



# The Gavel

## Diverse Viewpoints in the Law

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## The U.S. Department of Labor's clarification of the Family and Medical Leave Act's protection for employees who request leave to care for an adult child.

[http://www.fmlainsights.com/regulatory-activity/dol-issues-guidance-on-caring-for-an-adult-child-under-the-fmla/?goback=%2Egde\\_2479785\\_member\\_204723698](http://www.fmlainsights.com/regulatory-activity/dol-issues-guidance-on-caring-for-an-adult-child-under-the-fmla/?goback=%2Egde_2479785_member_204723698)

*The Family and Medical Leave Act (FMLA) entitles an employee to leave in order to care for a child with a serious health condition. "Child" is defined as a son or daughter who is 1) under the age of 18; or 2) age 18 or older and "incapable of self-care because of a mental or physical disability" at the time the FMLA is to commence.*

*The recent issuance of the Administrator's Interpretation is aimed at clarifying 1) the age of the child at the onset of the disability; 2) the impact of the ADA Amendments Act of 2008 on the interpretation of 'disability' under the FMLA; and 3) the availability of FMLA leave for parents to care for an adult child who becomes disabled during military service.*

### **Age of the Disabled Child:**

*- The Department of Labor clarified that the age of the child at the onset of the disability is irrelevant. The FMLA covers an adult child who suffers from a disability, whether it originated prior to the age of 18 or not.*

### **Impact of the Americans with Disabilities Act Amendments Act (ADAAA):**

*- The Department of Labor endorsed the changes to the definition of "disability" under the ADAAA and warned that these changes will clearly impact an employee's ability to take FMLA leave to care for an adult child. - The ADAAA expanded the term "disability" to mean an impairment that substantially limits one "major life activity." 42 U.S.C.A. Section 12102.*

### **Designation of an adult child with a disability:**

*- More often than not, an employer does not have enough information to designate leave as an FMLA leave. However, the Administrator's interpretation provided a valuable example of an adult child suffering from a disability whose parent would be entitled to take FMLA-protected leave:*

- A 37 year-old daughter
- Suffering from a shattered pelvis resulting from a car accident
- Injury substantially limits her ability to walk, stand, sit, etc., thereby requiring aid in three or more daily activities such as bathing, dressing, maintaining a residence, etc.
- Daughter was hospitalized for six months before being released from the hospital.

**Impact of Military Leave:**

- The Department of Labor confirmed that parents of adult children who have been wounded or sustained an injury or illness in military service may be allowed to take more leave than the 26 work-weeks provided for under the FMLA.

**Additional Information for Employers:**

- Administrative Guidance: [http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2013/FMLAAI2013\\_1.htm](http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2013/FMLAAI2013_1.htm)

- Fact Sheet: <http://www.dol.gov/whd/regs/compliance/whdfs28k.htm>

- Question and Answers on the Administrative Guidance: <http://www.dol.gov/whd/fmla/AdultChildFAQs.htm>

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