

Traversing the Spooky Triangle: The Intersection of Intersection of Worker's Compensation, OSHA and Leave

October 2, 2025

Presented by:

W. Kyle Dillard
Greenville, South Carolina
(864) 240-8317
kyle.dillard@ogletree.com



Roadmap

Issue-Spotting: What Laws
to Consider After a
Workplace Injury?

Hypothetical Scenario

Best Practices for
Compliance

The Rules

Injury Claim Interplay

- Employment laws involved in injury claims
 - ADA
 - FMLA
 - FLSA
 - GINA
 - HIPAA
 - OSHA
 - COBRA
 - ERISA
 - Medicare
 - Worker's Compensation

Determining Which Laws Apply

Worker's Compensation

- All SC employers with 4 or more employees
- Compensation for injury, including periods of disability
- Anti-retaliation

OSHA

- Under SC OSHA law, generally ALL employers
 - Reporting
 - Recording (11 or more employees)
 - Anti-retaliation

Determining Which Laws Apply

- Family and Medical Leave Act (FMLA)
 - Private employers with 50 or more employees in a 75 mile radius
 - All Public employers, regardless of size
 - Employees with “serious health conditions” who:
 - Have been employed for 12 months or more (does not need to be consecutive); and
 - Worked at least 1250 hours for the employer during the 12 months immediately preceding the leave
 - Provides job security during leave periods (up to 12 weeks)
 - Leave is unpaid unless company-provided leave is available



Determining Which Laws Apply

- ADA – Americans with Disabilities Act
 - Public and private employers with more than 15 employees
 - Length of service irrelevant
 - Applies to applicants too
 - Requires employers to make reasonable accommodations for “disabled” but otherwise qualified individuals
 - “Reasonable” job protection
 - Tier 1 (in-job)
 - Tier 2 (leave)
 - Tier 3 (vacant position)



Dealing with the Leave Overlap

Analyze and consider employee's rights and benefits under each law

The key is knowing that more than one law may apply

Rule of Thumb - if more than one applies - follow the law that provides the most protection to the employee

Remember that FMLA leave availability does not remove the duty to engage in the interactive process for ADA accommodations



Here's the Situation ...



Scenario - The Players

- Charlie is a full-time, hourly employee
- Senior Care, Inc., is the Employer
- Charlie is the Activities Director for Senior Care's AL facility in Columbia
- Charlie's Supervisor is Linus



And So, It Begins...

- On Tuesday, before work, Charlie tells Linus that while he was decorating for the Halloween party on Monday, he hurt his back lifting a very large (perhaps great) pumpkin



Charlie went to urgent care after work on Monday

Doctor's note says: "light duty until seen by orthopedist for possible herniated disc"

What should Linus be thinking about/how should he respond?

Get the Story Straight

Have employee document the injury

- What were they doing
- When did they do it
- Nature and onset of symptoms
- Prior problems with current condition
- Names of any witnesses



Claims Handling

- What else should you do following an accident?
 - ***Document, document, document!***
 - Investigate immediately
 - Interview witnesses
 - Gather witness statements
 - Take photos (if applicable)
 - Review video footage

What's Next?

OSHA -3 Considerations

Record?

- Injuries requiring medical treatment beyond first aid
- Lost time, restricted duty or re-assignment

Report?

- Serious injuries (fatality, amputation, loss of an eye, in-patient hospitalization)
- 8 hours for fatality
- 24 hours for all others

Retaliation

- OSHA may sue in name of employee

- Workers Comp?
 - In the course and scope of employment?
 - Form 12A
 - Workplace injury claims should be reported using the Form 12A
 - If the injury requires less than \$500 and does not cause more than a lost workday or permanency, the employer can pay for the treatment directly and does not need to fill out a Form 12A
 - Any other workplace injuries must be reported in 10 days
 - Submitting a Form 12A is not an acceptance of liability; however, always reflect “alleged” if questionable
- Leave?
 - Not there yet

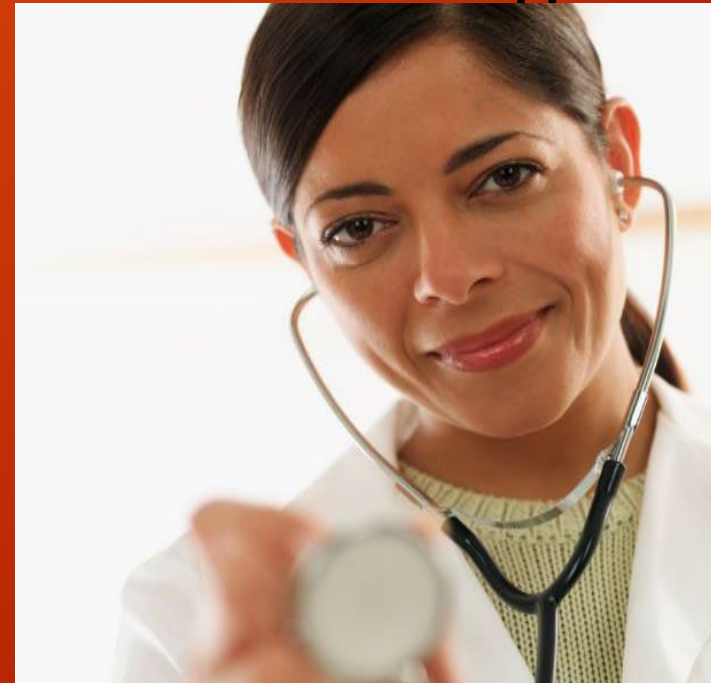
Moving On

Charlie Is Seen By “Company” Physician

- Charlie is sent to company doctor on Wednesday, the day after he reported the injury
- Report to Linus from company doctor
 - Potential herniated disc
 - Avoid work until seen by specialist on following Monday
 - Problem appears work-related
- Linus' Next Move?

Employee is Written “Out” of Work

- On Monday, orthopedist confirms herniated disc in lower back
- No reason to doubt injury resulted from lifting the pumpkin at work
- Out of work for 4 months
- What should Linus do?
 - FMLA/ADA (PTO?) (TTD?)



Employee Is Released

- Charlie is released after 4 months of no work
 - Restricted duty
 - Lift no more than 15 lbs.
 - Restrictions apply indefinitely
- Effectively MMI with Permanent Restrictions

Closing the Loop (Linus' Next Steps)

Return to Work Physical Exams

- ADA
 - Exams are allowed post-hire when job-related and consistent with business necessity (fitness for duty (FFD)) – also applies in RTW situations
 - ADA exams (FFD & RTW) should be narrowly tailored to the actual medical condition at issue, focus on the job duties of the position held and whether accommodation is necessary to perform the job
- FMLA
 - Medical certification may be obtained prior to RTW – MUST be applied uniformly as well as job-related and consistent with business necessity (see ADA)
 - Generally, the employer is only allowed to obtain a simple statement that employee is suitable for RTW
 - Notify employee at time of leave that RTW note will be required if you intend to require one (be consistent)

Access to Information

- If WC applies, employer will have automatic access to a much broader range of medical information and the ability to ask more questions
 - careful about what you ask and make sure you really need to know the answer (GINA prohibition on genetic information)
 - What you know under WC likely imputed to the employer for ADA and FMLA purposes



W/C Claims Resolution Strategy

- Resolving Claims
- “Clincher” Agreements
 - You’re Done
- Formal Hearings

Employee's Right to Former Position

- FMLA
 - Job protection law
 - No absolute right to former position – equivalent position only
- ADA
 - INTERACTIVE PROCESS
 - Tier 1 (in job)
 - Tier 2 (more leave)
 - Tier 3 (re-assignment)

Key Takeaways



- Investigate promptly and document
- Be mindful of OSHA obligations
- Any injury/leave situation should be analyzed under each law
- Follow the statute (FMLA/ADA) that offers the employee the *greatest* benefits
- Follow the ADA interactive process for restrictions and leave

Questions?



Thank You!

W. Kyle Dillard
Greenville, South Carolina
(864) 240-8317
kyle.dillard@ogletree.com

**Ogletree
Deakins**