

How I Implement the ABA Leave Policy

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8:45-9:30 AM

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How I Implement the ABA Leave Policy

Overall Panel Objectives/ At the end of this presentation the audience will be able to:

- Discuss the implications of the ABA Leave Policy
- Acknowledge and employ various processes for its implementation within your program
- State the intent of FMLA and its application to the ABA Leave Policy
- Recognize the legal ramifications in rendering ABA Leave Policy decisions

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Revised Policy 3.03

Without prior approval from the ABA, a resident may be absent from training up to a total of 60 working days (12 weeks) during the CA 1-3 years of training.

Attendance at scientific meetings, not to exceed five working days per year, shall be considered part of the training program and not count toward the absence calculation.

Residents should also comply with the policy of the institution and department in which that portion of the training is served for the duration of any absence during the clinical base year.

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Revised Policy

The ABA will consider requests for up to 40 additional days (8 weeks) away from training (over and above the 60 working days). Such additional leave of absence time must be approved by the ABA as follows:

Any request for such leave must be received by the ABA within four weeks of the resident's resumption of the residency program.

The request shall be in writing from the program director, countersigned by the department chair (if that person is different than the program director), and the resident.

The request must include: (1) the reason for the absence training request (as an example, serious medical illness, parental or family leave that are covered under the Family and Medical Leave Act would be reasons acceptable to the ABA) and (2) documentation about how all clinical experiences and educational objectives will be met.

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Revised Policy

Absences in excess of those described above will require lengthening of the total training time to compensate for the additional absences from training. The additional training days required will be equal to the total number of working days missed beyond (1) the 60 working days (without need for ABA approval); and, (2) the additional 40 working days (approved by the ABA).

Residents who have their residency extended may sit for the Summer ADVANCED examination if they complete all requirements by Sept. 30 of the same year. They may sit for the Winter ADVANCED examination if they complete all requirements by March 30 of the same year.

A lengthy interruption in training may have a deleterious effect upon the resident's knowledge or clinical competence. Therefore, when there is an absence for a period more than six months, the ABA Credentials Committee shall determine the number of months of training the resident must complete subsequent to resumption of the residency program to satisfy the training required for admission to the ABA examination system.

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Policy Guidelines

Qualifying Circumstances for Extended Leave (up to 40 additional day/eight weeks)

This policy is designed to align with circumstances covered by the Family and Medical Leave Act (FMLA), which allows for reasonable unpaid leave for certain family and medical reasons. These reasons may include:

- The birth and care of a newborn, adopted or foster child
- The care of an immediate family member (child, spouse or parent) with a serious health condition
- The resident's own serious health condition

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Policy Guidelines

Health Conditions Deemed "Serious"

A serious illness is defined as an illness, injury, ailment, impairment or physical/mental condition that involves an overnight hospital or hospice stay or ongoing medical treatment by a healthcare provider. Ongoing or continuous treatment by a medical provider generally includes:

- An incapacitated state lasting longer than three consecutive days and/or subsequent treatment that involves a regime of continuing treatment beyond drinking fluids, bedrest, exercise or taking over-the-counter medicines.
- Any period of incapacity due to pregnancy or prenatal care
- Any period of incapacity that is permanent or long-term
- Any period of incapacity for treatment of chronic conditions, such as asthma, diabetes, epilepsy, etc.
- Any absence or period of incapacity resulting from multiple treatments, such as chemotherapy, radiation, dialysis or physical therapy

These conditions should keep the resident or an immediate family member from performing his/her job, attending school or doing other routine activities that would allow the resident to perform at his/her normal capacity.

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Policy Guidelines

Conditions or Circumstances Not Covered by This Policy

Our Absence from Training Policy should not be applied to routine medical exams or checkups (e.g., physicals or dental exams), common colds, flu, earaches, stomach aches or other routine doctor visits or ailments. This leave may also not be used for jury duty, non-medical-related appointments, vacations or other routine life occurrences.

Conditions not considered serious for purposes of this policy include:

- The common cold, flu, earaches and other ailments mentioned above, unless complications arise
- Routine medical exams
- Conditions requiring over-the-counter medication, bedrest, drinking fluids, exercise and similar activities that can be applied without a visit to a healthcare provider
- Cosmetic treatments unless they require inpatient hospital care or complications arise

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Policy Guidelines

Qualifying for Additional Time

- A letter of request from the residency program director must come within four weeks of the resident's resumption of training.
- Request letters must be in writing from the program director, and countersigned by the resident and department chair.
- Requests must include the reason for the leave, which should align with the reasons outlined in the guidelines with documentation about how clinical experience and educational objectives will be met.
- Requests must be approved/supported by the program prior to submission to the ABA. Programs have the discretion to decline resident requests.
- If the resident does not qualify for the additional absence from training that was previously taken, his/her residency training may be extended to compensate for the additional absence, per the policy.

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Policy FAQs

What criteria should be used to determine which residents should get additional leave?

Programs should only approve additional leave time in cases of serious illness or the birth, adoption or fostering of a child, as described in the policy guidelines. The additional leave must be approved by both the program and the ABA.

What rationale should be used to deny the additional leave?

The ABA believes this policy serves the best interests of our residents, and in the long-term our patients and profession. However, programs have the discretion to decline resident requests. Please refer to the **guidelines** for additional assistance.

How should two residents requesting additional leave at the same time be handled? How does a program manage any perceived inequity?

Programs should use their discretion when reviewing leave requests. The ABA will not consider requests that are not previously approved by training programs. Programs can refer to the policy **guidelines** to confirm that the requests align with the qualifying conditions. Programs have the discretion to decline leave requests.

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Policy FAQs

Does a resident have to use 60 working days of leave before being considered for approval for the additional 40 days?

No. The additional 40 days of leave is to be used for conditions covered by FMLA; not vacation, routine appointments or other absences unrelated to a serious health condition. The other 60 working days of leave may be apportioned according to individual program policies.

Can the additional 40 days of leave be approved before it is taken?

No. Requests for the additional leave must be made upon a resident's return to training (after the leave has been taken).

Can the request for approval of leave taken in the CA-1 or CA-2 years wait until the CA-3 year?

No. Requests for approval for the additional leave must be made within four weeks of resumption of training, regardless of when the leave is taken. If a resident's leave request is granted early on in training and then he or she is not meeting training standards near the end of training, the program has the discretion to extend training independent of the leave policy.

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Policy FAQs

How do programs ensure that residents with eight weeks less training than their peers are prepared to practice independently?

We rely on the program directors to attest to residents' ability to practice independently. If a resident is not prepared to work independently, which is sometimes the case with or without missing any training, we would expect their training reports to reflect this and that the program would mandate additional training.

If a resident is managing a chronic illness or has a family member managing one, can he or she use the 40 additional days sporadically rather than in a single block of time?

Yes. Residents may use the additional 40 days over time rather than all at once, pending approval from the training program.

What if a resident requests the additional time off, but chooses to voluntarily extend his/her training?

If a resident felt he or she could benefit from making up the missed training, we would not discourage that. However, it would not be required. It is up to the program to determine if the resident has the clinical experience and expertise necessary to practice independently at the end of the training program and whether he/she could benefit from additional training.

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Policy FAQs

Can the 40 days of additional leave be taken in the CB year of a four-year program?
No. This policy applies only to residents in their CA 1-3 years.

What happens if a program chooses not to comply with this policy?

The policy is meant to serve the best interest of residents and the patients they serve. Training programs may use their discretion when implementing this policy. There is no requirement that a program must implement this policy.

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FMLA: Introduction

The Family and Medical Leave Act (FMLA) was passed in 1993 and revised January 16, 2009, and March 8, 2013, with some provisions retroactive to February 5, 2012.

Of all federal employment laws, the FMLA is one of the most popular and beneficial to employees. Most employees are aware of the basic requirements of the law, but they may not realize the law provides employers with various options on how to administer FMLA leave.

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FMLA: Employers Covered

A covered employer is one of the following:

- Private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer.
- Public agency, including a local, state or federal government agency, regardless of the number of workers it employs.
- Public or private elementary or secondary school, regardless of the number of workers it employs.

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FMLA: Employees Eligible for Leave

An eligible employee meets the following criteria:

- Works for a *covered* employer.
- Has worked for the employer for at least 12 months.
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave.
- Works at a location where the employer has at least 50 employees within 75 miles.

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FMLA: Basic Provisions

Qualifying reasons for FMLA leave:

1. For the birth of a child and to care for the newborn child.
2. For placement with the employee of a child for adoption or foster care.
3. To care for the employee's spouse, child or parent with a serious health condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.
5. Because of any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status).
6. To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the covered service member.

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FMLA: Basic Provisions

FMLA 12-month period:

An employer is permitted to choose one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement occurs:

- The calendar year.
- Any fixed 12-month leave year, such as a fiscal year.
- The 12-month period measured forward from the date an employee's first FMLA leave begins.
- A rolling 12-month period measured backward from the date an employee uses any FMLA leave.

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FMLA: Basic Provisions

FMLA does *not* require paid leave.

The law allows employers to require employees to use any paid leave that they may have as part of their FMLA leave.

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FMLA: Basic Provisions

FMLA allows employers to require employees to submit certification of the need for FMLA leave.

Certification may be required for:

- An employee's serious health condition.
- A family member's serious health condition.
- The qualifying exigency for military family leave.
- The serious injury or illness of a covered service member for military family leave.

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ADA: Introduction

The Americans with Disabilities Act (ADA) of 1990 was the first comprehensive civil rights law in this country that addressed the needs of people with disabilities. The law was amended by the ADA Amendments Act (ADAAA) of 2008. It applies to employers with 15 or more employees.

The ADA as amended prohibits discrimination in employment, public services and accommodations, and telecommunications. It also requires employers to make a reasonable accommodation to an applicant or employee if needed to perform the essential functions of a job.

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ADA: Covered Individuals

Employment discrimination is prohibited against qualified individuals with disabilities. Covered individuals include applicants for employment and employees.

Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

A qualified individual with a disability is 1) an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and 2) an individual who, with or without reasonable accommodation, can perform the essential functions of such position.

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ADA: Covered Individuals

An individual is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

The term "**substantially limits**" means:

An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting.

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ADA: Covered Individuals

"**Physical or mental impairment**" means:

Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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ADA: Covered Individuals

"Major life activities," as defined by the ADA, include:

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

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ADA: Covered Individuals

Whether an impairment is substantially limiting is made *without regard* to "ameliorative effects" of mitigating measures.

Mitigating measures may include:

- Medication.
- Medical supplies, equipment or appliances.
- Low-vision devices (not including ordinary eyeglasses or contact lenses).
- Prosthetics.
- Hearing aids and other hearing devices.
- Mobility devices.
- Other types of medical assistance or therapy.

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ADA: Covered Individuals

The ADA specifically states certain conditions that can quite easily be determined to be a covered disability under the law. These include an individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, cancer, post-traumatic stress disorder (PTSD), obsessive-compulsive disorder (OCD), multiple sclerosis (MS), muscular dystrophy, major depressive disorder, bipolar disorder, schizophrenia, autism, intellectual impairment, mobility impairments requiring use of a wheelchair and partial or missing limbs.

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ADA: Substance Abuse

Alcohol

A person who currently uses alcohol is not automatically denied protection simply because of alcohol use.

An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if he or she is qualified to perform the essential functions of a job.

However, an employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that he or she is not qualified.

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ADA: Substance Abuse

Drugs

A drug addict is protected as having a disability only if he or she *is receiving recovery treatment* and is not a current user.

Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.

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ADA: Reasonable Accommodations

Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable the qualified individual with a disability to participate in the application process or to perform essential job functions (the fundamental duties of the job).

Reasonable accommodation also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

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ADA: Reasonable Accommodations

A job function may be considered essential for any of several reasons, such as:

- The job exists to perform that function.
- The function requires specialized skills or expertise, and the person is hired for that expertise.
- Only a limited number of employees are to perform the function.

Examples of essential job function accommodations include:

- Providing a special phone for a receptionist who has a hearing impairment.
- Providing frequent stretching breaks for an employee with a muscular/joint/vascular disorder whose job requires long periods of sitting or standing.

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ADA: Reasonable Accommodations

Tolerating poor performance unrelated to a disability is not an accommodation.

Accommodations must be reasonable and not create an undue hardship on the employer. These criteria are very high standards and cannot be easily demonstrated.

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