

@work

Official Publication of Disability Management Employer Coalition

Americans with Disabilities Act

Inside This Issue:

- Expanding Compliance Mandates
- Leave Management Technology

Departments

5 The CEO's Desk
Accommodations: Respond, Interact, Manage & Document

7 Compliance Memos
Paid Sick Leave Conflicts: Litigation vs. Ballot Box
Paid Family Leave: Massachusetts Passes Sixth State Law
Employers May Select Among Effective Accommodations

33 DMEC News
2018 DMEC Annual Conference:
A Larger Toolbox for Workplace Diversity
2018 Partnership Award Winners:
Kimberly Mashburn and Michael Vittoria

SPOTLIGHT Articles

**17 Program Showcase:
The ADA and Job Descriptions**
by Margaret Walsh

**19 RTW Case Study:
Interaction with the ADAAA**
by Brian Kost

Features

**9 2017 Leave Management Survey:
Responses to Expanding
Compliance Mandates**



**13 Filling in the Gaps with
Leave Management Technology**
*by Angie Brown, Business Development Manager
ClaimVantage*



Columns

- 23 Work/Life Squeeze: FMLA Caregiver Protections**
by Marti Cardi
Federal and State Pregnancy Protections:
The Ultimate Caregiver
- 24 Integrated Absence Management**
by Glenn Pransky and Paula Aznavoorian-Barry
The ADA and RTW: Success Through Partnership
- 25 Absence Matters**
by Bryon Bass
Insightful Strategies for Managing and
Accommodating an Aging Workforce
- 26 Engaging Today's Workforce**
by Phil Bruen
Supporting Employees on Paid Family Leave
- 28 The Disabled Workforce**
by Rachel Shaw
Crossroads: When Disability and Discipline Meet
- 29 Accommodations Best Practice Guide**
by Roberta Etcheverry
What Is a "Reasonable" Accommodation?
- 30 Riding the Demographic Wave**
by Matthew Bahl and Kristin Tugman
Millennials and Mental Health
- 31 6 Pillars of Leave Management**
by Geoffrey Simpson
Workflow for the ADA Interactive Process
- 32 Aligning Workers' Compensation**
by Gary Anderberg
Coordinating ADAAA Compliance for All
RTW and Workplace Accommodations

@work

Editorial Policy

@Work magazine is the official publication of the Disability Management Employer Coalition. Copyright 2018 by DMEC. All rights reserved.

The goal of @Work is to present industry and Association news, highlight member achievements, and promote the exchange of specialized professional information. The statements and opinions expressed herein are those of the individual authors and do not necessarily represent the views of the Association, its staff, board of directors, or its editors. Likewise, the appearance of advertisers does not constitute an endorsement of products or services featured in this, past, or subsequent issues of this publication. DMEC makes no representations, warranties, or assurances as to accuracy of the information contained in the articles, and no content herein is legal or tax advice. Consult appropriate professionals for legal or tax advice.

@Work welcomes submission of articles of interest to disability and absence management professionals at all levels. Instructions for submission are published online at www.dmec.org/work-magazine.

DMEC Membership

Individuals receive @Work as a DMEC member benefit. Call 800.789.3632 or go online to www.dmec.org for more information.

Contact DMEC

800.789.3632
info@dmec.org

5173 Waring Road, Suite 134, San Diego, CA 92120-2705

Editor

Peter Mead, CPDM
editor@dmec.org
For all editorial questions

Layout & Production

Mark Jaquette

Editorial Review Panel

Linda J. Croushore, MEd, CRC
Steven M. Genduso, MA, CPDM
Thomas P. LeRoy, PT, MSERg
Terri Morris, CEBS, CPDM
Fred Schott
Skip Simonds

DMEC National Board

Marcia Carruthers
Terri L. Rhodes
Michael Crowe
Kevin Curry
Debby Kweller
Kimberly Mashburn

Sponsors

Diamond Sponsors

Lincoln Financial Group
MetLife
Sedgwick

Platinum Sponsors

AbsenceSoft
Broadspire
Cigna
Prudential
ReedGroup
Spring Consulting Group
Sun Life Financial
The Hartford
The Partners Group
The Standard
Unum

Gold Sponsors

ClaimVantage
FINEOS
Genex
Matrix/Reliance Standard
Pacific Resources

Share Your Input: 2018 Leave Management Survey

Participate in the 2018 DMEC Employer Leave Management Survey. The information gathered from the survey will provide insight into how employers are managing employee leaves. The white paper developed from the results will provide a set of leave management best practices distributed in early 2019. The survey closes Oct. 8. [Start the survey.](#)

Participate Today!



Creating Employee Experiences that Matter

Today, the best companies are creating employee experiences that drive satisfaction and loyalty. That's why we help you create a workforce focused on what matters most to your employees. Flexible employee benefit solutions, like enhanced leave and disability programs, that meet the changing needs of today's workforce. Keeping your business competitive and your employees motivated.

Learn what matters most to employees with our latest Employee Benefit Trends Study at [MetLife.com/ebts2018](https://www.MetLife.com/ebts2018)



Navigating life together



Terri L. Rhodes

CCMP, CLMS, CPDM, MBA
President and CEO, DMEC

Accommodations: Respond, Interact, Manage & Document

Welcome to Autumn! This edition of *@Work* is focused on the Americans with Disabilities Act (ADA). Why does the ADA remain a challenge for many employers? The law has been in existence for more than 25 years. We've evolved our programs to meet changing requirements. We've fine-tuned our processes, and we know what we need to do.

Perhaps we all need to take a step back and be reminded of the fundamentals when it comes to ADA accommodation requests. It boils down to four steps: respond, interact, manage, and document. That sounds simple, right?

Before we can respond to an accommodation request, we need to know that a request has been made. Often, the manager is aware of a medical

condition that may be impacting job performance before the HR team knows, so training frontline supervisors and managers proves essen-

tial. While this can be challenging given high turnover rates and multi-site employment environments, three main points are crucial for managers and supervisors. (1) They need to have a basic understanding of the ADA and when an employee might be invoking an ADA request; (2) they need to understand that not responding to an accommodation request can have serious implications for the organization; and (3) they need to know where to go for help.

Once the request has been made, employers are required to engage in the interactive process to determine ADA accommodations. The interactive process is a conversation with the employee, where restrictions and limitations

that impact the employee's ability to perform the job can be reviewed. We sometimes make this step more difficult than it is.

The most common accommodations are tools used through existing return-to-work (RTW) programs, such as adjusting work schedules and making the workplace more accessible, and typically the cost is less than \$500.

When managing accommodations, you need a written policy and process that clearly describes your disability management program with language about nondiscrimination for ADA purposes. It is imperative that enough people are trained, informed, and skilled at managing your program with consistent application of policy and process for requests across the organization.

And finally, document everything. Document all conversations and communications and keep a copy in a separate paper or electronic file that is not part of the HR file.

Covering the basics (respond, interact, manage, and document) is the key to compliant and effective ADA programs.

In this issue, you'll also find other tips and tools to help you manage your ADA obligations. Despite the concerns we all share about ADA litigation and reputational damage, it is important not to lose sight of the big picture: the workplace is more productive when we get employees back to work as quickly as possible or keep them on the job by making necessary adjustments.

For additional tools and resources, please plan to join us at the 2019 DMEC FMLA/ADA Employer Compliance Conference, May 6-9, 2019, at the Hilton Portland Downtown in Portland, OR.

Terri L. Rhodes,
DMEC CEO

"Once the request has been made, employers are required to engage in the interactive process...."

Taking care of people is at the heart of everything we do. Caring counts.SM

With Sedgwick's global reach and expert resources, we have set the industry standard for customized, technology-enabled risk and benefits solutions, but our approach to quality service goes far beyond just managing claims. Our disability and absence management experts not only work to ensure compliance with complex laws governing disability, FMLA, ADA and workers' compensation, but they also treat each employee with compassion and respect, acting as an advocate for their overall health and wellness. At Sedgwick, **caring counts.**SM



sedgwick
caring counts

www.sedgwick.com

800.625.6588 | [f](#) [t](#) [in](#)

CM #15 Paid Sick Leave Conflicts: Litigation vs. Ballot Box

In addition to a fragmented map of municipal, county, and state paid sick leave (PSL) laws, employers now face PSL laws that operate in litigation gray zones. PSL opponents are litigating against local ordinances, while advocates are getting PSL proposals on the ballot where they have good prospects for passage — opening the door to more litigation.

In **Illinois**, 80% of *Cook County* municipalities have opted out of the county's Earned Sick Leave Ordinance; more than half of the county population is covered, however, including *Chicago*. The Cook County Board of Commissioners is turning up the political heat on the municipalities that opted out by placing a non-binding "advisory" referendum on the Nov. 6 ballot as to whether voters believe their municipality should opt in.

In **Michigan**, a statewide PSL law will face voters on Nov. 6. PSL blogger Michael Soltis notes that "when voters are asked if they would like more paid time off, it is very likely the initiative will pass." Michigan could become the twelfth state with a PSL law (see Massachusetts headline below), and the third in 2018, following Maryland and New Jersey.

In **Minnesota**, a state district court decision found that a *Minneapolis* PSL ordinance may not compel employers located

outside the city to provide benefits to employees working in the city. It hasn't been determined if this decision also limits the PSL ordinance *Duluth* passed on May 29.

In **Pennsylvania**, a *Pittsburgh* PSL ordinance is being litigated on the charge that it is invalidated by the state's pre-emption law. A *Philadelphia* PSL law also might be affected.

The **Texas** Third Court of Appeals temporarily blocked *Austin's* new PSL ordinance from its Oct. 1 implementation date. Litigation will proceed that the ordinance violates the state's minimum wage law; advocates claim they could win their case in time to restore the Oct. 1 go-live date. In *San Antonio* and *Dallas*, local initiative petitions were circulated to place PSL ordinances on the ballot. The San Antonio city council adopted the proposed ballot measure, making a Nov. 6 vote unnecessary, but hinted it may amend the ordinance. The Dallas effort fell short of the required number of valid signatures. PSL opponents, looking for a backup strategy if the current litigation fails, will ask the Texas legislature to pass a law pre-empting local PSL ordinances.

To learn more about state, county, and municipal paid sick leave laws, visit <http://dmec.org/resources/legislative-updates/> and <https://pslatwork.com/psl-resources/>.

CM #16 Paid Family Leave: Massachusetts Passes Sixth State Law

On July 1, 2019, all employers with at least one employee working in Massachusetts will begin paying a 0.63% payroll tax (which can be split equally with employees) for a 12-week paid family leave and 20-week paid medical leave that begins paying benefits on Jan. 1, 2021. Enactment of the legislation on June 28 was called a "grand bargain" between business, labor, and community groups that forestalled several Nov. 6 proposed ballot questions.

This agreement highlights the power of the popular vote to enact paid sick and family leave. Similar to the San Antonio City Council, which passed a paid sick leave ordinance in response to voter demand, the Massachusetts legislature may have felt it could secure a better-designed law on the state level,

rather than leaving it to a fragmented patchwork of local votes. The Massachusetts law has generous terms: no minimum length of employment or hours worked per week; after a seven-day waiting period, workers are paid 80% of their wages (capped at 50% of the state average weekly wage) and then 50% of their wages beyond that amount (capped at \$850 per week).

The strength of the ballot box to directly or indirectly drive passage of paid sick and family leaves raises the possibility of federal legislation, especially if Congress shifts to Democratic control in 2019. To learn more about the new Massachusetts law, visit [https://ballotpedia.org/Massachusetts_Paid_Family_and_Medical_Leave_Initiative_\(2018\)#.22Grand_bargain.22_compromise_deal](https://ballotpedia.org/Massachusetts_Paid_Family_and_Medical_Leave_Initiative_(2018)#.22Grand_bargain.22_compromise_deal).

Compliance Memos continued on p. 21

YOUR EMPLOYEES HAVE PLENTY
OF REASONS TO TAKE LEAVE.



WE CAN HELP.

There are so many reasons for employees to be out. Up to one in five employees take leave each year. So when it's time to put an effective program in place, it's time to call Broadspire.[®] Our disability and leave management services are expertly designed to help increase employee productivity and contain costs. We offer proven solutions to help, great people to work with, and plenty of extra hands.

For more information about how we can help enhance your Workers Compensation or Disability program, please contact Mike Hoberman at 973.439.6761 or michael.hoberman@choosebroadspire.com.

    1001 Summit Blvd. | Atlanta, GA 30319 | www.choosebroadspire.com | eoe


Broadspire[®]
A CRAWFORD COMPANY

2017 Leave Management Survey: Responses to Expanding Compliance Mandates

The 2017 DMEC Employer Leave Management Survey white paper is available to members on the DMEC website, providing a deep review of results from the expanded survey.

Approximately one-third of the 1,203 employers who participated in the survey operate under the fragmented patchwork of state and local paid sick leave laws, now in more than 40 jurisdictions, including 10 states: Arizona, California, Connecticut, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island,

Maryland, Massachusetts, Minnesota, Oregon, Washington, and Wisconsin.¹

The survey outlines the employer response to these new compliance mandates, as well as the ever-expanding scope of the federal Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA).

Top Challenges

The top challenges in 2017 were very consistent with those in prior years: relying on managers for leave enforcement, followed by training

"Many employers are more generous with leaves than legally required to ensure compliance; from 33% (with 100 to 999 employees) up to 59% (jumbo-sized employers) of survey participants said they do this."



Vermont, and Washington. Also, paid family leave laws are in place in California, New Jersey, New York, and Rhode Island, with two new laws implementing in 2020 (Washington State) and 2021 (Massachusetts). The District of Columbia has both paid sick and family leave laws. Add to this that 11 states authorize at least some workers who already have paid sick days to use them to care for certain family members: California, Connecticut, Georgia, Hawaii, Maine,

supervisors and managers on the FMLA, and managing intermittent leave. These three top-ranked challenges all increased from 15% or 16% response in 2016 to 20% in 2017. Among these challenges, variations appeared based on employer size:

- Small employers were most concerned about keeping up with new laws.
- Mid- to large-sized employers struggled most with intermittent leave and training.
- Jumbo-sized employers with 20,000 or more employees struggled the most with managing

Get the view from every angle.

360° view
of employee
absences

Smooth integration
of absence and
disability services

Advanced leave
management
technology and tools

Contact your Lincoln benefits expert to learn how Lincoln disability and absence management services can help manage the impact of employee absence on your business.



LIFE • INCOME • RETIREMENT • GROUP BENEFITS • ADVICE

LCN-1377721-122215

Insurance products (policy series GL1101, GL3001) are issued by The Lincoln National Life Insurance Company (Fort Wayne, IN), which does not solicit business in New York, nor is it licensed to do so. In New York, insurance products (policy series GL111, GL3001) are issued by Lincoln Life & Annuity Company of New York (Syracuse, NY). Both are Lincoln Financial Group® companies. Product availability and/or features may vary by state. Limitations and exclusions apply. Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates. Affiliates are separately responsible for their own financial and contractual obligations.

©2016 Lincoln National Corporation

intermittent leave, training supervisors on the FMLA, relying on managers for leave enforcement, and controlling employee abuse.

Many employers are more generous with leaves than legally required to ensure compliance; from 33% (with 100 to 999 employees) up to 59% (jumbo-sized employers) of survey participants said they do this. This practice has potential downsides. During discussion about the survey in a webinar earlier this year, Spring Group SVP Karen English said generosity may drive increased rates of employee absence and foster an entitlement mentality.

Also, DMEC CEO Terri Rhodes cautioned employers to “be consistent in your generosity across the board” — as generosity must be welded to other compliance best practices to achieve the desired results. There was some good news for those concerned about compliance risks: only 11% of employers indi-

cated they had any interaction (such as complaint, review, or investigation) with the Department of Labor or the Equal Employment Opportunity Commission in the past two years.

Key Trends: ADA Accommodation

The ranking of preferred accommodations was the same as in 2016, with the highest-ranked accommodations earning even higher responses. The accommodations most often favored were: adjusting work schedules (89% in 2017 versus 83% in 2016); making the workplace accessible (88% in 2017 versus 81% in 2016); and providing leave (87% in 2017 versus 81% in 2016). The least common accommodation continues to be providing readers and interpreters.

Nearly one-third of employers (32%) reported having already implemented formal workplace accommodation programs, with another 24% planning to, for a total interest of 56%. The interest in

accommodations is very nearly equal to the interest in return-to-work (RTW) programs: 39% of participating employers reported having already implemented RTW programs, and 18% planned to, for a total interest of 58%. Among the accommodation programs already in place, 76% were integrated or coordinated with the organization’s RTW program.

Clearly, RTW programs are a resource for organizations planning to implement accommodation programs. Larger employers are more likely to have RTW efforts; 70% of employers with 5,000 or more employees reported having RTW efforts. Among these, RTW efforts were most commonly based in programs for workers’ compensation (WC) at 94%, then in short-term disability (STD) at 83%, in long-term disability (LTD) at 75%, and leave of absence at 74%.

Any of these RTW efforts offer a start-up resource for a new accommodation program. The WC program environment

is highly focused on state statutes, but the key factors here are the skills of the RTW professional who is requested to support the accommodation process, rather than the RTW program environment.

FMLA Leave Management

Outsourcing. As employer size increased, so did FMLA outsourcing. Employers with call centers were twice as likely (36%) to outsource. The number of work sites was another key factor: 11% of employers with five or fewer sites outsourced, compared to 44% with more than 50 sites.

Regardless of employer size, the percent of surveyed employers outsourcing FMLA in 2017 did not increase, as in most years. Among employers with 1,000 or more employees, 41% reported outsourcing in 2017 compared to 45% in 2016; among employers with 50 to 999 employees, 26% reported outsourcing in 2017 compared to 35% in 2016. More data from future years is needed to verify and explain these 2017 findings. The 2017 sample of participating employers was larger and recruited from more diverse sources, so variation in the survey participants is one possible explanation.

Bundled outsourcing practices differed by employer size. Employers with more than 1,000 employees were more likely to outsource STD, LTD, and statutory disability to the same vendor as leave management. Employers with fewer than 1,000 employees more commonly outsourced WC, medical, employer assistance programs, and wellness to the same leave vendor.

Insourcing. Among employers that insourced their FMLA leave management programs, the larger the employer, the more likely it was to be using an externally leased or purchased system, ranging from 50% of jumbo-sized employers down to 19% of employers with fewer than 100 employees. The



industries that most often turned to external systems were information management, manufacturing, professional/scientific/technical, transportation/warehousing, government, and health-care. Externally sourced leave management technology was most often used to run standard reports (93%), followed by eligibility determination (71%). Overall, 77% of all employers (regardless of size or technology sourcing) expressed satis-

mation and reporting, provide data feeds to/from various systems, and identify fraudulent activity. Satisfaction decreased in regard to vendors' ability to keep employers apprised of changing regulations and requirements, which is not surprising given the constant activity around leave legislation but poses an opportunity for improvement by the vendor community.

"Shared management cosourcing between employers and vendors most often involved the FMLA and the ADA, followed by personal leaves, particularly payment-related."

faction with their organization's leave management technology.

Cosourcing. Shared management cosourcing between employers and vendors most often involved the FMLA and the ADA, followed by personal leaves (particularly payment-related), medical review and certification, and other administrative tasks. Cosourcing was more common for employers with 1,000 to 4,999 employees and jumbo-sized employers. As employer size increased (starting at 1,000), FMLA cosourcing tended to decrease and ADA cosourcing tended to increase.

Program and Vendor Satisfaction

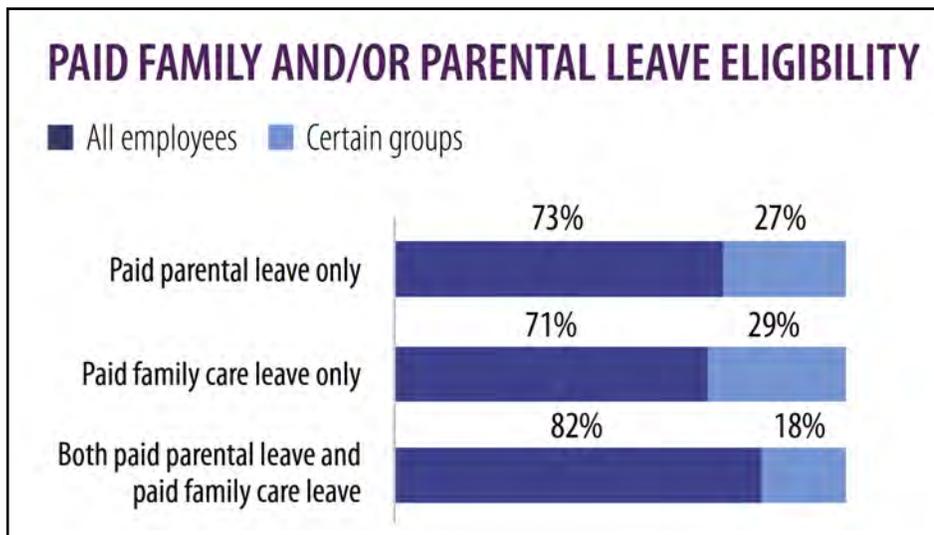
Compared to 2016, employers were more satisfied with their vendor's ability to grant access to self-service infor-

Paid Leave Administration

Paid Sick Leave. Employers subject to paid sick leave (PSL) laws were slightly more likely to structure PSL as part of their paid time off policy. This approach provides program convenience and accuracy in tracking total time off and total benefits used. PSL was more often structured as a separate policy in the 100-to-999 employee group and by a narrow margin in the 5,000-to-19,999 group. This trend was also stronger in some industries: utilities/energy, manufacturing, retail/wholesale, transportation/warehousing, and government. This approach may offer more focus on compliance for employers facing new PSL laws.

Paid Parental and Family Leave. Among employers offering paid parental or family care leave, 48% offered paid

Figure 1



parental leave only, 26% offered paid family care leave only, and 25% offered both. Among jumbo-sized employers, 54% offered paid family care leave, compared to 21% for companies with fewer than 1,000 employees. Employers in the telecommunications, information management, utilities/energy, education, and finance/insurance industries were more likely to offer paid family care leave compared to other industries.

Compliance was not the only issue for paid leaves, since 18% of employers offered employer-sponsored paid family and/or paid parental leave, rather than statutory programs. Paid parental and family leaves are used as recruiting/retention tools in industries with high competition for skilled labor. Large, industry-leading employers are also more likely to offer these benefits.

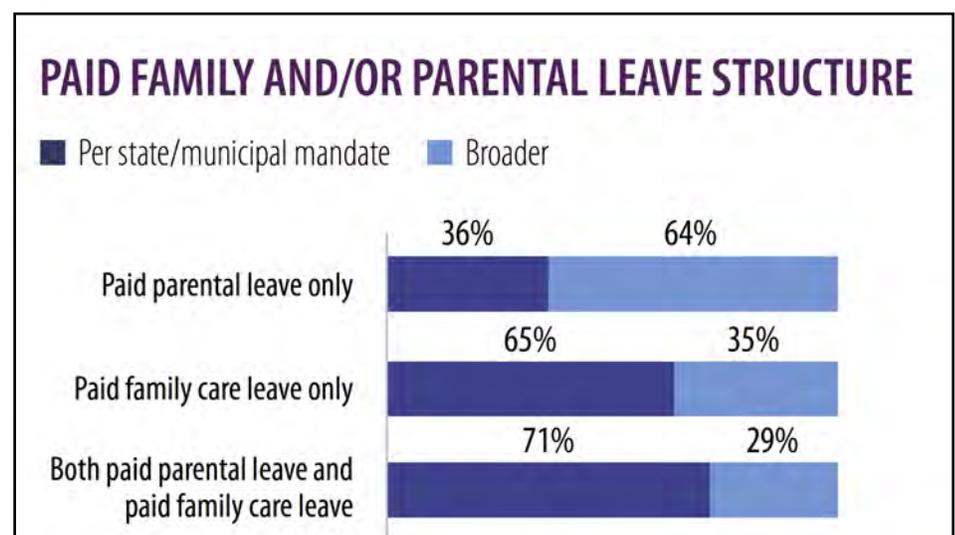
Some consultants and early-adopters offering paid leave advised employers to consider offering these benefits first to highly skilled employee categories, then expand to others. This approach provides the lowest initial cost, plus recruiting/retention advantages where they are most needed. This approach may be tailing off (see Fig. 1); in the 2017 survey, most employers offered paid parental or family care leave to all employees, rather

than particular groups.

This trend was strong in all cases but varied slightly. Employers offering both paid parental and family leave were the most likely to offer the benefits to all employees. Employers offering only one or the other leave were slightly less likely — but still above 70% in either case.

Another major concern with paid leave is how to structure the program (see Fig. 2): should it be narrowly designed to meet a state/municipal mandate or have a broader design for multiple goals? In 2017, the surveyed employers said their paid family leave programs, whether alone or combined with paid parental leave, were driven by mandates.

Figure 2



Paid parental leave programs offered alone were driven by broader goals.

These findings suggest that:

- A clear majority of employers view paid *family* leave in the context of compliance.
- A clear majority of employers view paid *parental* leave in a broader context that probably includes recruiting and retention.
- When both paid leave types are offered, an even larger majority of employers place both in the context of compliance.

The 2017 survey participation of 1,203 employers was the largest ever, representing all organizational sizes, U.S. states, and a broad range of industries. Members can visit www.dmec.org for the white paper, the executive summary, the webinar PowerPoint slides, and the recording.

Also, we invite you to complete the 2018 Employer Leave Management Survey. We have expanded the questions to offer a deeper dive in particular areas and appreciate your input and feedback.

References

1. For an updated list of the states and other jurisdictions with paid sick and family leave laws, visit <http://www.paid sick days.org/research-resources/current-sick-days-laws.html>.

By
Angie Brown
Business Development
Manager
ClaimVantage

Filling in the Gaps with **Leave Management Technology**

Technology does not eliminate human error, but it can erect barriers to our impulses to jump to the first “right thing.”

Let’s see how that happens in the trenches of integrated absence management (IAM). And let’s have a little fun, because most of us have encountered case scenarios that were almost too funny to be true.

Leave as Accommodation

Meet Billy Joe and Bobby Sue, two young lovers with nothing better to do, than sit around the house, and watch the tube. Billy Joe wanted some time off work.

Billy Joe had heard of the Family and Medical Leave Act (FMLA) before and

FMLA eligibility. Not to worry, Mary is very diligent and promises to send Billy Joe his eligibility denial in writing.

“But wait!” Billy cries, “What can I do? I absolutely cannot work. I feel debilitated!”

Mary knows what this means because she has read about the Americans with Disabilities Act Amendments Act (ADAAA). She knows she needs to engage in the interactive process. “Billy, please don’t fret,” she assures him. “Why don’t you tell me what is ailing you, and how we can help you to be your best person here at work?”

Mary doesn't know what she doesn't know. A software system would guide her through the interactive process, identifying the steps, the stakeholders, the resources, and the decisions. Much more than a spreadsheet checklist, the

“While the cases presented may seem extreme... they highlight how complex the interactive process and its outcomes can be in various work settings.”

decided that it was likely his best route. He grabs his trusted employee handbook and calls his leave administrator, Mary, who advises Billy Joe that one must have worked 1,250 hours and 12 months to be eligible. His 3.5 weeks of employment had left him rather short for

system should include updated protocols based on recent legislation and litigation. It should help her manage notifications and medical certifications. As it is, Mary believes that her conversation with Billy Joe constitutes the interactive process. She wants to resolve this in one call and return to her other work; she has a lot on her plate.

Mary is in a hurry, but Billy Joe is not. He

Labels hurt everyone.

Learn how to approach disability management differently.

Erase the label.



Visit standard.com/Labels to learn more about providing the opportunities your employees and your business need.

Standard Insurance Company
The Standard Life Insurance
Company of New York

19070 (7/17) SI/SNY ER



frowns into his phone, “Well, I’m tired a lot. I lack motivation and often feel that I must suppress these feelings with food. My hunger often feels insatiable. It’s very distracting.”

Mary churns through her knowledge base, remembering

“Mary’s inexperience generated a needless, expensive leave, but it didn’t generate a much more costly litigation event. However, had Mary done a little research...”

all that she’s read from Internet blogs about the interactive process. She knows the Equal Employment Opportunity Commission (EEOC) actively monitors employer compliance with the ADA, but she doesn’t feel she has the tools to navigate this murky scenario. Think Mary, think!

“Billy Joe, what if we were to move your desk closer to the cafeteria? Perhaps we could even procure a snack cart that makes rounds to your desk several times a day. This would surely alleviate your hunger and allow you to stay at work to be a productive employee.” Mary is pleased with herself.

Billy Joe sighs as if the exhaustion is just too much to bear.

“Mary, I’m sorry. My motivation is simply gone. Perhaps I’m severely depressed. In fact, I’m sure that’s probably it. I could have a mental illness, and I need this time to heal!”

On her end of the phone, Mary sits and frowns. What has happened here? Billy Joe has advised her of a disability, and she has (to her knowledge) engaged in the interactive process by suggesting a resolution that Billy Joe just rejected. For fear of litigation or offending Billy Joe, Mary nods her head emphatically, certain that she understands the right thing to do.

“Billy Joe,” she says, “I will grant you leave of absence under the ADA Amendments Act. I will provide you with this notification in writing so that you can be sure we’ve done the right thing by you. Please call me when you feel that you can return to work. We wish you well, Billy Joe.”

Billy Joe and Bobby Sue are happy.

Mary is happy too. Except now she’ll have to figure out how to replace Billy for an undetermined amount of time. Before moving on to the next item, Mary wonders if perhaps she should have brought Billy Joe’s supervisor into this process.

Mary most certainly did not engage in the interactive process but faced no repercussions for her actions. Why? Because Billy was happy, and his supervisor was glad to get someone else in his place. Mary’s inexperience generated a needless, expensive leave, but it didn’t generate a much more costly litigation event.

However, had Mary done a little research, she might have come across the *Neely vs. Benchmark Family Services* case.¹ Like Billy Joe, Mr. Neely had a few issues, but his supervisor did the work and found that the only documentation from a

physician stated that Neely was “poorly disciplined in both his sleep hygiene, and his taking of medication, as well as in his food consumption.” Neely was “usually in bed around 3 am and he sleeps through until 1 pm.” The employer won a summary judgment against Neely. By asking for medical documentation, Mary might have

reached a similar determination about Billy Joe’s employment.

Honest Belief of ADA Fraud

Meanwhile, in another part of the country, Amy finds herself in the same situation as Mary; they both work for the same company but in different divisions. Amy has attended numerous webinars, and she knows the components of the interactive process.

Steve comes to see Amy about the back pain he’s been experiencing since returning to work from his back surgery. He advises her that it is a real challenge to sit at his desk all

day. Amy immediately takes matters into her own capable hands and begins researching potential accommodations for Steve. She finds that a sit-stand desk is probably the best solution for Steve.

Two weeks later, it's apparent that Steve is not happy with the solution of the desk. His back is still very much hurting. Amy inquires if walking breaks would be helpful to him. Steve says yes, indeed it is very helpful to him to leave his desk for walking breaks.

One week later, it is apparent that the walking, sitting, and standing are still not helpful to Steve. Steve thinks he must go off work. However, he hasn't any time available as he exhausted all of his FMLA time recovering from his surgery at the beginning of the year.

Amy consults with her manager, who advises her to do "whatever she needs to do," and Amy tells Steve that he can go home, and she will evaluate him for "leave as an accommodation." Amy is using her flowcharts to stay on-track with the interactive process, and she's confident. She has not documented anything because she is going by the book and what better defense could a person have?

During Steve's absence, Amy hears from a fellow employee who said she saw Steve on the golf course over the previous weekend. Amy is quite disappointed in Steve but understands that she has rights as an employer, and his designation does not allow him to take advantage of the system. Amy calls Steve and enquires about his golfing days. He admits that he did go golfing and declines to come back to work even part-time when Amy suggests it.

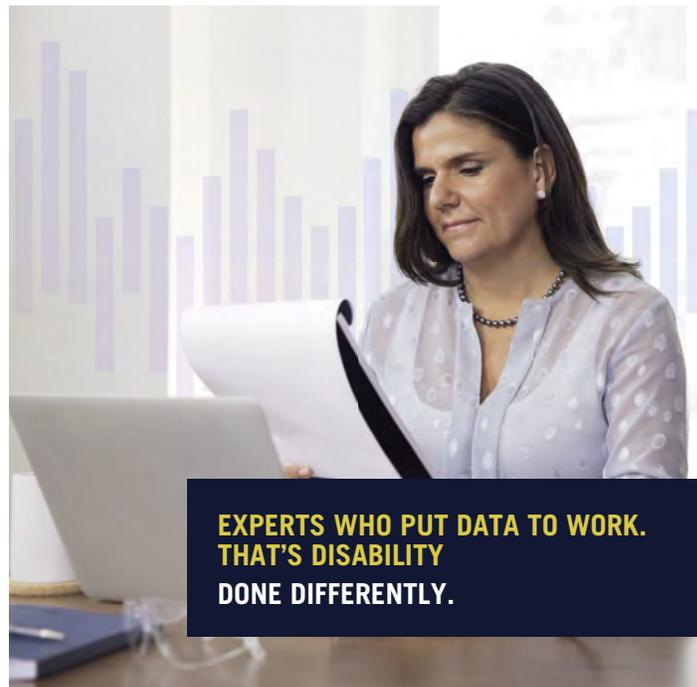
Amy requests updated medical information to support Steve's absence, which is never provided. Steve is given three days to return to work, which he does not do, and his employment is terminated. This is the first full interactive process Amy has ever led; she doesn't have enough hours in the day to invent new processes to document everything. She has heard about technology that can simplify documentation, but her company has other priorities.

Steve files a suit over violation of his rights under the ADAAA, and he wins.

This was a clear case of "honest belief," and Amy was right on point with her suspicions and her conversations with him. In a similar recent court case, *Sharrow v. S.C. Johnson & Son, Inc.*, the employer realized a very different outcome when the court ruled in its favor.²

Unlike Mary, Amy did engage in the interactive process yet still lost when Steve filed suit. Why? She didn't document anything. She failed to even start the process of proving

Leave Technology continued on p. 36



**EXPERTS WHO PUT DATA TO WORK.
THAT'S DISABILITY
DONE DIFFERENTLY.**

SEE HOW PRUDENTIAL'S HEALTH AND PRODUCTIVITY PRACTICE CAN BENEFIT YOUR WORKPLACE.

Our specialized team of experts helps you inspire behaviors that lead to better results—like improved productivity and reduced absence costs. Led by 20-year industry veteran Dr. Kristin Tugman, we translate data into actionable solutions for employers across industries.

We analyze your plan design and claims results against industry benchmarks, to identify trends and pinpoint opportunities. Then, we design and implement a program that matches the needs of your organization. And helps boost the financial wellness of your workers.



Learn more at [ExperienceBenefits.Prudential.com](https://www.experiencebenefits.prudential.com)

Group Insurance coverages are issued by The Prudential Insurance Company of America, a Prudential Financial company, Newark, NJ.

© 2017 Prudential Financial, Inc. and its related entities.

Prudential, the Prudential logo, the Rock symbol, and Bring Your Challenges are service marks of Prudential Financial, Inc. and its related entities, registered in many jurisdictions worldwide.

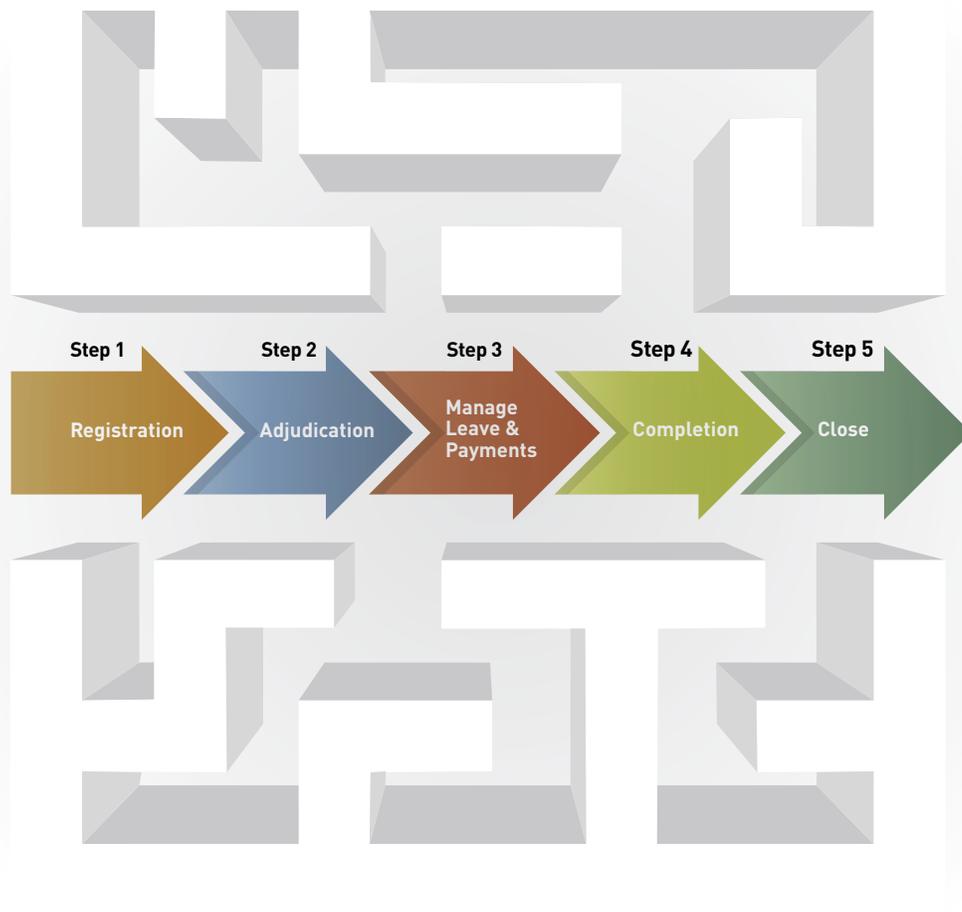
0306713-00001-00

Introducing FINEOS Absence

Simplify the Complex

Absence from work costs employers around **22% of total payroll**, but with **over 100 reasons to be absent from work** and an ever-changing regulatory landscape (federal, state, municipal regulations, including FMLA, Paid Family Leave, and Disability Benefits Law) managing absence can be a very complex problem to solve.

Enter FINEOS Absence. With a simple 5-step process designed to help insurers, employers, and employees easily navigate the absence claim from registration to close, this solution brings clarity and peace of mind to anyone involved in managing absence.



To learn more about FINEOS Absence, visit <https://www.fineos.com/products/fineos-absence/>

Building Your Foundation: The ADA and Job Descriptions

By
Margaret Walsh, MS, CRC, CDMS, CCM
RTW Consultant
The Hartford

Almost a decade has passed since the Americans with Disabilities Act Amendments Act (ADAAA) was enacted, yet employers continue to struggle with ADA accommodation requests.

Some feel ill-prepared to make practical job accommodation decisions because information on their employee's work capabilities is limited or vague. They may also lack specific job information to determine if an accommodation can be made, if it is appropriate for the worker, and if it's reasonable for the business. These gaps can create significant challenges or cause delays in making sound accommodation decisions.

Employers are under increasing pressure to effectively and responsibly manage ADA requests. An unresolved request for accommodation may create situations in which the worker is not performing their work fully or adequately, or they require total absence from work. In addition to business concerns, there can also be legal implications. Since the passage of the ADAAA, ADA litigation against employers has more than doubled; from 2008 to 2017, filings of ADA cases raising employment discrimination claims rose 216%.¹

These trends should encourage companies to take the time to review their

internal structure and processes regarding accommodation practices. Are they prepared to comply with the ADA? Can they conduct an effective interactive process in a reasonable period of time? What information is needed to facilitate accommodation decisions which meet the needs of their worker as well as the business?

A key component to successful decisions is the ability to identify essential job functions. This information, in combination with the person's work capacity is the basis in matching job requirements to the worker's qualifications. However, when information is outdated, limited in scope, or non-existent, issues can arise which halt the ADA process, create delays, require extra work for the employee or employer, or possibly lead to inappropriate accommodation decisions.

Inappropriate accommodation decisions can have negative consequences for an organization or impact workforce productivity. An employer may provide accommodations beyond what is considered reasonable for the business, in order to avoid employment concerns or legal actions, such as allowing indefinite leave time when there is no indication the employee will be able to work.

On the other end of the spectrum, an employer could refuse to consider adaptive equipment or modified work schedules which can impact the employee's ability to work or expose them to situations which aggravate or exacerbate

their medical condition.

By not having accurate job descriptions, an employer may not be prepared for the interactive discussion or to make appropriate decisions which serve the needs of both the employee and the business.

Employers often acknowledge the need to update and improve the quality of their job information. With well-defined descriptions, human resource personnel may find they are useful for other purposes such as recruitment, safety, and job performance considerations.

Job activities identified as "essential duties" are central to effective accommodation discussions. They are the reason the job exists and the activities a person must be able to perform to be qualified for the job. Therefore, they should be the focus of conversations with the employee. Can they perform those duties with or without a modification? If an accommodation is needed, what might that modification be? Is this a temporary or permanent request? Will this change be reasonable for the business?

One method to ensure a position is defined is through a job analysis approach. A comprehensive job analysis will capture essential and nonessential duties, the physical requirements, environmental conditions, as well as the behavioral/cognitive skills necessary to perform the work. Although the ADA focus is solely on the "essential duties" of

WHO or WHAT is Missing From Your Workforce Management Puzzle?

Whether your company is small or large, using internal resources or relying on vendor expertise, Spring can help piece it all together and measure your performance against your peers.

Our customized solutions integrate benefits, create process efficiencies and consistently reduce costs across disability, workers' compensation, FMLA, health management and other initiatives.

Learn How Our Solutions Can Help

- Total Absence Management
- Integrated Disability Management
- Health & Productivity Management
- Research & Benchmarking

The logo for Spring, featuring the word "Spring" in a blue serif font with a green leaf-like shape integrated into the letter 'i'. A small "SM" trademark symbol is to the right.

Creating next generation solutions that maximize health, wealth and productivity

www.SpringGroup.com

617-589-0930

a job, other factors should not be overlooked, as they can help to formulate the best work options for an individual.

Job analyses can be completed by internal or external resources. In some cases the cost of a job analysis is included in a vendor contract; in other cases the job analysis must be contracted separately. Some employers use staff from their occupational health, risk management, or health and safety areas to complete job reviews. Others may have access to these services from their workers' compensation or benefits provider. Professionals such as rehabilitation specialists, ergonomists, and occupational or physical therapists can conduct job analyses for a fee. They may also be available to train company personnel to perform job reviews, so the business becomes self-sufficient and less reliant on third parties.

Some employers have indicated an outside resource may offer an objective assessment, while others believe their own teams can most accurately depict the critical aspects of their positions. Consideration needs to be given to job factors not easily observed such as those

that involve multiple or seasonal work shifts, or similar jobs which vary by location or department. Regardless of who completes the analysis, it is advisable to consider the following suggestions:

- Use a standard form as a guide to structure the review and ensure consistency.
- Start with core or prevalent jobs to obtain documentation with the greatest impact across the business.

- Consider grouping similar jobs or tiered positions into "job families" so one analysis can be applied to multiple positions.
- Remember to schedule periodic job reviews; once formally documented, the follow-up reviews should be more efficient and require less effort.

- Documentation of jobs can be useful for a number of business purposes such as recruitment efforts, job performance measurements, and in organizations invested in safety practices, used to identify job safety considerations.

Employers want to do the "right thing" when faced with an ADA job accommodation requests. Barriers are created when they don't have the means or methods to facilitate the process and cannot make sound and appropriate decisions. Making the effort to build accurate job descriptions is a best practice that eliminates delays, avoids confusion, and reduces extra work on everyone's part. It also demonstrates a "good faith" effort to everyone involved in the process!

References

1. See Figure 2 at <http://www.uscourts.gov/news/2018/07/12/just-facts-americans-disabilities-act#fig2>.



**YOU CAN FOCUS
ON YOUR PEOPLE
WE'LL FOCUS ON THEIR
LEAVE ADMINISTRATION.**

Learn about our:

- Fully integrated leave management software
- Outsourced and co-sourced solutions
- FMLA/ADA compliance

 **ReedGroup**
reedgroup.com

Make RTW and Stay-at-Work Support the Cornerstone of Your ADAAA Strategy

By
Brian Kost, MA

Sr. Director Workplace Possibilities
The Standard

Litigation against employers filed under the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) is on the rise. From 2013 to 2017, employment-based ADAAA litigation is up nearly one-third, 32.4%, reaching 2,494 cases in 2017.¹

While familiar with the premise of the ADAAA, many employers still struggle with how to help their employees stay at work while experiencing a health condition or return to work after a disability leave. Employers can better meet their ADAAA obligations by working with their vendor partners to create a proactive program that treats the whole person and tailors a plan to support their unique needs. Here are a few considerations to keep in mind when implementing a program.

Provide Stay-at-Work Support

Employers may be used to the claims-first approach in which they can only start helping an employee after he or she is on a disability leave. However, comprehensive disability management programs can help before the employee loses time from work with a proactive approach in identifying employees who may need assistance. Some programs offer

management training, which can help supervisors understand the signs or symptoms and the importance of referring employees to their human resources manager for assistance. Other programs may have disability consultants through the third-party administrator or carrier who can evaluate an employee's situation and propose accommodations or adjustments that may alleviate symptoms and increase productivity.

Engage Employees Early During Their Leave

For an employee who does have to take a disability leave, being engaged with the disability management program early on can go a long way to help ensure their return to work (RTW) is successful. Standard Insurance Company (The Standard) recently surveyed employees who experienced a disability for at least six to eight weeks and received workplace accommodations.

Of those employees surveyed, 44% were able to return to work when they worked with their human resources manager and were communicated to as part of their leave.² That's because this approach can help identify any needs or limitations the employee may have when coming back to work and can start the discussion about reasonable accommodations right away.

Implement Reasonable Accommodations

Finding and implementing accommodations — for either a stay-at-work or return-to-work plan — doesn't have to be difficult or expensive. Our survey found that simple accommodations, which may not cost an employer anything, can be helpful in supporting an employee's condition. Consider:

- 61% of employees said they were provided with flexibility to attend appointments.
- 58% were provided with schedule modifications.
- 40% were provided with workstation modifications.
- 38% undertook temporary job duties.²

Overall, 93% of employees said they could perform their job effectively after receiving support from their employer.

Success Story

A comprehensive approach to ADAAA support helped one employee return to work four weeks earlier than anticipated. After having surgery for a hernia repair, a lab manager was limited by his physician in the amount of weight he could lift. An ergonomic evaluation was completed by his employer's disability program to help identify potential accommodations and workarounds. After some discussion,

his role was temporarily adjusted to reduce the amount of weight that he was required to lift while he recovered. After he was fully recovered, he was able to resume his normal duties. Many accommodations are this simple — applying processes and resources that employers already know from their disability RTW process.

Conclusion

Employers can empower employees with the help of workplace accommodations and a sound return-to-work and stay-at-work strategy. Not only can this create a workplace that supports employees with health issues, but it also can help an employer meet ADA obligations.

References

1. Federal reporting on ADA-based lawsuits (see Figure 2) retrieved from <http://www.uscourts.gov/news/2018/07/12/just-facts-americans-disabilities-act>.
2. Data based on a survey of 528 participants conducted in April 2017 by a third-party research firm hired by Standard Insurance Company. Results can be retrieved at <https://www.standard.com/eforms/19911.pdf>.



FMLA? ADA? ROI.

These days, business is about saving time and money.
(And acronyms. It's also about acronyms.)
Absence and disability must be managed effectively and efficiently.

-  **Ridiculously-easy-to-use**
AbsenceTracker automates the process while giving users an intuitive, super-fast—some say fun-to-work-with—interface.
-  **Highly configurable**
AbsenceTracker works with your policies and systems, not the other way around. Whatever the company's size, we integrate seamlessly.

AbsenceTracker delivers a return on your investment, compliantly.
Schedule a demo today and see for yourself.

 AbsenceSoft | absencesoft.com



TAKE ADVANTAGE OF YOUR MEMBER BENEFITS

As a DMEC member, you have access to a wide range of trusted tools, resources, and networking opportunities, including:

- 30+ free webinars per year
- Six issues of @Work magazine
- Discounts on events and certifications
- White papers and case studies
- And much more

Get the tools you need to increase employee productivity and minimize lost work time.



Access your DMEC benefits today.
www.dmec.org/member-benefits



TOGETHER WORKS BETTER

Working together, Cigna can help you create a benefits plan that focuses on helping employees achieve what matters most – to live healthier and more financially protected lives.

Cigna.com/group-voluntary



Together, all the way.®

All Cigna products and services are provided exclusively by or through operating subsidiaries of Cigna Corporation, including Life Insurance Company of North America, Connecticut General Life Insurance Company, and Cigna Life Insurance Company of New York (New York, NY). This ad is not intended for residents of New Mexico. The Cigna name, logo, and other Cigna marks are owned by Cigna Intellectual Property, Inc. 912757 11/17 © 2017 Cigna.

Total Absence Management



Employee absence can have a profound effect on an organization's costs, productivity and employee engagement



Your Consulting Partner at Work

- Cost of Absence Analysis
- Absence Program Assessment
- Program Management

TAM@tpgrp.com

Portland | Lake Oswego | Bellevue | Bend | Bozeman

Compliance Memos continued from p. 7

CM #17 Employers May Select Among Effective Accommodations

Adding to the case law that supports the right of employers to select the most reasonable effective accommodation is *Sessoms v. Trustees of the University of Pennsylvania*. The Third Circuit U.S. Court of Appeals upheld dismissal of all charges despite negative treatment of the employee that the court held did not rise to the level of a hostile work environment. Sessoms, who suffered from mental and physical disabilities and had difficulties with her supervisor, requested to return to work part-time and transfer to a “lower-stress” department with a new supervisor. The university proposed a part-time schedule at the same job with the same supervisor. Sessoms declined and her employment was terminated. The Third Circuit held that the university’s accommodation offer was in good faith because “Sessoms did not meet her burden of showing that other positions existed to which

transfer was possible.”

The Equal Employment Opportunity Commission (EEOC) has acknowledged that: “If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective (i.e., it would remove a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment).” To view the Third Circuit’s Sessoms opinion, visit <http://www2.ca3.uscourts.gov/opinarch/172369np.pdf>. To view the EEOC accommodation guidance, visit <https://www.eeoc.gov/policy/docs/accommodation.html>.



YOU NEED A PARTNER

At WorkPartners, we believe that when things work together, they work better. That's why we offer fully integrated solutions to more efficiently manage the health and productivity of your workforce. The result? Reduced costs, improved employee engagement, and a healthier bottom line. Now that's the power of partnership.



Absence
Management



Life
Solutions



Workers'
Comp



Onsite
Services



Visit us at
[WorkPartners.com](https://www.WorkPartners.com)



WorkPartners



Marti Cardi, JD
VP Product Compliance
Matrix Absence Management

Federal and State Pregnancy Protections: The Ultimate Caregiver

Your pregnant employees face significant caregiver demands that can affect their engagement at work. They also enjoy substantial federal and state caregiver protections, including on-the-job accommodations, leave of absence, and nondiscrimination.

Federal Pregnancy Protections

Title VII — Pregnancy Discrimination Act (PDA). Enacted in 1978, the PDA was intended to prohibit sex discrimination on the basis of pregnancy. In general, the PDA requires that pregnant women who are able to work be permitted to do so under the same conditions and to be treated the same as employees with non-pregnancy-related conditions.¹

Americans with Disabilities Act (ADA). A “normal” pregnancy is not an ADA-qualifying disability; however, pregnancy-related complications can be.² The Equal Employment Opportunity Commission has identified pregnancy discrimination as a top strategic priority for enforcement proceedings and will broadly interpret when pregnancy-related conditions are considered disabilities under the ADA.

State Pregnancy Protections

To date, 20 states and the District of Columbia have special laws protecting pregnant employees (and applicants), many of which require the employer to

provide reasonable accommodations, even if the employee is not disabled by the pregnancy. The state laws are a patchwork of employee rights and employer responsibilities and obligations. It is important for employers to understand their obligations in each state in which they have employees.

Here are some of the common features of these laws:

- Require the employer to grant a requested leave of absence for pregnancy disability and/or childbirth (including California, Washington, the District of Columbia, Hawaii, Illinois, and Louisiana). Many laws also provide that the employer cannot require the employee to take a leave if she doesn’t want it and is still able to work, with or without an accommodation.

- Mandate the employer to provide reasonable accommodations to pregnant employees in the workplace, even if they are not disabled by pregnancy. The laws often refer to accommodating the “common conditions of pregnancy.”

- Require an employer to grant certain accommodations without medical certification to support the employee’s need. For example, in Massachusetts, employers are required to provide pregnant employees with more frequent rest, water, and food breaks; seating; and limits on lifting over 20 pounds — any

and all, upon request and without supporting medical documentation.

- A detailed laundry list of “reasonable accommodations” that the employer is required to consider and explore with its pregnant employees (and applicants), such as a temporary transfer to a less strenuous position, modified work schedule, and provision of or modification of equipment.

Most of these laws also have special notice provisions, often requiring notice of the employee’s rights to be posted and provided to employees within a short time after learning from the employee that she is pregnant. And, of course, these laws protect pregnant employees and applicants from discrimination and retaliation both in connection with their status as pregnant employees and in connection with their requests for accommodations.

References

1. For more detail on employers’ responsibilities for pregnant employees, see the EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (last updated June 2015). Retrieved from https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.
2. A “pregnancy related impairment” that substantially limits a major life activity is an ADA-qualifying disability. 29 C.F.R. § 1630.2(h).
3. For a comprehensive summary of state pregnancy laws by Matrix, visit <https://matrixcos.com/MatrixAbsenceManagement/media/docs/Matrix-Cardi-Cohen.pdf>.



Glenn Pransky, MD
Scientific Advisor
Lincoln Financial Group



Paula Aznavoorian-Barry
Accommodation Services Mgr.
Lincoln Financial Group

The ADA and RTW: Success Through Partnership

The Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act (ADAAA) in 2008 created a new work environment, enabling more persons with disabilities to participate in the workforce. When employees are recovering from an injury or illness, employers often wonder about their role in this context.

The ADAAA broadened the definition of disability, so the ADA now covers many persons who have health problems that in some way limit their work ability. Instead of trying to figure out whether an employee who is returning from leave is covered, employers are advised rather to focus on identifying accommodations to support the RTW process.¹

A coordinator or liaison, whether in-house or outsourced, needs to gather background information about the employee's job requirements, and impairments due to their medical condition. Employers can request information from providers about medical restrictions such as lifting limits, but not about the treatment plan, medications, or test results. The employer needs accurate, detailed information about job requirements and medical restrictions to determine whether an accommodation is needed to enable RTW.

Guidance from the Equal Employment Opportunity Commission (EEOC) suggests an interactive process as the best way to develop accommodations.²

The employer should have a job description identifying the essential job functions, including those that cannot be changed by accommodation, and the employee can supply medical information on the functional implications of their condition, plus their experience in the work environment.

Several steps in the interactive process will benefit from a coordinator or liaison — whether in-house or an experienced vendor partner — to maintain timely progress on key activities:

- Helping the employee to identify barriers to their success at work involving key tasks that are difficult to perform, and what might help them perform successfully
- Facilitating communication with the employee
- Securing a signed release form and providing the employer with appropriate medical information

And what makes an accommodation “reasonable”? That depends on several factors: the size of the company, essential job functions, and any significant, immediate safety risks. The EEOC has provided detailed guidance³ on how to evaluate whether an accommodation is reasonable and necessary, another area in which a vendor's broad experience with accommodations may help their employer partners.

The “interactive” requirement also relates to how an employee's condition

may change over time. Ideally, an employee will gradually regain functional ability and eventually resume their former job duties. During this process, the type and extent of accommodation may change.⁴ This process is best managed through an ongoing, regular dialogue between the employee and supervisor⁴ and may involve others in the workplace.⁵

The ADA has created new obligations for employers, but also new opportunities for employees to return to work earlier, making a valued contribution in the workplace. An experienced coordinator or liaison can help guide this process by creating an effective partnership among all parties.

References

1. The EEOC's notice introducing the ADAAA can be retrieved from https://www.eeoc.gov/laws/statutes/adaaa_notice.cfm.
2. The EEOC guidance for requesting reasonable accommodations can be retrieved from <https://www.eeoc.gov/policy/docs/accommodation.html#requesting>.
3. The EEOC guidance for reasonable accommodations can be retrieved from <https://www.eeoc.gov/policy/docs/accommodation.html>.
4. Durand MJ, M Corbière, MF Coutu, et al. A Review of Best Work-absence Management and Return-to-work Practices for Workers with Musculoskeletal or Common Mental Disorders. *Work*. 48:579-89. 2014.
5. Buys NJ, J Selander, J Sun. Employee Experience of Workplace Supervisor Contact and Support During Long-term Sickness absence. *Disability and Rehabilitation*, pp. 1-7. December 2017. LCN-2191028-072518.

**Bryon Bass**SVP, Disability and Absence Practice & Compliance
Sedgwick

Insightful Strategies for Managing and Accommodating an Aging Workforce

Advances in public health and medicine are enabling Americans to live and work longer, resulting in an unprecedented transformation of the workplace. What does this mean for businesses, and how is this trend impacting the workforce and management strategies for employers?

Aging is an inevitable and irreversible part of the life cycle. Given the size of the Baby Boomer population, the average age for workers will increase, along with the likelihood of more employees living with and managing a disability.

The aging process has obvious, predictable consequences: reduced strength, possible hearing loss, deteriorating eyesight, less physical flexibility, slower reaction times, and other age-related limitations. However, many older workers will continue to work at full production with no limitations and no need for accommodation. In fact, some studies suggest that older workers have the fewest number of work-related injuries.¹

However, it is important to consider and understand the Americans with Disabilities Act (ADA) when managing an aging workforce. With the ADA, employers must provide a reasonable accommodation to individuals with disabilities to meet a qualification standard that is relevant to the job and consistent

with business necessity. A reasonable accommodation is any change in the position or workplace that is customarily made to provide an employee with impairment access to equal employment opportunities. A person who has medical conditions often associated with age, such as osteoporosis, arthritis, hearing loss, or hypertension, can be considered as having an impairment on the basis of the medical condition.

Managing an aging workforce requires employers to consider the provision of different training for older workers compared to younger workers and diversification of roles according to worker capabilities and job demands. Examples of reasonable and practical accommodations to improve activities of older workers include:

- Make work facilities accessible.
- Allow use of a personal attendant or service animal at work.
- Apply ergonomics and adaptive equipment to improve workstations: change the position and height of monitors, provide foot supports, three-in-one sit-stand chairs, or knee pads with shin guards.
- Allow longer breaks or more frequent shorter breaks.
- Use mechanical assistive devices and workplace design to reduce physical activities.
- Allow a flexible work schedule.

Employers should also recognize that diversity and inclusion are becoming increasingly important. The aging workforce brings its own distinct characteristics, values, and attitudes to work. The growing number of workers aged 65 and above will shape preferences about work and retirement, practices implemented by employers, and the direction of a company's policy. To sustain future success, an organization should establish a collaborative work environment in which all employees from different generations share ideas and innovate together to deliver on shared purposes. Employers should aspire to become inclusive leaders and make sure all employees, regardless of age and background, feel welcome and empowered to be high performers.

The aging population has and will continue to alter the workforce landscape. Those organizations that learn to accommodate and leverage the collective talents and skills of older workers can expect to achieve a higher degree of long-term success. Companies, communities, families, and workers can all benefit from this type of approach. And that is a desired outcome at any age.

References

1. The EEOC's notice introducing the ADAAA can be retrieved from https://www.eeoc.gov/laws/statutes/adaaa_notice.cfm.



Phil Bruen, VP
Group Life and Disability Products
MetLife

Supporting Employees on Paid Family Leave

While a handful of states now mandate paid leave be offered by private employers, many employers also offer paid family leave to compete in today's hot job market. For all employers, it is a business imperative to marry the benefit with a strong support strategy for employees taking or returning from leave.

Employers offering paid parental leave increased significantly between 2016 and 2018 for every type of parental leave, according to the Society for Human Resource Management's 2018 Employee Benefits Survey.¹ Employers offering paid maternity leave increased from 26% in 2016 to 35% in 2018, and paid paternity leave increased from 21% to 29% over the same period. And we're seeing strong utilization rates for New York State Paid Family Leave, which reaffirms the desire for this benefit.

With this increase in leave offerings and utilization, it is imperative for companies to have a well-thought-out strategy for successfully reintegrating employees back into the organization when they return from leave, as well as to consider appropriate ways to interact with employees while on leave to further ease their return. Through technology, flexibility, and human connection, employers can increase the retention and productivity of employees on leave and those returning.

To start, consider how technology can keep employees on leave feeling

included and connected to their team and organization. Many employers incorporate an online dashboard that on-leave employees can access from anywhere for important information, such as their benefits or company news. Because many employers remove email access for their workers on leave, employees often feel when they come back from leave that they have an overwhelming amount of new information to catch up on. Offering a modified in-box with semi-regular updates from an employee's team, for example, means they stay connected and informed, helping to avoid feelings of isolation while on leave.

Technology can also help during return to work by supporting flexibility for employees. As organizations grow increasingly global, technology is being used to aid connectivity among colleagues. By applying these technologies to offer flexible work situations, employees transitioning back to full- or part-time work can be productive and engaged on a schedule that best suits their current life.

According to MetLife's 16th annual U.S. Employee Benefit Trends Study,¹ nearly three quarters (72%) of employees report that having the option to work remotely is important to their work/life balance. And offering a flexible schedule — something 74% of employees say is important when considering a new job — builds loyalty.

Finally, it is imperative for employers to support the career goals of workers coming back from a leave. Often, employees returning from leave struggle to continue on the same career trajectory, particularly if they are using flexible work arrangements. Learning and development opportunities, such as training and mentorship networks, are beneficial to all employees for career development, and can be particularly useful for those who return from an absence with additional responsibilities at home. Through these opportunities, colleagues can share guidance and best practices from similar experience, such as returning to work as a caregiver, further supporting workers' needs to maintain work/life balance.

As more employers offer paid family leave and more employees use it, organizations must understand that opportunities for engagement do not end once the benefit is offered. In fact, that's only the start. Thankfully, technology affords today's workforce additional flexibility and opportunities for connection — with their employer and their colleagues — that drive increased loyalty and improved productivity upon return from leave.

Reference

1. MetLife. 16th Annual U.S. Employee Benefit Trends Study. 2018. Retrieved at <https://benefit-trends.metlife.com>.



YOUR BUSINESS, YOUR BENEFITS, YOUR WAY



Now we can offer you even more of what you're looking for in Absence Management solutions. The Hartford's acquisition of Aetna's U.S. Group **Life, Absence** and **Disability** business solidifies our position as a unified top industry leader in the Group Benefits market, helping us continue to deliver **best-in-class customer experiences**.

Visit THEHARTFORD.COM/ABSENCE-MANAGEMENT

Together We Prevail™

The Hartford® is The Hartford Financial Services Group, Inc. and its subsidiaries, including Hartford Life Insurance Company and Hartford Life and Accident Insurance Company. Home office is Hartford, CT. Disability Form Series includes GBD-1000, GBD-1200, or state equivalent. Life Form Series includes GBD-1000, GBD-1100, or state equivalent. 6882b NS 02/18 © 2018 The Hartford Financial Services Group, Inc. All rights reserved.



DMEC Career Center

Your source for integrated absence management jobs and career resources

Get the competitive edge you need in today's workforce and find your next job.

The DMEC Career Center offers job seekers targeted career opportunities, giving you easy access to the top jobs in the IAM field. And, you can take advantage of other free career resources such as resume review and interview coaching.

Set up your profile today.



www.dmec.org/careers



Rachel Shaw, JD
CEO and Principal
Shaw HR Consulting

Crossroads: When Disability and Discipline Meet

When employees link performance issues to a claimed disability whether at the start of the discipline process or in the eleventh hour, employers are triggered to start the disability interactive process.

Frustrating? Yes! But pausing to address the claim will help determine if a disability really is at play and dealing with the true root of the issue helps you deal with the performance concern more effectively and efficiently.

Disciplinary actions such as reprimand letters, suspensions, or counseling are not the right tools if the issues are related to a disability. Conversely, reasonable accommodations are inappropriate if the employee is not performing due to lack of knowledge, effort, or ability. If performance cannot be fixed, the employee will see the same outcome, either through termination or medical separation.

If multiple performance issues are at stake, don't assume the employee is claiming all issues relate to a disability. Ask the employee which performance areas are impacted by the claimed disability. For issues not attributed to the disability continue disciplinary action. For others, use the disability interactive process to determine the correct tool to use after disability is claimed. While this process may seem daunting, it can be broken into four easy steps to ensure compliance. At Step 1, obtain clear

medical information from the employee's healthcare provider to determine if the claim of disability is accurate:

A. Does the employee have a serious medical condition as defined by the Americans with Disabilities Act (ADA)? If so, does the disability impair their ability to fully and/or safely perform an essential job function(s)?

B. If yes, did the disability cause the following performance deficiencies? (List specific performance issues for provider comments.)

C. If yes again, can you suggest reasonable accommodations to mitigate the negative performance issue(s) or ensure the employee does not engage in the negative behaviors/actions again?

You can ask questions linking performance issues with possible accommodations. For example, if Amy is missing deadlines and attributes it to her disability, ask her provider directly if she has a serious medical condition that would impact her ability to know when she is behind schedule on a project and communicate that issue; and if so, could any accommodations eliminate that issue going forward?

If the provider answers such questions in a useful way and indicates a disability, then move to Step 2; identify reasonable accommodations to support the employee to meet performance expectations. If the healthcare provider indicates there is no disability, close the

process and continue with discipline.

If you don't have confidence in the medical opinion provided, then consider a third-party medical fitness for duty examination to determine if the disability is really the root of the issue and if so what specific work restrictions or functional limitations the employee has. This tool can be very useful when objective evidence suggests the employee is misusing a claim of disability to circumvent discipline or when an employee's healthcare provider offers incomplete or unsupported opinions.

The ADA says an organization may hold all employees, with or without disabilities, to the same performance and conduct standards.¹ However, when faced with an accommodation request, an employer must determine whether discipline is the right tool or if there is the presence of a disability and if an accommodation may or may not eliminate the misconduct or performance deficiency and support the employee to succeed at work. If exploring accommodation is appropriate, meet with the employee to discuss possible accommodation (Step 3) and implement (Step 4).

Remember that supporting employee success at work is the goal. Discipline is not about termination: it is about supporting successful job performance.

References

1. The EEOC guidance can be retrieved at <https://www.eeoc.gov/facts/performance-conduct.html>.



Roberta Etcheverry, CPDM
CEO
Diversified Management Group

What Is a “Reasonable” Accommodation?

When employers consider accommodations for disabled employees, their first question for us is usually “what is and what is not a ‘reasonable accommodation,’ and who gets to decide?”

Employers express frustration over what they see as a lack of bright-line definitions from the Equal Employment Opportunity Commission (EEOC), which monitors and enforces the Americans with Disabilities Act (ADA). Those definitions are intentionally broad to drive employers into a fact-based, case-by-case analysis when determining what an employee with a disability may need to support job performance and whether providing the accommodation is ultimately reasonable.

So how exactly does an employer conduct that analysis? This is first and foremost a case-by-case process. Through an open, back-and-forth dialogue, commonly known as the interactive process, the employer and employee discuss exactly how the disability is affecting their ability to successfully and safely perform their job.

At this stage of accommodation exploration, the employee is typically asked to provide appropriate documentation from their doctor. The job description is an important tool in reviewing the essential functions of the job, but does not replace a “reality check” of the job tasks actually performed by the individual employee. These are specific to

the location where they work, the department they work in, and other factors that drive variations in how the job is performed.

The second factor affecting the definition of reasonable: in the end, the accommodation must be effective to be deemed reasonable. That is, does the accommodation support successful performance of the essential functions of the job?

Employers are not required to remove essential functions as an accommodation, nor do they need to lower productivity or performance standards. Reasonable accommodations are not intended to require employers and employees to “settle for less” — that is never the goal nor a satisfactory outcome. The intent of the law is to encourage employers to provide necessary assistance to support employees with disabilities in being able to perform their job. This is a mutually beneficial outcome, as is what a disabled employee wants as well.

Employers have a right to consider the other side of the equation as well; it may be effective for the employee, but is it effective for our organization? Does it create an undue hardship?

In considering these questions, many employers focus on the financial burden of providing the accommodation. When considering if an accommodation is prohibitively expensive, remember that the

financial resources of the entire organization are considered, not just one department’s operating budget; arguing that an accommodation is too expensive may be a tough point to win in court. Even so, employers should discuss with employees the impact of the accommodation on business operations, including the impact on coworkers and their workload. The interactive process must always balance the needs of the employee and the needs of the organization.

Finally, the interactive process should not hone in on one accommodation idea exclusively, especially when there are concerns about the “reasonableness” of that approach. Employers should explore a variety of options, both to show their good-faith efforts in attempting to accommodate the employee and because that increases the odds of finding an effective solution. Employees may insist on one accommodation, but the employer has the final decision here, provided that the accommodation is effective. A first and unsuccessful attempt to accommodate may not end the employer’s obligation. If at first you don’t succeed, keep trying until you have fully explored all options. Reasonable accommodations that help an employee continue to work productively while supporting business operations are a “win-win” worth the effort.



Matthew Bahl, JD
Dir. Health & Productivity Analytics
Prudential Group Insurance



Kristin Tugman, PhD
VP Health & Productivity Analytics
Prudential Group Insurance

Millennials and Mental Health

Millennials comprise more than one-third of the U.S. labor force and are the largest generation currently in the workplace.¹ Much attention has been paid to the recruitment and retention of Millennials, but employers are increasingly exploring strategies to help this key population deal with a major challenge: mental health.

Millennials grew up with an awareness of depression, anxiety, and eating disorders, and are generally more accepting of those with mental illness. Millennials are also more likely to talk about mental health issues openly, and the stigma around mental health is beginning to lessen with the impact of this generation.² The American Psychiatric Association, based on poll results, has dubbed Millennials the most “anxious generation.”³

Educating employees, managers, and executives on mental health issues (especially those impacting Millennials) plays a crucial role in workplace mental health strategy. To this end, there are a number of steps — often costing nothing — that employers can implement to better promote and support the mental health of their workforce, particularly Millennials. Specifically:

- *Stay in Touch:* Keep an open connection with employees while they are out of work to help mitigate additional stress for the employee. Returning to

work and finding they are behind the learning curve on big organizational changes can be very stressful. This is particularly important for Millennials who, as a generation, are used to having unlimited access to an endless stream of information via texts and social media. Losing that connection to the workplace can be a major source of stress.

- *Support Return to Work:* Communicate openly regarding the return-to-work process. Ensuring that employees know they have a supportive pathway back to the workplace can not only help facilitate return-to-work efforts but can also help promote stay-at-work initiatives.

- *Strategically Target Key Triggers:* There is no single solution for addressing mental health in the workplace. However, targeted programming for key triggers may help move the needle in a positive direction. For example, in a recent study, 36% of Millennials showed symptoms related to post-traumatic stress disorder due to financial stress.⁴ Having targeted programs like a financial wellness program can help augment an organization’s larger mental health strategy and provide resources to alleviate a key mental health trigger for Millennials.

- *Actively Eliminate Stigma:* Millennials are widely credited as the generation shattering workplace stig-

mas associated with mental health. Thus, a work culture that passively tolerates stigmas can amplify feelings of conflict for Millennials, which can be a hindrance to their full participation and successful re-engagement after an absence. Employers should have a clear understanding of restrictions and limitations to ensure a healthy and incremental return to work, and not assume anything about what an employee can or cannot do.

As the largest generation in the workforce, Millennials are an important demographic. Having a proactive mental health program that targets multiple key stressors and helps facilitate a stigma-free return to work are some of the best practices employers can deploy.

References

1. Pew Research Center. Millennials Are the Largest Generation in the U.S. Labor Force. April 10, 2018. Retrieved from http://www.pewresearch.org/fact-tank/2018/04/11/millennials-largest-generation-us-labor-force/ft_18-04-02_genworkforcerevised_bars1/.
2. Lorusso M, S Barnes. Matters of the Mind Survey, American University. A Look at Millennials and Mental Health. 2015. Retrieved from <http://www.themillennialminds.com/survey/>.
3. American Psychiatric Association. 2018. Retrieved from <https://www.psychiatry.org/newsroom/apa-public-opinion-poll-annual-meeting-2018>.
4. K Ashford. *Forbes*. 1 in 4 Americans PTSD-Like Symptoms from Financial Stress. April 2016. Retrieved from <https://www.forbes.com/sites/kateashford/2016/04/22/financial-stress/#17c501ab2753>.



Geoffrey Simpson
Director of Sales & Marketing
Presagia

Workflow for the ADA Interactive Process

Understanding how to accommodate employees properly under the Americans with Disabilities Act (ADA) and the ADA Amendments Act is challenging for employers. Each case must be assessed individually, yet managed equitably.

This entails developing a best-practice workflow to guide you through the interactive accommodation process; having this process provides the consistency to be equitable and the flexibility to manage the nuances of individual cases.

First, you need to identify the data, systems, and tools you use to accommodate employees, such as case management systems, job banks, disability guidelines, job descriptions, essential functions, and an inventory of your adaptive equipment. Mapping out your full spectrum of resources will set you on the right path to determine the mix of tools needed.

Second, identify your key stakeholders and their responsibilities; they can provide information and support during the interactive process and may even help identify a need for accommodation. Stakeholders commonly include, but are not limited to, managers, HR business partners, and safety/workers' compensation professionals. Knowing and working with your stakeholders will help you determine where each fits within your accommodation process.

As you build out the accommodation process for your organization, use the fol-

lowing steps as a guideline, adapting them as needed to fit your specific requirements.

1. Recognize the need to accommodate. Identify who in your organization can make an accommodation request and common reasons for them. It might be that most requests come at the end of Family and Medical Leave Act (FMLA) leaves or they come from stay-at-work accommodation requests employees make directly to their managers.

Awareness of these triggers will allow you to determine the most effective and efficient request process, focus training efforts, and minimize the risk of accommodations falling through the cracks.

2. Gather information. Before determining how to accommodate, engage all stakeholders in the process and assemble information such as restrictions and essential job functions. When you have all available information, you can make informed accommodation decisions.

3. Analyze the impact of restrictions on essential functions. How do your employee's restrictions affect performance of essential functions? Meet with the employee, their manager, and others to fully understand the job, whether the employee can safely and effectively perform the essential tasks, and if alternative accommodations are needed.

4. Propose and evaluate accommodations. What type of accommodation — modified duty, transitional assignment, workplace modification, or leave —

might be effective? Consider all types of potential accommodations to reduce the risk of placing an “undue hardship” on the employer.

5. Determine the accommodation. Step 4 might involve several iterations to reach an accommodation that satisfies everyone. Remember the employer has the ultimate choice among effective accommodations. After choosing, implement the accommodation while clearly identifying follow-up and next steps.

6. Monitor accommodations. The first accommodation may not be as effective as anticipated; consider other options to restore an employee to their original position. Often, you need to look at this as an iterative process; keep circling back to Step 2 if you find yourself progressing through multiple accommodations. Insert deadlines and reminders to ensure a case doesn't get forgotten or an accommodation is not left in place longer than necessary.

7. Program exit. Continue to cycle through accommodations until you reach a permanent accommodation, restrictions are lifted, or termination is the only option after making your best effort.

Mapping out your accommodation process helps you give effective, individual consideration to each employee. Consistent processes facilitate data collection for spotting trends, which supports continuous improvement of your accommodation program.

**Gary Anderberg, PhD**SVP Claim Analytics
Gallagher Bassett

Coordinating ADAAA Compliance for All RTW and Workplace Accommodations

The Americans with Disabilities Act Amendments Act (ADAAA) applies equally to all return-to-work (RTW) and related workplace accommodation activities, regardless of whether the underlying disabling event is work-related or not. This is still news in many places. This is also an area in which a company's safety/workers' compensation (WC) apparatus and human resources/benefits functions can help each other — and ill or injured employees with WC or disability claims — by working together and coordinating knowledge and resources. Let's take a look at how this can play out in real life.

ADAAA compliance begins with a functional job description that is both complete and current, which means that you should be asking whether your organization has functional job descriptions in place for all of the occupations. You should be using the same job description for all aspects of managing RTW for claims, both work-related and not. This is an important consideration because historically, functional job descriptions, if they existed at all, were developed and held by WC or safety managers and often not available to human resources (HR) for handling non-occupational disability events.

One of the most challenging aspects of ADAAA compliance is creating work-

place accommodations for returning employees following an injury or illness. This has resulted in RTW being a major source of Equal Employment Opportunity Commission litigation. Sharing job accommodation ideas and resources for optimal RTW plans is a very fruitful area for cooperation between HR and the company's health and safety and/or workers' compensation (WC) programs. Joining these typically-separate units for RTW accommodation considerations can help facilitate a seamless and consistent approach to bringing employees back to work.

One major resource that both entities can use is found on the website of the Office of Disability Employment Policy (ODEP).¹ This source provides five documents that should be consulted for every RTW event involving temporary or permanent accommodations:

- A-Z of Disabilities and Accommodations
- Searchable Online Accommodation Resource
- Job Accommodations for RTW Fact Sheet
- Employer's Practical Guide to Reasonable Accommodation Under the ADA
- Medical Inquiry in Response to an Accommodation Request

ODEP has provided numerous resources to ease the perceived difficulty in providing accommodations to employees. This guidance is important for employers because some of the con-

cepts, such as what is or is not a "reasonable accommodation," are not always obvious in some situations.

Note that the ODEP titles do not speak to occupational or non-occupational disabilities; the ADAAA is neutral in this regard. This ODEP website helps build shared turf for non-occupational and WC practitioners as they learn how to collaborate at the intersection of ADAAA and RTW. The world of WC and risk management can look arcane to HR and benefits professionals. The ADAAA looks just as odd to your new partners in the WC program. State-based WC laws and regulations for the most part have never been properly reconciled with the ADAAA. This gives your WC partners an even more complex operating environment than the one you had when you began learning about the ADAAA.

The good news is that help is no more than a few clicks away. Every RTW event — work-related or not — is an opportunity to help an employee get back to life. This is too important to get hung up in HR versus WC silos. Share every resource, and don't wait to be told to do the right thing.

References

1. The ODEP resources can be retrieved at <https://www.dol.gov/odep/return-to-work/employer-accommodations.htm>.

2018 DMEC Annual Conference: A Larger IAM Toolbox for Workplace Diversity

The 2018 DMEC Annual Conference explored new ideas and the larger toolbox that integrated absence management (IAM) professionals are using to design programs for today's more diverse workplace. More than 750 individuals attended, making this DMEC's largest conference ever, and half were new attendees, underlining the importance of and changes in our IAM profession.

Major changes in the workplace are being driven by important factors such as:

- ongoing pressure for more inclusive workplaces by the Americans with Disabilities Act (ADA) and other laws enforced by the Equal Employment Opportunity Commission (EEOC);
- record-low unemployment of less than 4% is impacting recruiting and retention; and
- younger workers bringing new values and cultural norms.

Inspiration

Two keynote speakers challenged our focus on disability. Once we step out of disability claims and into the ADA, we need to shift our focus to a person's abilities that can facilitate performance of their essential job functions.

First-day keynote speaker Nyle DiMarco, viewed through the lens of disability, is functionally deaf, which carries numerous challenges in a hearing-centric world. Yet in terms of ability, DiMarco has many exceptional traits: strong non-verbal communication, a superlative work ethic, and a passion for the world

around him and how he can make a difference. All of these traits make him a valuable contributor in the workforce, and have brought him stunning professional success: in 2015, he was the second male winner and the first deaf winner of America's Next Top Model; in 2016, he won season 22 of Dancing with the Stars, with professional dance partner Peta Murgatroyd. DiMarco's story highlights the importance of seeing individuals for their "ability" rather than their "disability" and how accommodation in the workplace can create opportunities for individuals with valuable skills that organizations need.

Second-day general session speaker Keith Gabel, a U.S. Paralympic snowboarder, showed us the power of the human spirit and the importance of a supportive workplace. Gabel overcame a dysfunctional family history to become a respected oil exploration crew chief. Then disaster struck, and he lost half his leg in an accident on an oil-drilling rig. Through the support of his company and his own determination, Gabel aggressively pushed forward with his

recovery and was eventually able to return to his beloved snowboarding, and became a U.S. Paralympic medalist in 2014 and 2018. Gabel's story showcases what many IAM professionals know to be true — a strong desire to return to work and a caring and compassionate workplace have a remarkable impact on recovery from an injury or illness.

Expanding the Scope of IAM

The conference also challenged traditional IAM thinking through several sessions over the four days. The ideas brought forward were more than just an evolution of existing practices; they showcased innovations that open new approaches to difficult accommodations and complex claims.

Neurodiversity. It can take engineer-level intelligence and work intensity to deliver today's technology products and services. Professional services firm Ernst & Young LLP (EY) found that a formerly ignored population can deliver these traits — people on the autism spectrum. Presenters described how they built their

Annual Conference continued on p. 35

Do you know what disability related absence is costing your company?

A New Way of Seeing Employee Benefits

Pacific Resources is able to ask the **tough questions,** because we're not afraid of any of the **answers.**

Disability & Leave Management | Benefits Administration Consulting | Private Exchange Consulting | Life & Accident | Voluntary Benefits | Absence Management | Global Benefits | Executive Benefits | Dental | Vision

PACIFIC RESOURCES
a new way of seeing
pacresbenefits.com
860-986-4870

2018 Partnership Award Winners: Kimberly Mashburn and Michael Vittoria

DMEC's growth and positive impact are driven by industry leaders like Kimberly Mashburn, RN, and Michael Vittoria, MBA, JD, winners of the 2018 Partnership Award.

DMEC CEO Terri Rhodes recognized Mashburn and Vittoria on the stage at the 2018 DMEC Annual Conference in Austin, TX, on Wednesday, Aug. 8.

Rhodes praised their careers and contributions to DMEC.

"If you've ever met Kimberly, you know that she knows almost everyone in the industry," said Rhodes. "Her strong connections in the community have been invaluable in assisting DMEC in the development of several strategic partnerships."

Mashburn first engaged with DMEC in the early 2000s with her work as an absence management consultant, and since that time, has been instrumental in DMEC's growth.

She currently serves as a member of the DMEC Board of Directors and previously served as an Executive Advisory Board member, and an Atlanta chapter board member. Mashburn authored a chapter of *The Complete Return to Work Manual* and is a frequent



Michael Vittoria and Kimberly Mashburn, 2018 Partnership Award Winners

attendee at both local and national DMEC events.

Her ongoing commitment to the industry is also evident in her current role as National Accounts, Practice Lead at The Hartford, an organization that has been a long-time DMEC sponsor, assisting DMEC in the work of supporting members.

Welcoming Vittoria to the stage, Rhodes said, "In his 20-plus year career and in his current role as Director of Benefits and HR Solution Center at Lifespan, Michael has been passionate about creating a holistic approach to health, disability, leave of absence management, and return to work."

Vittoria began his volunteer service with DMEC in 2013 through the Greater Boston chapter. He stepped into role of Vice President and then President of the chapter, dedicating his time and energy to create valuable education

and networking opportunities for New England employers.

Vittoria currently serves on DMEC's Employer Advisory Council, providing feedback on member programs and resources. He has also contributed to *@Work* magazine, and served as a volunteer at conferences over the years.

Congratulations to Mashburn and Vittoria

for their exceptional careers and special efforts that have helped make DMEC one of the friendliest and most effective professional associations in the nation.

Reliance Standard / Matrix ADA Accommodation Data: 2017 Benchmark Analysis

Drawing from a sample size larger than the inaugural benchmark analysis, this statistical analysis is based on a review of more than 6,966 accommodation requests collected over a period of 12 months from employers representing a universe of 185,000 employees.

Contact your local Reliance Standard Sales or Account Management Professional for a copy!

RELIANCE STANDARD
A MEMBER OF THE TOKIO MARINE GROUP

MATRIX
ABSENCE MANAGEMENT
A MEMBER OF THE TOKIO MARINE GROUP

program to recruit, equip, and support employees on the autism spectrum.

The program involves a hiring process with a week-long orientation, training, and evaluation experience to ensure that prospects have a match with the job and that the environment can support their success. Jamell Mitchell, leader of EY's Neurodiversity Center of Excellence, described one key to the program's success: "get comfortable with being slightly uncomfortable." Adding neurodiversity to the workplace solved problems that other employees weren't aware of.

"Accommodations we made for individuals on the spectrum actually helped the whole team," Mitchell said.

Transgender Employees. Through growing awareness and education, there are now tools available to support people who have experienced a major shift in their gender identity and expression, in a way that is helpful and legally compliant. Challenging transgender transitions may involve "gender dysphoria" which can include depression or anxiety, and affect a person's ability to perform the essential functions of their job. Qualified counselors can identify psychological processes that may become the focus of the interactive reasonable accommodation process. This ground-breaking session also provided an overview of the topic, including: legal rights of transgender employees, case law, best practices in the administrative approach to fitness-for-duty evaluations, and how to accurately assess impairment and support the workplace performance of employees who identify as transgender.

Artificial Intelligence (AI). "Automatic" claim management using AI is happening already as carriers and other claim management vendors install AI systems, which they make available to clients through outsourced or cosourced services. Some insurance carriers that have not yet fully implemented AI systems are using outsourced AI organizations to review blocks of thousands of complex claims. Employers that manage their claims in-house now have access to this service as well. AI systems are hungry for data, so key functions of today's absence managers are to identify under-utilized data, and to identify and capture new useful data from claim service providers and other sources.

Geosocial Data for Claim Investigations. Social media is an even deeper data mine than most people realize, and includes

Time Off. Time On.

At Unum, we recognize that life doesn't always give you a gracious heads up – and sometimes you have no choice but to face a challenge head-on. We believe that productive time off – time devoted to healing caring and loving – leads to more productive time "on the clock" And we're willing to bet that your employees agree.

To learn more about Unum's Leave & Absence solutions visit unum.com/fmla

the ability to capture location and time information that is crucial to establish an employee claim fraud. This far exceeds simple cases where employees incautiously post, providing incriminating photos and text. Real-life case examples showed how social media was used to crack even the most challenging cases. The presenter discussed cyber-evidence rules, including privacy and legal issues, as well as preserving, authenticating, and presentation of evidence.

Redesigning the Basics

The conference also highlighted two existing IAM areas where evolution is important: diversity strategies and benefit design.

Diversity is more than recruiting minorities to fill positions in an org chart, said Bryon Bass, SVP, Disability and Absence Practice & Compliance at Sedgwick. "An organization that is not actively promoting inclusion is not supporting diversity," he said.

Promoting inclusion involves encouraging friendly dialogue about differences. "Something as simple as holding a bring-your-pet-to-work day can start the conversation," he said.

Inclusion happens among employees at all levels, but it must be modeled and promoted by upper management. Workplaces with diversity among employees and an inclusive culture can generate exceptional employee engagement, which is a major competitive advantage, Bass said.

Benefit redesign is important for all workers, but especially younger employees who want flexible benefits including generous paid leave benefits, said Bradd Chignoli, SVP, Head of National Accounts, MetLife. Among employees of all ages, 60% say they would pay more for benefits to get more options;

Annual Conference continued on p. 36

Leave Technology continued from p. 15

her honest belief that this employee may be capable of work.

Conclusions

While the cases presented may seem extreme and give us a chuckle, they highlight how complex the interactive process and its outcomes can be in various work settings. The ADAAA field is changing quickly due to the influence of state laws and federal litigation; even experienced IAM professionals may need assistance to stay current. It's easier than ever to access leave management technology through providers, third-party administrators, or carriers.

What can technology do for us in the ADAAA interactive process? It can prompt us to engage in it, for one. It can prompt us to document conversations at specific points in the process. It can provide us with accommodations for specific conditions and provide a centralized place for all case information, date- and time-stamped, easily exported in the event of an EEOC investigation. However, it can't force you to make the right decisions; you have to have the right people using it for that to happen.

An IAM professional in California who had just lost a \$300,000 suit told me, "I KNOW I made the right decision. I just couldn't prove it."

Technology has its limitations. It is not self-evolving when new court cases raise new compliance issues. However your organization accesses technology, it will have to invest substantial time in monitoring its performance, updating it, and fine-tuning it to address special conditions in your worksites and work force. But my friend in California believes it could have given her a different outcome in her lawsuit.

References

1. To view the Circuit Court's opinion in *Neeley*, visit <http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0048n-06.pdf>.
2. To view the District Court's opinion in *Sharrow*, visit <https://cases.justia.com/federal/district-courts/michigan/miedce/1:2017cv11138/319270/20/0.pdf?ts=1523611719>.



Your best partner for disability and absence management solutions

Life's brighter under the sun
sunlife.com/us



© 2017 Sun Life Assurance Company of Canada, Wellesley Hills, MA 02481. All rights reserved. Sun Life Financial and the globe symbol are registered trademarks of Sun Life Assurance Company of Canada. GGAD-7109b SLPC 24679 02/16 (exp. 02/18)

Annual Conference continued from p. 35

among Millennials, up to 70% would pay more.

The larger context of benefits delivery is important as well. Paid leave provides valuable flexibility for major life events of employees, but also brings risks. The termination rate of people after they return from leave is much higher, said Chignoli; people get disconnected while they're off work. "How do we use technology to keep employees connected while they're out of the workplace? How do we help them feel they're still part of the company?" Chignoli asked.

A record number of attendees in Austin witnessed the IAM profession enlarging its toolbox for today's more diverse workplace. These important new themes and the

evolution of IAM's core will offer new avenues to build employee success and productivity in the year ahead. What new narratives will we hear when we meet again at the 2019 DMEC Annual Conference, Aug. 5-8, 2019, at the Gaylord National Resort & Convention Center in Washington, D.C.? Mark your calendars to find out!

**Manage & Measure
Your
Employee Absence**

Don't just track your absence data, use it!

ClaimVantage

Index of Advertisers

AbsenceSoft	20
Broadspire	8
CareWorks Absence Management	37
Cigna	21
ClaimVantage	36
FINEOS	16
Genex	11
Lincoln Financial Group	10
MetLife	4
Pacific Resources	33
Prudential	15
ReedGroup	18
Reliance Standard/Matrix	34
Sedgwick	6
Spring Consulting Group	18
Sun Life Financial	36
The Hartford	27
The Partners Group	21
The Standard	14
Unum	35
WorkPartners	22



A fresh start to total absence management

When it comes to ADA accommodations, one size doesn't fit all.

That's why at CareWorks Absence Management, we provide solutions tailored to each request that include:

- Documenting the interactive process
- Obtaining medical paperwork
- Recommending assistive devices
- Tracking time for leave as accommodation

We're the partner of choice for accommodations, leave, disability and return-to-work services.

Let us show you why.



1 (888) 436-9530 | careworksabsence.com



STAND OUT AS A LEAVE EXPERT

Each day, you are faced with FMLA challenges that require thoughtful, compliant solutions. Take your expertise and knowledge to the next level and earn your **Certified Leave Management Specialist (CLMS) designation**.

The CLMS program provides interactive, hands-on training that will help you understand the nuts and bolts of FMLA management. Through real-life scenarios, interactive quizzes, sample policies, up-to-date guidance, and resources, the self-paced online program covers the following FMLA topics:

- Eligibility requirements, reasons for leave, and qualified relationships
- Medical certification and recertification
- FMLA counting methods
- And much more

"I realized that I didn't have a lot of depth when it came to the FMLA. I really wanted to understand the nuts and bolts of the law. After completing the course, I feel a lot more confident when I'm talking to our customers about the nitty, gritty provisions of the regulation."

— ALLYSON KAMBACH
*CLMS, Director, Disability & Absence
Product Management*

LEARN MORE.
www.dmec.org/clms-certification

