Employers face a host of compliance challenges under state and federal law when an employee suffers a workplace injury. As we recently reported, employers must consider the legal implications of the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA) when litigating workers’ compensation claims. Employers should also be cognizant of their obligations under the Occupational Health and Safety Act (OSHA) and the Genetic Information Nondiscrimination Act (GINA).

Workers’ Compensation and the FMLA

Generally, state workers’ compensation laws require the provision of benefits to employees who sustain relatively minor, temporary job-related injuries as well as for permanently disabling serious injuries. Additionally, the FMLA provides eligible employees with up to twelve weeks of unpaid, job-protected leave per year. Eligible employees may take leave under the FMLA to care for a spouse, child or parent who has a serious health condition or because of their own serious health condition. Under the FMLA, a “serious health condition” includes an illness, injury, impairment, and physical or mental condition involving inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider. Thus, a workplace injury or illness that qualifies as a serious health condition may entitle an eligible employee to FMLA leave.

Workers’ Compensation and the ADA

The ADA prohibits employers from discriminating against qualified individuals because of their disability. The ADA defines a disability as (1) a physical or mental impairment that substantially limits a major life activity, (2) a record of such an impairment, or (3) being regarded as having such an impairment. If an employee suffers a workplace injury that qualifies as a serious health condition and meets the ADA’s definition of an individual with a disability, the ADA, FMLA, and state workers’ compensation laws are implicated, and the employee could be entitled to job-protected leave and may also require a workplace accommodation.

OSHA and GINA

OSHA requires employers to provide a safe and healthful workplace to employees. Among other
obligations, OSHA requires employers to timely report and keep records of work-related injuries and illnesses. In addition, employers are prohibited from discharging, retaliating or discriminating against any employee because the employee has exercised rights under OSHA.

Finally, GINA prohibits employers from discriminating on the basis of genetic information. Among other obligations, GINA requires employers who seek medical certifications in support of leave or accommodation requests- including FMLA leave- to affirmatively notify employees of GINA’s limitations on requests for genetic information.

In light of the interplay between state workers’ compensation laws, the FMLA, ADA, OSHA, and GINA, employers should pro-actively evaluate and manage their workers’ compensation, FMLA, and ADA issues concurrently at the time of an employee’s injury, while an employee is on leave due to a workplace injury or illness, and after an employee has exhausted any leave or workers’ compensation benefits to ensure compliance with OSHA and GINA.

© Polsinelli PC, Polsinelli LLP in California

National Law Review, Volumess VIII, Number 155