



Municipal Technical Advisory Service
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Intersection of FMLA and ADA

Dear Reader:

The following document was created from the Municipal Technical Advisory Services website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website shares information relative to Tennessee municipal government. We hope this information will be useful to you and that it will assist you with questions that arise in your tenure in municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

The Municipal Technical Advisory Service (MTAS) was created in 1949 to provide technical assistance to elected and appointed municipal officials in Tennessee. We are a resource for Tennessee municipal officials in areas of municipal government, human resources, finance, fire, legal, police, public works, water, and wastewater. We provide personal and professional knowledge growth opportunities on current issues within municipal government.

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The FMLA regulations define son or daughter as the “biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis, who is under 18 years of age.” The definition is expanded to include a child 18 years of age or older if the child is incapable of self-care because of a mental or physical disability. The FMLA defers to the ADA’s definition of the term “disability.” As an employer you need to proceed cautiously when FMLA and ADA intersect. The new legislation makes it clear that an employee who performs well also may be substantially limited in one of the major life activities of learning, reading, writing, thinking, and speaking. This employee will still need to establish that he or she has limitations and needs a “reasonable” accommodation.

Some clarifications have been made since the ADA Amendments Act of 2008 was passed those include:

- ADA amendments do not apply retroactively (Sixth Circuit *Milholland*).
- The regulations clarify that “major life activities” include “major bodily functions” such as functions of the immune system, normal cell growth, brain, neurological, and endocrine functions.
- Under the old ADA, not every impairment will constitute a disability.
- The new ADA standards will allow more adult children of your employees to qualify as being disabled. This will result in more employees requesting FMLA to care for their adult children with disabilities.

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