



INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

# FMLA & ADA

April 1, 2026



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# **THE FEDERAL FAMILY MEDICAL LEAVE ACT (FMLA)**

April 1, 2026

# WHAT IS FMLA?

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

Of all federal employment laws, FMLA is one of the most popular and beneficial to employees. 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.

FMLA is administered & regulated by the US Department of Labor (DOL), Wage & Hour Division (WHD).

Perhaps more importantly, FMLA has had the “benefit” of over two decades of extensive litigation.



# OVERVIEW

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## What does FMLA provide?

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

Twelve workweeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse\*, son, daughter, or parent is a covered military member on "covered active duty;" **or**

Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).



# DEFINITION OF SPOUSE

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The U.S. Department of Labor's Wage and Hour Division issued a Final Rule to revise the definition of spouse to include individuals in same-sex marriages, in light of the United States Supreme Court's decision in *United States v. Windsor*, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. This Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, *regardless of where they live*.

This means that a same-sex couple who got married in, for example, Iowa, and moves to a state that does not recognize same-sex marriage, will still be eligible for FMLA for their spouse.

- *This is a good place to spend a few minutes on state laws...*
  - <http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>
  - *For example, District of Columbia:* <https://www.dol.gov/whd/state/fmla/dc.htm>



# DEFINITION OF CHILD

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- A “son or daughter” is defined by the FMLA regulations as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and “incapable of self-care because of a mental or physical disability”\* at the time FMLA leave is to commence.
- The FMLA regulations provide separate definitions of “son or daughter” for its military family leave provisions that are not restricted by age.
- Wage and Hour Administrator’s Interpretation No. 2010-3 (June 22, 2010) provides additional information regarding the definition of a son or daughter as it applies to an employee standing in loco parentis. In other words, if you are legally responsible for the health & welfare of a child due to an administrative and/or court order, you are able to take FMLA for the care of that child as if they were biological or adopted children.



# DEFINITION OF DISABILITY

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## Definition of Disability for FMLA Purposes

- Parents\* are able to take FMLA leave for caring of their disabled child(ren) over the age of 18 if the disability meets definitions laid out by US DOL, WHD.
- The FMLA regulations adopted the Americans with Disabilities Act (ADA) definition of disability as a **physical or mental impairment that substantially limits a major life activity, as interpreted by the Equal Employment Opportunity Commission (EEOC), to define “physical or mental disability.”**
- If an adult son or daughter is “incapable of self-care” due to a disability, he or she will meet the FMLA definition of a son or daughter for whom an eligible employee may take leave.



# DEFINITION OF DISABILITY

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## Definition of Disability for FMLA Purposes, cont:

- Physical or Mental Disability is defined by the Americans with Disabilities Act (ADA) of 1990, and has been expanded by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), significantly broadened the scope of the term “disability” under the ADA.
- Pursuant to DOL: “In order for a parent, who is an eligible employee, to take FMLA leave to care for a son or daughter 18 years of age or older, the adult child must be incapable of self-care due to a mental or physical disability, i.e., an impairment that “substantially limits” one or more of the individual’s “major life activities.” The ADAAA broadened the definition of “major life activities” under the ADA to include, among other things, the “operation of a major bodily function” such as those of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive systems.”



# DEFINITION OF DISABILITY

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## Definition of Disability for FMLA Purposes, cont:

- “The ADAAA also clarified that the use of mitigating measures to ameliorate the effects of an impairment, other than ordinary eyeglasses or contact lenses, may not be considered in determining whether the individual is substantially limited in a major life activity. It further stated that an impairment that is episodic or in remission is a disability if it would, when active, substantially limit a major life activity.”



# DEFINITION OF DISABILITY

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## What is a disability:

- There are a range of diseases that are “automatically” considered to be disability:
  - Cancer, multiple sclerosis, etc. – in other words, conditions that automatically also meet FMLA’s definition of “serious health condition.”
- An individual will be considered “incapable of self-care” for FMLA leave purposes if he or she requires active assistance or supervision in three or more activities of daily living (ADLs) or instrumental activities of daily living (IADLs).
- The FMLA regulations include the following as examples of “activities of daily living”:
- Caring appropriately for one’s grooming and hygiene



# DEFINITION OF DISABILITY

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## What is a disability:

- The FMLA regulations provide the following examples of “instrumental activities of daily living”:
- Cooking, Cleaning, Shopping, Taking public transportation, Paying bills, Maintaining a residence, Using telephones and directories, Using a post office.
- Important to note: each case has to be taken on in its own merits!



# DEFINITION OF SERIOUS HEALTH CONDITION

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## FMLA defines a serious health condition as:

- “as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The FMLA regulations provide objective tests to determine whether a particular condition is a serious health condition under the FMLA. Common serious health conditions include conditions requiring an overnight stay in a hospital or other medical care facility; conditions that cause the employee or the employee’s spouse, son or daughter, or parent to be incapacitated for more than **three consecutive calendar days** and that require ongoing medical treatments (e.g., two in-person visits to a health care provider, or one visit with follow-up care such as prescription medication); chronic conditions that cause occasional periods of incapacity and that require treatment by a health care provider at least twice a year; and incapacity due to pregnancy. Providing needed care to a son or daughter with a serious health condition is a qualifying reason for FMLA leave.”
- As you can see, FMLA’s definition is very broad.
- Discussion and note: employers generally should and do notify employees of their FMLA rights once they’ve been out sick for three to five consecutive days. What does this mean in practice?



# THE TWELVE WEEKS

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- FMLA provides up to twelve calendar weeks per year\* of unpaid\* leave. This leave can be taken all at once, or in the smallest increments (as intermittent leave) in which the employer keeps time. Generally, this can be fifteen minutes, thirty minutes, etc.
- What does a “year” mean in FMLA? A plan year for FMLA can be calculated in two ways:
  - **“Rolling” Twelve Months:** this is the most common methodology used. This means that the FMLA plan year for an employee begins with the first instance of absence. For example, if the employee begins FMLA leave on January 25<sup>th</sup> of a year, his 12 month FMLA plan year ends on January 24 of the following year.
  - **Fixed/Calendar Year:** this is not common. This means that the FMLA plan year starts on, say, January 1<sup>st</sup> of each year.
  - **Why is this important?** Let’s remember that the employee receives 12 weeks of FMLA leave. If an employee who starts their leave on January 25<sup>th</sup> of a year, and uses, say, eight weeks of FMLA, that individual will only have four weeks of FMLA left until the January 25<sup>th</sup> of the following year. In other words, FMLA is “refilled” up to 12 weeks at the conclusion of the plan year.



# THE TWELVE WEEKS

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- Reminder: FMLA requires the employer to provide UNPAID leave only.
- **How does FMLA work with paid sick leave?** Paid sick leave can be anything that pays while an employee is out sick or injured: accumulated sick leave, vacation leave, PTO, donated leave, salary extension, short and/or long term disability, workers compensation, etc.
- FMLA allows employees to be paid from any source (as detailed above), while they are on FMLA. Employers are also permitted to require employees to use paid leave while they are on FMLA.
  - For example – an employer may require that an employee on FMLA use their sick, then their vacation leave and/or apply for disability, etc. However, FMLA cannot be denied if an employee “forgets” to use sick leave, etc., or (if applicable) does not apply for disability. In other words, while on FMLA, employees must still comply with the normal paid leave policies of the employer.
- ***Please remember again – your state FMLA or FMLA-like law may provide additional benefits and/or protections!***



# THE TWELVE WEEKS

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- All time must be requested with 30 calendar days ‘ notice, or as soon as practicable.
- What does this mean?
  - Notice to take FMLA leave must be provided to the employer no later than 30 calendar days prior to taking leave, UNLESS it is not *practicable*.
  - **Practicable** means that there is a **reasonable** exigency which makes giving such notice **unreasonable**.
    - **For example:** the employee’s wife is due to give birth in three months. 30 days’ notice can be given.
    - **For example:** employee is diagnosed with a condition that requires immediate surgery – 30 days’ notice cannot be given – this is reasonable under these circumstances.



# BIRTH OR ADOPTION

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- **Birth of a son or daughter and to care for the newborn child:** This applies to both the mother and the father\*. The expectant mother may take FMLA leave for prenatal care or if the pregnancy makes her unable to work prior to the actual birth of the child. (\*Applies to same sex couples as well.)
- **Placement with the employee of a son or daughter for adoption or foster care:** This leave must be given before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.



# ILLNESS OR INJURY

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- **Care for others:** the employee's spouse, son, daughter or parent with a serious health condition.
- **Care for Self:** a serious health condition that makes the employee unable to perform the functions of his/her job.



# FMLA FOR MILITARY DEPLOYMENT OR INJURY

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## Provision from 2008 – FMLA Leave Available for Military Deployment or Injury

- For Military Deployment, up to 12 weeks is available for: “...[a] qualifying exigency for families of members of the regular Armed Forces, National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation in a foreign country. This leave may commence as soon as the individual receives the call-up notice. A qualifying exigency must be one of the following:
  - Short-notice deployment, Military events and activities, Childcare and school activities.
  - Financial and legal arrangements and Counseling.
  - Rest and recuperation (up to 15 days)



# FMLA FOR MILITARY DEPLOYMENT OR INJURY

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## Provision from 2008 – FMLA Leave Available for Military Deployment or Injury

- Post-deployment activities.
- Additional activities that arise out of active duty, provided that the company and the employee agree, including agreement on timing and duration of the leave.
- Parental care-employee may take leave to care for the parent of the military member who is incapable of self-care. The parent must be the military member's biological, adoptive, step, or foster father or mother. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.



# FMLA FOR MILITARY DEPLOYMENT OR INJURY

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## Provision from 2008 – FMLA Leave Available for Military Deployment or Injury

- **For Military Injury or Illness**, up to **26(!!!)** weeks is available for: FMLA provides for up to 26 weeks of leave in a single 12-month period for the care of a spouse, son, daughter, parent or **next-of-kin** covered servicemember with a serious illness or injury incurred in the line of duty on active duty. Next-of-kin is defined as the closest blood relative of the injured or recovering servicemember. This type of FMLA leave is also known as military caregiver leave or covered servicemember leave.
- **Specifically, care for a person** “who is: undergoing medical treatment, recuperation, or therapy, otherwise in outpatient status, otherwise on the temporary disability retired list for a serious injury or illness...that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.”
- **Note that:** the 26 weeks are **inclusive** of the 12 weeks of leave already provided under regular FMLA leave. This leave can be used only once per veteran, per injury, and must be used within one 12-month period.



# WHO IS ELIGIBLE FOR FMLA AND FMLA JOB PROTECTION?

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- **FMLA Eligibility:** any employee of an organization that employs 50 or more individuals within a 75-mile radius, AND has worked 1,250 hours in the past 12 months for that organization.
- **FMLA Job Protection:** any employee returning from FMLA leave, must be returned to his/her previous position or an EQUIVALENT position. In practice, it is better for employer to return the employee to their existing position.
- **Key Employee Exception:** “Under certain circumstances, an employer may deny job restoration to "key employees." A "key employee" is a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.
- In order to deny restoration to a key employee, an employer must determine that the restoration of the employee to employment will cause "substantial and grievous economic injury" to the operations of the employer, not whether the absence of the employee will cause such substantial and grievous injury.”



# WHO IS ELIGIBLE FOR FMLA AND FMLA JOB PROTECTION?

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- **Spousal exception:** Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company.
- On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where the spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a parent, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.”
- Same as above is applicable for the up to 26 week leave for the military illness leave.



# WHO IS ELIGIBLE FOR FMLA AND FMLA JOB PROTECTION?

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## Can employees be terminated and/or laid off while on FMLA?

- In short, the answer is “yes,” **as long as such action(s) would have happened regardless of the FMLA being filed.** In practice, it is legally very dangerous for an employer to terminate employees during FMLA, unless the reasons are “iron-tight.”
- Normally, most employers will wait until the FMLA term is over.
- In these circumstances, the employers have to be prepared to show that their actions are not, in any way, retaliatory, or discriminatory.



# FMLA LEAVE

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- **FMLA is very liberal in how employees may request FMLA leave.** While an organization may have procedures (and should have procedures) in place for the request of FMLA leave, and employees are expected to follow those procedures when practicable, as soon as an employee contacts management or HR personnel by phone, email, text, etc., and either requests FMLA leave and/or information, FMLA will consider that “transaction” to be covered under the the aegis of FMLA.
- **Required information for FMLA:** employers may use the forms provided by DOL to collect the necessary and needed information for decision-making regarding FMLA leave. Alternatively, employers may outsource FMLA processing to third-party administrators, insurance providers, etc. However, at no time can the information requested EXCEED that which is delineated on the forms supplied by DOL. Please note that there are different forms for FMLA for self, others, and military leave.
- **Leave approval** may be done on the forms supplied by the DOL, or any other method that meets DOL requirements.



# FMLA LEAVE

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- **If leave is denied**, the employee may appeal the denial. If the employer upholds the denial, the employee may contact the DOL, and/or take private action (lawsuit).
- **Employers may also request a second opinion**, at the employer's request. If this opinion disagrees with the employee's clinician's opinion, the employer may request a third medical opinion, again at the employer's expense.
- **A fitness for duty medical certificate** may be requested by the employer before an employee may return to work. (This is strongly suggested.)



# FMLA AND BENEFITS

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- **Insurance benefits:** If an employee is provided group health insurance, the employee is entitled to the continuation of the group health insurance coverage during FMLA leave on the same terms as if he or she had continued to work. If family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. The employee must continue to make any normal contributions to the cost of the health insurance premiums. (An employer May allow the employee to accrue the deduction obligations and deduct such from their pay when they return.)
- **Benefits Other Than Health Insurance:** An employee's rights to benefits other than group health insurance while on FMLA leave depend upon the employer's established policies. Any benefits that would be maintained while the employee is on other forms of leave, including paid leave if the employee substitutes accrued paid leave during FMLA leave, must be maintained while the employee is on FMLA leave.
- **Checking In While on FMLA Leave:** an employer does have the right to have the employee out on FMLA leave "check in" pursuant to the normal leave policies of the employer, is long it is practicable.



# DEEMING LEAVE TO BE FMLA QUALIFYING

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Whether an employer can or should “deem” a leave to be FMLA qualifying is complex.

- In general, employers cannot “deem” a leave to be FMLA qualifying, and thus start the clock on FMLA employee leave...
- **UNLESS(!!)** – the employer has, in their hands, medical information that clearly shows that the employee does qualify for FMLA – this can be the case with members of the fire service!



# DEEMING LEAVE TO BE FMLA QUALIFYING

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- **And UNLESS!!!** – as a condition of receiving disability compensation of any kind, it is the employer’s policy that FMLA be applied for at the same time.
- And however(!), if an employer is reasonably aware that a condition is likely to be FMLA covered, the employer may deem the condition to be FMLA qualifying (thus safeguarding employee rights), *pending normal receipt of FMLA materials. If the employee then does not return the FMLA materials and/or does not qualify for FMLA, then any time logged against FMLA is reversed. This is a safe-harbor defensive “move,” that some employers may choose to employ. Remember, employees have 15 calendar days (or as soon as practicable) to return FMLA materials. In general, outsourced FMLA administration will NOT deem leaves to be FMLA qualifying without receiving appropriate materials.*



# ENFORCEMENT AND REGULATION

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- The US Department of Labor, Wage and Hour Division regulate and enforce FMLA. If disability and/or discrimination issues are involved, this power is shared with the EEOC. Both DOL and EEOC may make referrals to DOJ for prosecution of employers in egregious FMLA violation cases – this is VERY rare. DOL and EEOC may initiate civil litigation and/or administrative actions against employers that violate FMLA.
- Individual litigation is always in federal court, although states that have their own FMLA laws, litigation can also be in state court.
- ***States with their own FMLA (or like) rules can also take enforcement action and/or legal action can be taken by the employee under such state law(s), for example, in CA, DC, etc.***
- In short, non-compliance with FMLA can be very costly.
- How to stay compliant? Follow the law, regulations, court decisions, and employers must be consistent and must also be non-discriminatory in applying FMLA.



# ROLE OF STATES AND LOCALITIES

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- FMLA is one of the few federal laws that specifically permits states (and localities) to legislate in the same area, as long as the benefits thus provided are *greater than* that which is provided by federal FMLA.
- For example, District of Columbia has had its own Family and Medical Leave Law since 1990; it actually predates FMLA. DC's law provides far greater coverage to workers in the District of Columbia than does the federal FMLA.
- Since then, other states such as CA, NY, RI, etc., have enacted legislation that either expands federal FMLA, and/or creates a mechanism for such leave to be paid via the state. For a quick example, beginning on July 1, 2020, ALL individuals employed in DC, will be able to received *paid* leave (subject to some "terms and conditions") for themselves, childbirth/placement, etc., and this legislation works in concert with DC's FMLA.



# GLOBAL PARENTAL LEAVE LANDSCAPE

Provisions	Benefits
<p>How much time off, if any, is afforded before the baby is due? How much time off after the birth is afforded?</p>	<ul style="list-style-type: none"> <li>U.S. does not have a federal law that specifically covers paid parental leave, but some states/cities offer state disability or paid parental leave (PPL) benefits</li> <li>Family and Medical Leave Act (FMLA) is commonly used towards parental leave               <ul style="list-style-type: none"> <li>Unpaid, job protected for up to 12 weeks</li> <li>Must meet certain eligibility requirements</li> </ul> </li> </ul>
<p>What is the pay during the time off, and how does it change over time?</p>	<ul style="list-style-type: none"> <li>There is no requirement for an employer to provide pay for parental leave</li> <li>For employers that do offer this benefit, it is typically a 100% benefit</li> </ul>
<p>Is there any support toward childcare costs? How much does childcare cost?</p>	<ul style="list-style-type: none"> <li>Families can receive credits worth 15-30% of childcare costs, capped at \$3,000 per child per year with Child and Dependent Care Tax Credit (CDCTC)</li> <li>While the average cost of full-time care in childcare centers for all children age zero to 4 in the US is \$9,589 a year according to research from New America (a think tank)               <ul style="list-style-type: none"> <li>Nationally, the cost of full-time care in childcare centers is 85 percent of the monthly US median cost of rent</li> </ul> </li> <li>Some employers offer dependent-care assistance</li> </ul>
<p>What percentage of women return to work within a year after childbirth?</p>	<ul style="list-style-type: none"> <li>Based on census data from 2005 -2007, 70% of women returned to work within a year of their first birth, 60% percent returned within 5 months</li> </ul>
<p>How much time off is afforded for paternity?</p>	<ul style="list-style-type: none"> <li>No current policy, can use FMLA</li> </ul>

Courtesy of Willis Towers Watson



# GLOBAL PARENTAL LEAVE LANDSCAPE

- Germany was the first to enact paid maternity leave in 1883, followed by Sweden in 1891, and France in 1929 — initially granted lengthy paid leave after the birth of a child to women, not men
- Beginning in the 1990s, a majority of countries in the Organization for Economic Cooperation and Development (OECD) began offering job-protected parental leave and paid leave specifically to fathers, some with “use it or lose it” provisions and higher wage replacement to encourage men to take an active role in caregiving
- U.S. is the only country among 41 nations that does not mandate any paid leave for new parents
- Total amount of leave available to new parents on chart to the right is based upon:
  - Maternity leave: available to mothers ~ to the time of birth or adoption
  - Paternity leave: available to fathers ~ to the time of birth or adoption
  - Parental leave: which is typically available after maternity or paternity leave. In some cases, parental leave is allocated for mothers only or for fathers only. In other cases, it is available to either parent
- In most countries, a social-security-type system is used to fund the paid time off



# STATE AND LOCAL UNPAID FAMILY AND MEDICAL LEAVE LAWS

Unpaid Family & Medical Leave <sup>1</sup>		
 <b>California</b> (12 weeks/12-month period)	 <b>Maine</b> (10 weeks/2 calendar years)	 <b>Vermont<sup>2</sup></b> (12 weeks/12-month period)
 <b>Colorado</b> (12 weeks/12-month period)	 <b>Massachusetts</b> (24 weeks/12-month period)	 <b>Washington</b> (12 weeks/12-month period)
 <b>Connecticut</b> (16 weeks/24-month period)	 <b>New Jersey</b> (12 weeks/24-month period)	 <b>Wisconsin</b> (6 weeks family & 2 weeks medical/12-month period)
 <b>Washington D.C.</b> (16 weeks/24-month period)	 <b>Oregon</b> (12 weeks/year)	
 <b>Hawaii</b> (4 weeks/12-month period)	 <b>Rhode Island</b> (13 consecutive weeks/ 2 calendar years)	

<sup>1</sup>These states and D.C. have unpaid family & medical leave laws that expand protections beyond the minimum federal requirements. Subject employers in these states and D.C. must comply with both the federal Family and Medical Leave Act and state laws. Where they differ, employers should follow the law that provides the greatest benefits to employees.

<sup>2</sup>VT also has a short-term family leave law -- 4 hours/30-day period but not to exceed 24 hours/12-month period -- so that eligible employees can take certain family members to routine medical visits and to respond to medical emergencies.





# PAID FAMILY AND MEDICAL LEAVE LAWS

Paid Family & Medical Leave <sup>1</sup>	
 <p><b>California</b> (6 weeks family/52 weeks for own disability during 52 week period)</p>	 <p><b>New York<sup>2</sup></b> (family leave increases over time from 8 to 12 weeks/26 weeks for own disability during 52 week period)</p>
 <p><b>Washington, D.C.</b> (8 weeks parental/6 weeks family care/2 weeks for own disability during 52 week period beginning 7/1/2020)</p>	 <p><b>Rhode Island</b> (4 weeks family/30 weeks for own disability during 52 week period)</p>
 <p><b>Massachusetts<sup>3</sup></b> (12-26 weeks depending on type of leave during 52 week period) beginning 1/1/2021</p>	 <p><b>Washington<sup>4</sup></b> (12 weeks/12-month period beginning 1/1/2020)</p>
 <p><b>New Jersey</b> (6 weeks family/26 weeks for own disability during 12-month period)</p>	

<sup>1</sup>These states and D.C. provide employees with partial compensation for loss of wages typically due to family caregiving needs, such as the arrival of a new child, or time taken to care for an injured or ill family member. They also provide partial compensation for loss of wages due to an employee's own non-occupational injury or illness. Note that Hawaii has a law that provides up to 26 weeks for an employee's own non-occupational injury or illness.

<sup>2</sup>Eight weeks effective 1/1/2018; ten weeks effective 1/1/2019; twelve weeks effective 1/1/2021 in any 52 week calendar period for family leave, including family military leave.

<sup>3</sup>Effective 7/1/2021, 20 weeks for one's own serious health condition. Effective 1/1/2021, 12 weeks family leave (including family military), and 26 weeks to deal with an emergency related to deployment of a family member for military service. Employees may not take more than 26 weeks in the aggregate in a benefit year.

<sup>4</sup>12 weeks family leave (including family military), 12 weeks for one's own injury or illness, or a combination of the two for up to 16 weeks. An additional two weeks of paid leave may be used for a serious health condition related to a pregnancy, for a combined total of 18 weeks.

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# PARENTAL/SCHOOL RELATED LEAVE LAWS

Parental Leave <sup>1</sup>	
	<b>Maryland</b> (6 weeks/12-month period)
★	<b>Montgomery County<sup>5</sup></b> (up to 80 hours/calendar year)
	<b>Massachusetts</b> (8 weeks)
	<b>Minnesota</b> (12 weeks)
★	<b>San Francisco<sup>6</sup></b> (6 weeks)
	<b>Tennessee</b> (4 months)

School Related Parental Leave <sup>2</sup>			
	<b>California<sup>3</sup></b> (40 hours/year)		<b>Nevada<sup>4</sup></b> (4 hours/school year)
★	<b>Washington D.C.</b> (24 hours/12-month period)		<b>North Carolina</b> (4 hours/year)
	<b>Illinois</b> (8 hours/school year; not to exceed 4 hours/day)		<b>Rhode Island</b> (10 hours/12 month-period)
	<b>Massachusetts</b> (24 hours/12-month period)		<b>Vermont</b> (4 hours/30-day period but not to exceed 24 hours/12-month period)
	<b>Minnesota</b> (16 hours/12-month period)		

<sup>1</sup>These laws generally provide either paid or unpaid leave so that employees can bond with a new child (by birth, adoption or placement in foster care). Pregnancy related leave is available to female employees in MN and TN. The TN law also includes nursing a newborn.

<sup>2</sup>These laws generally provide unpaid leave so that employees can attend their child's daycare or school-related events.

<sup>3</sup>CA also has a leave law -- equivalent to a portion of a child's school day -- so that employees may appear in the suspended child's school.

<sup>4</sup>NV also has a leave law -- of unspecified duration -- so employees can attend school conferences requested by an administrator or for an emergency regarding the child; if notified during work by a school employee.

<sup>5</sup>Montgomery County's paid sick/safe leave ordinance also allows employees to use earned sick and safe leave for parental leave purposes. Amount of time employees can use depends on size of employer and whether the employer uses the frontloading or accrual method.

<sup>6</sup>San Francisco's paid parental leave ordinance pays the difference between an employee's weekly benefit from the CA PFL program and 100% of the employee's normal gross weekly wages (up to a cap).

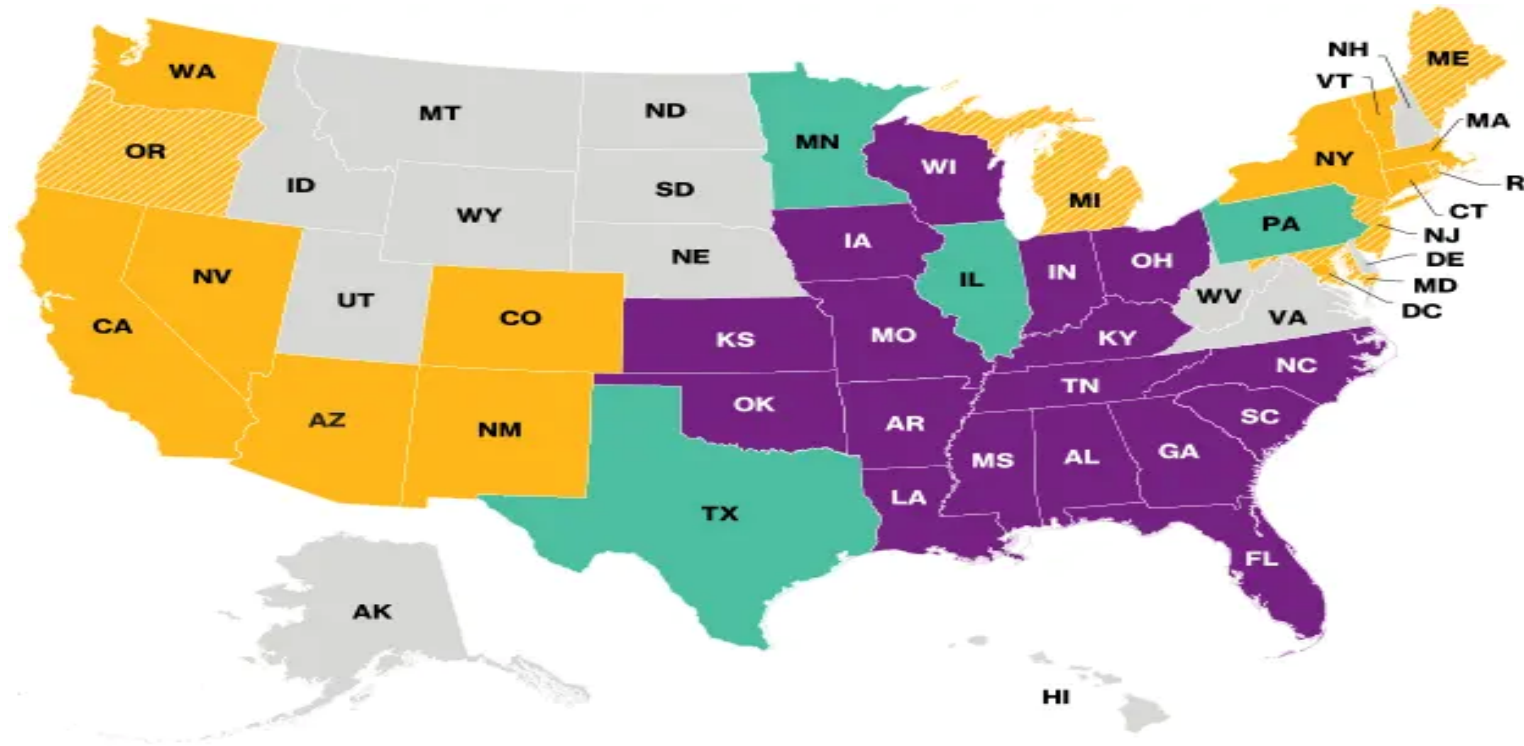
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# STATE & LOCAL PAID SICK/SAFE LEAVE LAWS



- States mandating paid sick leave (and the District of Columbia)
- States mandating paid sick leave and prohibiting local jurisdictions from mandating paid sick leave
- States with one or more localities (but not the state itself) that mandate paid sick leave
- States prohibiting local jurisdictions from mandating paid sick leave

This map does not include the jurisdictions that have enacted temporary mandates in direct response to the COVID-19 pandemic.

March 2022  
wtwco.com

## States/localities mandating paid sick leave

Arizona	Massachusetts	Oregon
California	Michigan	Rhode Island
Colorado	Nevada <sup>2</sup>	Vermont
Connecticut	New Jersey	Washington
Maine <sup>1</sup>	New Mexico <sup>3</sup>	Washington, DC
Maryland	New York <sup>4</sup>	

California: Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, Santa Monica, West Hollywood<sup>5</sup>  
 Illinois: Chicago, Cook County<sup>6</sup>  
 Maryland: Montgomery County  
 Minnesota: Duluth, Minneapolis, St. Paul  
 New Mexico: Bernalillo County<sup>7</sup>  
 New York: New York City  
 Pennsylvania: Allegheny County, Philadelphia, Pittsburgh  
 Texas: Austin,<sup>8</sup> San Antonio<sup>9</sup>  
 Washington: Seattle, Tacoma

<sup>1</sup> Leave can be taken for any reason.  
<sup>2</sup> Leave can be taken for any reason.  
<sup>3</sup> Effective July 1, 2022.  
<sup>4</sup> Does not prevent a city with a population of 1 million or more from enacting or enforcing local laws that meet or exceed the law's minimum requirements.  
<sup>5</sup> Leave can be taken for any reason, effective July 1, 2022, for non-hotel employees  
<sup>6</sup> Numerous municipalities have opted out.  
<sup>7</sup> Leave can be taken for any reason.  
<sup>8</sup> Implementation blocked due to court ruling.  
<sup>9</sup> Implementation temporarily postponed due to court ruling.

## States with bans against local paid sick leave laws

Alabama	Louisiana	Ohio
Arkansas	Maine	Oklahoma
Florida	Maryland	Oregon
Georgia	Michigan	Rhode Island
Indiana	Mississippi	South Carolina
Iowa	Missouri	Tennessee
Kansas	New Jersey	Wisconsin
Kentucky	North Carolina	



# STATE PAID LEAVE LAWS

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- The previous slides were a snapshot from 2022 and 2024.
- My prediction is that most of the legislative “action” will be in states/localities in at least the near/mid term future.
- State paid leave laws can take the form of (essentially) state run short-term disability plans, and/or sick leave mandates on employers, and/or (such as DC) payment for various covered conditions.
- *Please remember! How you get paid WHILE on FMLA has no impact on the FMLA itself.*
- The details are in the additional PDF that you have access to in the IAFF App.



# APPENDIXES AND ATTACHMENTS

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- Certification of Health Care Provider for U.S. Department of Labor Employee's Serious Health Condition - <http://www.dol.gov/whd/forms/WH-380-E.pdf>
- Certification of Health Care Provider for U.S. Department of Labor Family Member's Serious Health Condition - <http://www.dol.gov/whd/forms/WH-380-F.pdf>
- Optional Notice - <http://www.dol.gov/whd/forms/WH-381.pdf>
- FMLA Designation Notice - <http://www.dol.gov/whd/forms/WH-382.pdf>
- Certification of Qualifying Exigency U.S. Department of Labor For Military Family Leave - <http://www.dol.gov/whd/forms/WH-384.pdf>
- Certification for Serious Injury or U.S. Department of Labor Illness of a Current Wage and Hour Division Servicemember - for Military Family Leave - <http://www.dol.gov/whd/forms/WH-385.pdf>
- Certification for Serious Injury U.S. Department of Labor or Illness of a Veteran for Wage and Hour Division Military Caregiver Leave - <http://www.dol.gov/whd/forms/wh385V.pdf>



# APPENDIXES AND ATTACHMENTS

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- DOL FMLA Employee Rights Poster - <https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf> and <http://www.dol.gov/whd/regs/compliance/whdfs28a.pdf>
- Summary of State Family Leave Laws - <http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>





INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

**THE ADA & ADA**

**AMERICANS WITH DISABILITIES ACT**

# WHAT IS THE ADA AND ADAAA?

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**ADA – Americans with Disabilities Act - 1990**

**ADAAA - The Americans with Disabilities Act (ADA) Amendments Act of 2008**

- Essentially, the ADA and the ADAAA seek to prevent discrimination against those with covered disabilities in employment and hiring, *as long as*, such individual(s) are able to do the *essential functions* of the job, with (if needed) *reasonable accommodations*.
- “Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.”



# HISTORY OF THE ADA & ADAAA

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## **The Rehabilitation Act of 1973 and as amended**

- The Rehabilitation Act covers all federal employees, and essentially gives the same or similar protections as the ADA/ADAAA. In fact, the ADA as inspired and modeled by the Rehabilitation Act of 1973.

## **The Americans With Disabilities Act – 1990**

- Milestone civil rights legislation prohibiting discrimination against those with disabilities in employment, hiring process, and (most) public accommodations.



# HISTORY OF THE ADA & ADAAA, CONT.

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## The Americans with Disabilities Act Amendments Act of 2008

- In short, the ADAAA sought to remedy and “undo\*” changes to the meaning of the ADA caused by primarily two US Supreme Court decisions:
- Sutton v. United Airlines, Inc., 527 U.S. (1999)
- Murphy v. United Parcel Service, Inc., 527 U.S. (1999)

*\*Congress may “overrule” the US Supreme Court, if the Court made its decision as a matter of legal not constitutional interpretation.*

*This presentation examines the post-ADAAA world, and for ease of reference, both ADA and ADAAA (unless otherwise noted), will be referred to as the ADA.*



# WHO DOES THE ADA COVER AND WHO ENFORCES ADA?

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- The ADA covers all non-federal employers – with 15 or more employees - such as state and local governments, private enterprises, labor organizations, etc.
- Federal employees are covered by the Rehabilitation Act of 1973 and as amended.
- The federal Equal Employment Opportunity Commission (EEOC) regulates and enforces the ADA.



# THE PROVISIONS OF ADA AND WHO DOES IT COVER?

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The ADA seeks to provide a “level playing field” for individuals who have or are “perceived” to have a disability, in the fields of employment and hiring.

Therefore, the ADA protects individuals with a disability. The EEOC defines an individual with a disability as a person who:

- “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.”

What does this all mean?



# ADA DEFINITIONS, CONT.

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## What is “a physical or mental impairment that substantially limits one or more major life activities” and what is a disability?

- **Life activities:** The final regulations provide a non-exhaustive list of examples of major life activities: 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. Most of these examples are taken from the ADAAA, which in turn adopted them from the original ADA regulations and EEOC guidance, or from ADA and Rehabilitation Act case law.
- The final regulations also state that major life activities include the operation of *major bodily functions*, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. Although not specifically stated in the NPRM, the final regulations state that major bodily functions include the operation of an individual organ within a body system ( e.g., the operation of the kidney, liver, or pancreas).
- As a result of the ADAAA’s recognition of major bodily functions as major life activities, it will be easier to find that individuals with certain types of impairments have a disability. (For examples of impairments affecting major bodily functions that should easily be concluded to meet the first or second part of the definition of “disability.”)



# ADA DEFINITIONS, CONT.

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**And don't forget that individuals *associated* with an individual with a covered disability may *not* be discriminated against.**

- What does this mean? An employer may not take any negative or discriminatory action against an employee because of his/her association with an individual with a covered disability.
- For example – if an employee's spouse has, say, cancer, such discriminatory behavior may be a denial of leave to the employee to take care of the spouse, *if available to similarly situated employees*. Please also note that this may very well be a nexus between ADA and leave that is also protected by FMLA. Such discriminatory behaviors may also enter the realm of creating a hostile workplace environment, for example.



# ADA MANDATES

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## What must employers do to comply with the ADA?

- Employers may not ask an employee if they have a disability *pre-employment*; employers can ask if the applicant needs *reasonable accommodation* in order to apply, interview, etc. Additionally, employers may only ask an applicant if they may need a reasonable accommodation to perform the job.
- Once offered a position, employers may ask the new employee to *self-identify* if they have a disability. *Please note: federal contractors are required to request such information, and various states/localities may have similar requirements.* It is recommended and good HR practice to have self-identification be part of onboarding for all ADA-covered employers.



# ADA MANDATES, CONT.

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## What must employers do to comply with the ADA?

- Upon request, employers must provide employees (and applicants) with *reasonable* accommodation, as long as the employee is *able to perform the essential functions of the job with or without the accommodation*.
  - *What does this mean? And specifically, what does this mean in the fire service and public safety occupations? Discussion.*
  - Note: medical exams and questions cannot be requested until an offer is made to an applicant, which may be contingent on the above. However, such exams must be given to all similarly situated applicants.
  - This does NOT mean that there cannot be PRE-OFFER physical tests (such as in the fire service) as long as such tests measure abilities that are essential functions of the job.



# THE ACCOMMODATION PROCESS

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## What must employees do to request an accommodation?

- The EEOC does not mandate any particular form with which an accommodation is to be requested. Most employers tend to follow similar questioners, whether ADA is administered internally or if it is outsourced. *Please note: employers have a duty to protect the privacy of the requestor, and must protect all private health information. While with FMLA details supplied to the supervisory staff of the affected employee is limited, in instances where accommodation is requested, by its very nature, information shared with supervisory staff may be greater. However, best practice is always to share the least amount of information with the fewest number of people, as possible.*
- An accommodation may be requested verbally, in writing, through a supervisor or human resources. Employers can direct employees to specific application paths, once the employer is aware of an accommodation request.
- A sample accommodation request form's questions follow.



# THE ACCOMMODATION PROCESS, CONT.

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1. As it relates to the request for accommodation, what is this employee's medical diagnosis or diagnoses?
2. As it relates to Question 1, what medication(s), if any, is this employee taking?
3. If the employee is taking medication, has the employee reported any side effects to you? If so, what are the side effects the employee is experiencing?
4. As it relates to Question 1, does this employee use any other mitigating measures or assistive devices to improve his/her functioning? If so, please describe them and assess the degree to which they are effective in reducing any functional limitation.



# THE ACCOMMODATION PROCESS, CONT.

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5. As it relates to Question 1, to your knowledge, has the employee's medical condition affected his/her life activities; such as driving, shopping, self-care, or recreational activities? If so, how and to what degree? What is the basis for your conclusion?
6. As it relates to Question 1, does the employee's medical condition preclude the assignment of any of the tasks and duties listed in the enclosed job description? If so, identify the tasks and duties the employee is precluded from performing, and the medical reason for your decision.
7. As it relates to the request for accommodation, what is this employee's medical diagnosis or diagnoses?



# THE ACCOMMODATION PROCESS, CONT.

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8. Are there any accommodations of which you are aware that would enable the employee to safely and satisfactorily perform all of the tasks without which the employee would be precluded from performing?
9. Is there a medical reason where you believe the employee may experience injury, harm or aggravation of the medical condition by performing or attempting to perform any of the tasks and duties identified in the job description? If so, what is the degree of injury, harm or aggravation that should be expected, and what is the likelihood that it will occur? What is the timeframe in which it is likely to occur? What is the expected risk? What is the medical reason for your conclusions?



# THE ACCOMMODATION PROCESS, CONT.

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10. Is there a medical reason to believe that, because of the medical condition, the employee is likely to experience sudden or subtle incapacitation? If so, to what degree could the employee be incapacitated, and what is the likelihood that this will occur? What is the expected duration of the event? What is the medical reason for your conclusions?
11. Is the employee likely to recover sufficiently to perform all of the tasks and duties listed in the job description without accommodation or restriction? If so, when is this likely to occur?



# THE ACCOMMODATION PROCESS, CONT.

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- Can employers ask different/more specific questions? YES! As long as the questions are relating to the essential functions of the job, and the SAME questions are asked of anyone similarly situated.
- An appropriate state-licensed medical professional needs to complete and sign/certify the information. What does appropriate mean? For example, a dermatologist should not sign off on an accommodation regarding mental health. However, for example, an internist can sign off on, say, heart disease.
- Can employers request an independent exam (at their own expense) and/or further medical information? YES!
- *Note: individuals returning from FMLA and/or disability may be persons who return to work and request an accommodation. Please also note that leave taken under FMLA is NOT part of an ADA accommodation. There can be very complex interplay between ADA, FMLA and disability coverage that may be offered by employers.*



# THE ACCOMMODATION PROCESS, CONT.

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The EEOC defines the accommodation request process as “iterative.” The EEOC expects that the employer and the employee (and by definition if there is a collective bargaining agreement in place, the labor union) engage in a good faith process – negotiations – to come to an agreement for an accommodation. *Keep in mind that the employee has to be able to do the “essential functions of the job” with or without the accommodation.* What does “essential functions” mean?

- *“Reasonable accommodation is a modification or an adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of nondisabled employees.” Let’s discuss...*



# THE ACCOMMODATION PROCESS, CONT.

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**Does the employer HAVE to provide an accommodation?** Yes, *unless the accommodation is an “undue hardship” (or burden) on the employer AND(!) as long as the employee can perform the essential functions of the job with or without the accommodation.* What is an “undue burden?”

- *“Undue hardship” is defined as “an action requiring significant difficulty or expense” when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer. Let's discuss...*



# THE ACCOMMODATION PROCESS, CONT.

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## What does the accommodation process mean for fire service positions?

- Federal courts have held that, and the US House of Representatives Judiciary Committee report (from during the discussion of the ADA) confirms that the intent of the ADA is to recognize that, essentially, part of the essential duties of a position include not placing others at risk. In other words, if a disability, even with an accommodation would place, say, fellow fire fighters or the public at risk, cannot be reasonably accommodated. “The determination that an individual applicant or employee with a disability poses a “direct threat” to health or safety must be based on objective factual evidence related to that individual’s present ability to safely perform the essential functions of a job.’  
**Determining whether an individual poses a significant risk of harm to others must be made on a case-by-case basis.”**
  - *The reality is that, often, what constitutes an undue hardship and/or reasonable accommodation is in the eye of the beholder, or the EEOC, or the courts.*



# THE ACCOMMODATION PROCESS, CONT.

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**What does the accommodation process mean for fire service positions?**

- **Each accommodation case, therefore, must be considered on its own merits, and decided equitably, with sufficient medical information.**
- ***Final note – the ADA considers alcohol abuse and dependency a covered disability BUT employers may exercise normal discipline in such circumstances. Abuse of illegal substances is NOT considered to be an ADA-covered disability.***



# REFERENCES AND NOTES:

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- New York University Journal of Legislation and Public Policy – vol. 2:37, Martin, Dawn, JD - <http://www.nyujlpp.org/wp-content/uploads/2012/10/Dawn-Martin-911-How-Will-Police-and-Fire-Departments-Respond.pdf>
- US Department of Justice – Americans with Disabilities Act – Questions and Answers - <http://www.ada.gov/qandaeng.htm>
- Equal Employment Opportunities Commission  
<http://www.eeoc.gov/eeoc/publications/fs-ada.cfm>  
<http://www.eeoc.gov/eeoc/publications/adaqa1.cfm>  
[http://www.eeoc.gov/laws/statutes/adaaa\\_notice.cfm](http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm)  
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[http://www.eeoc.gov/laws/regulations/ada\\_qa\\_final\\_rule.cfm](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm)



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  3. Tap "Sessions" and tap on the workshops you attended
  4. Tap "Evaluation" and complete the evaluation
  5. Tap "Submit"

**For the event's overall evaluation, follow steps 1 and 2, then tap "Event Evaluation" located in the event's Dashboard.**

