthetic devices
- Transportation costs associated with medical treatment
- Translation at physician examinations and consultations

Claim Management – A Three Step Process

The following pages outline a structured approach to managing workers' compensation claims, organized into three steps: Pre-Injury Risk Management, Forms at the Time of Injury, and Post-Claim Management.

Step 1 – Pre-Injury Risk Management Forms

These documents should be completed before an injury occurs.

Job Description

Maintain a written job description including physical demands.

Post-Offer Medical Questionnaire

Used after a conditional job offer, but before the commencement of employment, to identify preexisting medical conditions and whether the employee has undergone, or is undergoing, treatment for a specific condition or suffers from symptoms.

The questionnaire must be tailored to comply with the ADA and other applicable federal and state laws as to what information may be disclosed.

Employee Acknowledgment Forms

Employees should sign acknowledgments confirming they understand:

- Injury reporting procedures (reporting postings, otherwise may waive notice defense)
- Drug testing policy (post offer and during employment)
- Return-to-work program

Drug-Free Workplace Consent

Florida employers participating in a drug-free workplace program must obtain written consent for testing. Must be randomly selected, enforced across the board, and conducted post-accident.

Return-to-Work Policy

Employees should acknowledge the company's light duty / modified duty program.

Step 2 – Forms Completed at the Time of Injury

When an injury occurs, employers should immediately begin documenting the incident and evaluating potential issues.

Accident Scene Review

- Identify any unsafe conditions or hazards
- Document equipment or materials involved
- Take photographs if necessary, or provide video footage of the area, if available

Form 1 - First Report of Injury or Illness (DWC-1)

This is the official claim report submitted to the insurance carrier and the Division of Workers' Compensation.

Form 2 – Incident Report

This internal report should document:

Employee Statement

- Date and time of injury
- Detailed description of accident
- Body parts injured
- Witness information

Supervisor Report

- When management first learned of the injury
- Observations regarding the incident

Witness Statements

- Obtain statements from individuals who saw the accident
- Document statements from employees who observed the employee immediately after the incident

Management Review

- Identification of safety issues
- Identification of potential claim red flags, including:
    - Delayed reporting of the injury
    - Accidents occurring late on Fridays or early Mondays
    - Conflicting witness statements
    - Lack of witnesses to a serious accident
    - Prior similar injuries or claims

Form 3 – Medical Treatment Authorization

Provide the injured worker with the authorized treating physician information and send the physician an authorization for treatment. This should include:

- Employer information
- Insurance carrier information
- Claim number
- Job description and physical requirements
- The body part to be treated

Form 4 – DWC-25 Medical Treatment / Work Status Form

After every medical appointment the physician must complete the DWC-25 indicating:

- Work status
- Work restrictions
- Referrals
- Determination of work relatedness of Claimant's injuries
- Whether there is any contributing pre-existing condition
- Whether injury is an exacerbation or aggravation of a prior injury
- Next appointment date

Employees must provide this form to the employer after each appointment.

Form 5 - Medical Records Authorization

Carriers may request a medical authorization allowing access to relevant prior medical records.

Form 6 - Refusal of Medical Treatment

If an employee refuses medical treatment, document the refusal in writing and if possible, have him/her sign the statement acknowledging the same.

Step 3 – Post-Claim Management

Return-to-Work Program

One of the most effective strategies for controlling workers' compensation costs is maintaining a structured return-to-work program. A return-to-work program allows injured employees to return to work in a modified or light-duty capacity that complies with the restrictions imposed by the authorized treating physician.

Employers should coordinate closely with the insurance adjuster and treating physician when offering modified duty positions. Failure to return to suitable employment may result in suspension of wage benefits.

Communication with the Adjuster

Employers should immediately report:

- Changes in work status
- Wage information (provide 13-week wage statement upon adjuster's request and payroll records shortly after the accident)
- Return-to-work offers
- Termination of employment
- Non-compliance with treatment, for example, employee's failure to:
    - Attend scheduled medical appointments
    - Follow treatment plans
    - Comply with work restrictions

Wage Statement

The carrier calculates the employee's Average Weekly Wage (AWW) based on earnings before the accident. Employers must provide accurate payroll records promptly and a completed 13-week wage statement upon request.

Claim Investigation

Claims should be evaluated for potential issues such as:

- Late reporting
- Inconsistent accident history
- Lack of witnesses
- Possible intoxication
- Preexisting conditions

Key Florida Workers' Compensation Forms

Employers should be familiar with the following:

- DWC-1 – First Report of Injury
- DWC-4 – Notice of Action / Change
- DWC-12 – Notice of Denial
- DWC-19 – Subsequent Earnings Reports
- DWC-25 – Medical Treatment / Work Status Report
- Petition for Benefits – Filed with the OJCC

Fraud Prevention

Workers' compensation fraud occurs when an individual knowingly provides false or misleading information to obtain benefits.

Examples include:

- Misrepresenting how the injury occurred, or occurrence of prior injuries
- Working another job while receiving disability benefits
- Misreporting subsequent earnings while receiving indemnity benefits
- Exaggerating symptoms or disability

Under Florida law, workers' compensation fraud is a third-degree felony and may result in criminal penalties, fines, and civil liability. Employers should report suspected fraud to the Florida Division of Insurance Fraud.

Florida Workers' Compensation Contacts

Employee Assistance Office (EAO)
1-800-342-1741
The EAO provides assistance in resolving disputes between injured workers, employers, and carriers.