

Intersection of FMLA and ADA

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with 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.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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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.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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