

THE
NATIONAL LAW REVIEW

The FMLA, ADA and Overseas Employees

Wednesday, March 20, 2019

In the global economy, it is not unusual for U.S. multinational companies to have employees working overseas. Overseas employment arrangements require employers to navigate a variety of complex legal issues – some of them leave related. For example, what happens if an overseas employee has a medical condition that causes them to miss work?

The Family and Medical Leave Act and Americans with Disabilities Act treat employees working in a foreign country differently.

Section 29 CFR 825.105(b) of the FMLA regulations states that “the FMLA applies only to employees who are employed within any State of the United States, the District of Columbia or any Territory or possession of the United States.”

Territories or possessions of the United States include Puerto Rico, the Virgin Islands, the Outer Continental Shelf lands, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll and Johnston Island. Employees who are employed outside these areas are not covered by the FMLA and, accordingly, not counted for purposes of determining employer coverage or employee eligibility.

The ADA, however, may apply to overseas employees. To be covered under the ADA, an employer must employ 15 employees. The ADA applies to U.S. employees employed by covered employers in foreign countries, provided the employee is: 1) a U.S. citizen and 2) employed by a U.S. company or a foreign company controlled by an employer of American nationality.

It should be noted that the ADA does not require U.S. employers to violate the laws of a foreign country where the workplace is located in order to comply with the ADA.

Global employers should remember that some U.S. legal protections travel with employees who work overseas. Given the complexity of these issues, employers should consider engaging legal counsel when dealing with leave issues involving employees who work outside of the U.S.

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