



CLMS Resource Guide



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FOREWORD

The Certified Leave Management Specialist (CLMS) designation and the seventh edition of the *CLMS Resource Guide* have been updated to remain current with the changing leave management landscape. The concept for this training came to me as a practicing absence management consultant and from DMEC members, the DMEC Executive Advisory Board, and absence management professionals who expressed a need for training and certification for individuals managing leaves of absence for an employer or vendor.

This book is more than just a resource guide. It is designed to meet the needs of practicing leave management professionals by offering both background information and the tools and resources needed to manage leaves of absence. This resource guide is a companion piece to the materials in the CLMS online course.

Special thanks to the Job Accommodation Network and Shaw HR Consulting, Inc. for allowing us to use their materials in this guide. And thanks to Kristin Jones, Jess Dudley, and Tasha Patterson who assisted us in updating this new version of the CLMS Resource Guide.

Terri L. Rhodes, CCMP, CLMS, CPDM, MBA

Chief Executive Officer
DMEC

OVERVIEW

The CLMS online designation program is designed to solidify your technical expertise on various programs and regulations that affect an organization and its employees. The *CLMS Resource Guide* complements the online program by providing background and resources to support your learning experience around the regulations, company policies, procedures, and communications that are critical to managing an effective and compliant leave program.

This resource guide contains three sets of resources: FMLA, ADA, and other leave laws that impact employee absences. Each section includes sample policies, forms, and letter templates that you can use to implement or enhance an absence management program.

The *CLMS Resource Guide* is grounded in two fundamental concepts: communication and consistency. First, communications between an employee and employer must be ongoing, easy to understand, and explicit. The positive benefits of good communication are an open and free-flowing exchange of information, the potential for creative and “win-win” solutions, and an overall pattern of engagement and listening. The downside, on the other hand, is the potential for confusion, escalation, conflict, and sometimes litigation. Second, the approach to managing absences must reflect a consistent application of the written policies and procedures. Without a consistent approach, a company could be open to sanctions for unfair and arbitrary practices and outcomes.

LEGAL DISCLAIMER

The *CLMS Resource Guide* will provide you with a menu of sample policies, forms, and communication examples to help you build the right programs and enhance the programs you may already have. DMEC is not a law firm and cannot provide legal advice. No employer should implement any of the recommendations and policies in the *CLMS Resource Guide* without first reviewing them with appropriate legal counsel. All forms are provided without warranty of effectiveness, compliance, or legality. We recognize that there is no such thing as a perfectly safe and perfectly effective policy, form, or communication, so the balance of risk and reward is yours to determine. However, we also realize that it is difficult to start with a blank sheet of paper, so these samples are offered to help get you started.

YOUR ABSENCE POLICY

Policies form the foundation of a company's absence management process and procedures. They are the explicit, and sometimes implicit, statements describing how a company will manage employee absences. In case of conflict, they will become a reference point for escalation, review, and even legal actions.

Written policies inform all parties, specifically both employees and management, of the company's intentions in a given situation. Unless employees know what to expect, it is difficult, if not impossible, to hold them accountable for their actions or behaviors. Similarly, unless managers and supervisors know the intentions of the organization they represent, they will solve problems they encounter in ways that may seem best to them in the moment but may create an inconsistent or noncompliant incident or pattern of actions.

Absence management programs should be based on clear, comprehensive, and published policies approved by senior management. We have provided a number of sample policies for your consideration. Your company likely has some or all of these policies already in place. As you review the sample policies provided in this resource guide, we suggest that you adopt and customize only those that you need. If you already have a similar policy, look at the sample policy template provided to ensure your policy contains all of the important points you wish to convey to your employees. When in doubt, consult with your HR team and legal counsel.

The sample policies are in the sections on FMLA, ADA, and other leaves.

All companies have policies, but are they written?

If a company does not have a written policy for attendance, this does not mean the company does not have an attendance policy. It actually means that the predominant practices of the people who handle absences on a daily basis determine the absence policy. Those people will be your supervisors and managers. Therefore, a company's unwritten policy is likely whatever your supervisors and managers think is the best in each situation. Even with the best of intentions, these ad hoc policies are, by definition, likely to be extremely inconsistent and perhaps unfair and arbitrary. As a result, this practice results in potential exposure to legal risk. Consistent management of all absences is key to reducing such risk. This occurs through documented processes followed by all levels of the organization.

Key Elements of All Policies

Overall, policies need to be clear and understandable by all employees. All employees means everyone from the CEO and managers to the newest hire in a training class.

To set the stage for clarity and understanding, start a policy off with a statement of purpose. This statement gives the reason for this particular policy, the situations the policy will be used to address, even the problems that the policy will be used to solve. This written policy will be the first and best opportunity to express the clear intent of the policy; intent often gets lost in the administrative details that will follow the statement of purpose. Note any business drivers for this policy, and include reference to whether this policy will apply to all employees or to only a subset.

Each policy needs to have an effective date. If the first written policy on attendance, for example, became effective on July 1, 2013, then that was the effective date. The effective date generally does not change often over the life of the policy, even though there may be revisions from time to time. If revisions do not fundamentally change the policy but simply amplify, clarify, or update it to changing terminology or business needs, then the effective date remains the same. However, if a policy provision changes fundamentally — for example, the organization previously allowed leave only for the employee but changed the policy to allow for family members and well-care visits — this is a change of policy, and the effective date would reflect this change accordingly.

What do we mean by a substantial change? Using an attendance policy as an example, if the change was to make the trigger point for the number of excused absences that results in a verbal warning lower or higher, that would probably not be a substantial change. There is still a trigger point, the warning is still verbal, and the implications of the warning are unchanged. But if the new policy were to broaden the trigger for determining a verbal warning to include unexcused absences, that would then warrant a new version and effective date.

When a new version of a particular policy substantially changes the policy, change the effective date to match the date of the revision. Include a note indicating that this version supersedes a previous policy and identify that prior version by its effective date.

Revisions to a policy are inevitable and will range from correcting typographical errors all the way to adding elements of the policy to cover previously unaddressed situations. Keep track of prior and current versions with their

effective dates. And ensure that the organization maintains a master copy and that doing so is the responsibility of a specific person in HR or on a senior management team.

The legitimacy of the policy can be attested to by an “approved by” notation with an associated date. Generally, the approval date is the same as the effective date. In some cases, a policy may be approved before it becomes effective, as when the change needs to be timed in coordination with some other future event, such as a pending benefit change.

Speaking of approvals, who approves new policies?

Most organizations will benefit by having the highest level of authority be the approver. In very large organizations, this person might be the member of the C-suite who is considered the chief human resource officer (CHRO). In smaller organizations, this person might be the chief operating officer (COO). And in still smaller organizations, the chief executive officer (CEO). But the rule of thumb is that approval should be done at the highest level possible.

How often should policies be reviewed?

We recommend an annual review and update of policies. This review will ideally take the form of a general comparison of the policies against any new business needs, changed environment, or external factors. It is important to engage an employment attorney in this review, because comparing policies against legislative changes, regulatory updates, and significant court decisions or opinions is especially important. For instance, the Equal Employment Opportunity Commission issued guidance in 2016 that could impact written policies. Since 2015, many states and cities have enacted laws affecting paid family and sick leaves.

How should policies be communicated to employees?

There are numerous strategies, some passive, some proactive, that can help employees to be aware of an organization’s policies. The most common method up until the last decade or so was the printed employee handbook. This has been replaced by the electronic “intranet” version, published on internal company websites. The benefit of a printed employee handbook is that employees without access to the Internet at home or at work will have a copy. The downside is, of course, that the handbook is necessarily a static copy that will not be easily updated when policies are revised.

The benefit of electronic distribution is that the most current version of the handbook is instantly available to all and may be simply and quickly updated as needed.

Those are both relatively passive strategies: they require

employees to do something (find the copy they were given at time of hire or log on to the company website) to access the information. Employees will become aware of changes in company policy only if they happen to hear about the change and take the time to access and read the handbook. In most situations, that is probably acceptable. However, if an organization is making a substantial change to policy (e.g., going from an “excused/unexcused” to a “no fault” attendance policy) and the change is going to significantly influence employee behaviors, then passive distribution will not be sufficient.

The more proactive elements of a policy communication plan will involve communication vehicles such as team meetings, a corporate email, a company newsletter, or even an “all employees” meeting. In cases in which there may be legal or liability issues related to the notification, the communication plan could include a letter sent to each employee’s home. Other strategies include a notice on the employee’s pay stub (if paper checks are still used), posters on bulletin boards in break areas, or handouts distributed to every work station. It’s best to employ a variety of strategies to ensure an adequate level of distribution and attention. Ensuring all employees are informed is key. It is the responsibility of the employer to provide the employees with the direction they need to follow such policies.

INFORMATION AND FORMS

An absence management program relies completely on the correct and current information being available and used in every part of the process. This information will flow from the employee, from the employer, and from a medical provider. Often, if an employee is experiencing a longer-term absence, others such as a third-party claims administrator (TPA) or an insurance carrier’s claims management staff, clinical resources, and vocational rehabilitation teams will need to be part of the information flow. The best outcome is for the employee to have the optimum time away from work to recover from illness, care for a family member, or attend to other family or medical responsibilities. For the employer, the best outcome is to have the employee return to some level of productive work as soon as it is medically safe to do so. For medical providers, the best outcome is to have the patient reach their maximum medical improvement as soon as possible, while minimizing or eliminating unnecessary treatment.

Some of the information in this flow will be in time and attendance systems, payroll databases, or perhaps in specially formatted “eligibility” files that are passed from the

employer to TPA or insurance carrier. However, much of the information that is needed to manage an employee's absence will be communicated by forms that are filled out by any of those stakeholders: employee, employer, or medical provider. Some will consider that filling out forms is a waste of time or expensive red tape, but in the case of absence management, these forms enable clarity, accuracy, and most importantly, legality. Forms will contain the information to ensure everyone has the same data and is on the right page at the same time, and that there is a fundamental level of documentation in the process. With the number of FMLA-related and other leave laws increasing in number yearly, the element of documentation is becoming more and more critical.

FORM FUNDAMENTALS

Get only the information you need. You may be curious and want a lot of information, but you should ask only for that information that is strictly required to support the absence management process.

It is not necessary to obtain the diagnosis from the provider, and the confidentiality surrounding this is strictly outlined in the FMLA regulations. It is, however, important to obtain from the medical provider the likely length of the absence, the specific work restrictions that will need to be in place, and the work capacity of the employee upon their return to work in a partial or full duty capacity. The employee is expected to provide an initial notification of the absence and a periodic check-in with their direct supervisor. An employee certainly needs to know and understand their diagnosis, treatment, and prognosis from their medical provider. The employee can expect to learn the following from the forms they receive:

- What benefits are applicable to their absence
- How they may be paid for the time away from work
- What their job status will be upon their return
- The process for requesting worksite or schedule accommodations to ensure they are able to return to productive work

The provider needs to know symptoms and status from the employee in order to correctly treat the problem. From the employer, the provider needs to know the physical, mental, and emotional demands of the employee's job and, briefly, any alternative work arrangements that can be offered.

Responsibilities of Each Party

- **Leave administrators:** Leave administrators need to give the employee information about benefits, timelines, and

deadlines, and give the provider the physical and cognitive demands of the essential functions of the employee's job and the same information about alternative work arrangements.

- **Employees:** Employees need to provide the employer notice and maintain regular updates on their status, attend provider appointments, and comply with treatment plans.
- **Providers:** Providers need to give information about work capacity to the employer and the employee, and they need to provide the employee with treatment plans and realistic assessments of recovery.

Keep it short. This is especially true when communicating with the provider. Consider that the average time spent with a patient is measured in minutes. Requesting a multi-page form on work capacity to be filled out or expecting the provider to read a multi-page description of the job and physical and cognitive demands is unrealistic. Get and give the information you need in the most efficient and effective way possible.

Stay in compliance. Review your forms with legal counsel regularly. The forms for absence management are an integral part of your policies.

Communication and Consistency: Setting the Stage and Following Through

Communication and consistency are the hallmarks of any "best practice" absence management program. Even a cursory review of the summaries of many court decisions is instructive, revealing a pattern in the findings in which communication was missing or faulty, and "one-off" decision-making led to arbitrary and capricious treatment, interference with FMLA rights, and widespread patterns of inconsistent application of rules across business units. A well-run program with clear communications and consistent application of rules results in employees who are far more likely to reciprocate the respect and concern such an approach demonstrates. There will be less confusion, more time spent on creative problem solving, and much less negative feedback in the system around absences.

Have up-to-date and comprehensive policies written and available to all employees.

When an employee is faced with an absence from illness or injury, or to care for a family member, they will often investigate online corporate resources to see how HR policies will cover and affect their absences. You can set the stage for good understanding by ensuring these policies are understandable — written for this audience — and cover as

many scenarios as possible. Since these written policies need to integrate with an absence management program, it is imperative they are reviewed regularly.

Train Your Supervisors

Occasionally, supervisors will act in a very situation-specific, localized fashion. Even accounting for all the best intentions, you can't begin to ensure a consistent administration of a company's policies if the management team is not in sync, all working from the same set of policies, procedures, and guidelines. Who to call when an employee will be absent beyond a few sick days; how to engage the employee and HR in the interactive process; when to consult with HR for guidance; how to respond to an employee's request for a leave — all of these items could be the subject of management training sessions. Along with helping them understand "what to do when XYZ happens," it is just as important to set expectations around behaviors, appropriate questions, and consistent practices for documenting discussions, agreements, and next steps.

Don't forget new supervisors. This training should be available on demand and certainly refreshed annually.

It's OK to Ask for Help

No single person can have all the right answers. In fact, when faced with a confusing or complicated request, an excellent technique would be to remember this response: "That's a great question. I don't know the answer. Let me look at the handbook and consult with an HR partner, and I'll get back to you this afternoon [or Monday, etc.]" Be open, be specific, and always follow through.

Ensure forms, form letters, and special letters are correct, understandable, and cover the questions.

We provide many sample forms and letters in the *CLMS Resource Guide*. It is up to you to ensure they apply well to your organization and employees, comply with policies, and are written in plain, simple language for the greatest comprehension possible. Solicit feedback from recipients on whether the communications are understandable. Remember, if someone is getting a letter about short-term disability, FMLA, paid leave, and benefits withholding rules, that employee is sure to be somewhat confused, even

overwhelmed, by all the information.

Document and Track

Incorporate into the supervisor training a set of expectations around documenting questions and discussions relating to employee absences. Encourage simple email responses such as: "Thanks for talking with me this morning. We reviewed your concerns about your worksite and work schedule, given your recent complaints of back pain and headaches. I will check on the safety program with the Facilities Coordinator and talk with James in HR about those modifications you thought might be helpful. Let's get back together tomorrow at the end of the day." If supervisors are recording conversations like this and then following through to document the agreements and plans, they are creating an excellent record for later review.

Audit Your Own Practices

If you have multiple groups managing absences independently, it is almost inevitable that inconsistencies will crop up. Some will be minor and easily fixed. Others could be more complex and difficult to unravel and bring into conformance with standard processes. On a regular basis, take the time to review each team's practices and dive into individual absence situations to ensure that regulations are applied correctly, eligibility is determined accurately, time is tracked against the correct calendar, and so forth.

Here is a checklist to get you started:

- ✓ Gather policies and handbooks for each location to ensure consistency.
- ✓ Complete a comprehensive review with your legal counsel.
- ✓ Review training materials or create them if they do not exist.
- ✓ Confirm tracking of participation.
- ✓ Gather available data and reports, assess for current effectiveness, and update, if needed.
- ✓ Identify baseline expectations so you will have a gauge.
- ✓ Identify gaps and put a plan in place for filling them.

FAMILY AND MEDICAL LEAVE ACT

The following section covers the federal Family and Medical Leave Act (FMLA) and includes a high-level review of state FMLA components. This section will cover:

- Overview of Family & Medical Leave Act
- Forms and online resources
- Sample policy
- Letters
- Absence tracking samples

FMLA: AN OVERVIEW

The Family and Medical Leave Act (FMLA) is a federal law designed to provide a consistent approach for how employers and employees work through the complexities of absences needed when an employee or a member of their family needs support due to medical issues. The law has often been identified as a job protection benefit for employees. It is also a support for the “sandwich generation” as they are increasingly called upon to support their parents in their aging years as well as their children, all while still working to ensure their own financial stability. However, this law is also a benefit to employers by giving them a structure around which to design their absence programs, knowledge of what is required of them, and guidelines for how to consistently manage employees’ absences, while keeping their company running.

Originally enacted in 1993, the FMLA has evolved to keep up with the changes in society and to meet the needs that arise when there is a necessary medical leave. The Certified Leave Management Specialist (CLMS) online course will go into substantial depth on the differing components of the FMLA. Each section will provide a bridge to the next, giving a complete picture of how leaves under the FMLA are managed.

Although it can quite quickly become complicated, leave management under the FMLA for the most part falls into clearly identified components. Be sure to review in detail the Department of Labor (DOL) employers guide, which you will find in the online resources section of this guide. Following is a list of the basic components:

- What is an FMLA leave
 - What are the reasons for leave
- Employer requirements
 - Who is a covered employer
 - Employer general notice requirements
 - Employer eligibility notice requirements
 - Employer designation notice requirements
- Employee requirements
 - Who is a qualified employee
 - Employee notice requirements
 - Employee entitlements

FMLA Certification Forms

The FMLA does not require the use of any specific certification form(s). The Department of Labor has developed optional forms that can be used when an employee requests leave for their own serious health condition (WH380-E) or to care for a family member’s serious health condition (WH-380-F). The employer may also use its own forms; however, if the employer chooses this option, they may not require any additional information beyond what is specified in the FMLA and its regulations.

The FMLA Leave of Absence

There are specific reasons for which an employee may take an absence from work and receive job protection under the FMLA. Those reasons are identified below but outlined clearly in the online resources section of this guide:

1. The birth of a child and to bond with a newborn child within one (1) year of birth
2. The placement of a child for adoption or foster care and to bond with the newly placed child within one (1) year of placement
3. The employee's own serious health condition
4. To care for an employee's spouse, son, daughter, or parent with a serious health condition
5. Any qualified exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty
6. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member (*Note: This leave has additional provisions with respect to length of leave and definition of a family member*)

Covered Employers

The FMLA only applies to employers that meet certain criteria. A covered employer is a:

- Private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer
- Public agency, including a local, state, or federal government agency, regardless of the number of employees it employs
- Public or private elementary or secondary school, regardless of the number of employees it employs

Employer General Notice Requirements

Covered employers are obligated to post certain information so it may be easily viewed by employees and applicants. They must:

- Display a DOL FMLA poster in plain view for all workers and applicants to see, notifying them of the FMLA provisions and providing information concerning how to file a complaint with the DOL Wage and Hour Division.
- Display this poster even if the employer has no eligible employees.

Employer Eligibility Notice Requirements

When an employee requests a leave from work, an employer has clearly defined response obligations. One such obligation is informing the employee, if they are eligible, to take the leave. This obligation is met with a notice that:

- Must be provided the first time the employee takes a leave for an FMLA-qualifying reason in that designated 12-month leave year

- May be oral or in writing
- Must be provided within five (5) business days of the request for leave or when the employer acquires knowledge that an employee may be out for an FMLA-qualifying reason
- Must inform the employee of his or her eligibility status
 - If the employee is not eligible, the notice must provide at least one reason why they are not eligible (e.g., length of service or hours worked).

Employer Rights and Responsibilities Notice Requirements

The DOL has created a set of information that must be communicated in a written notice to inform employees of their rights and their responsibilities in order to have their absence reviewed for FMLA protection. This rights and responsibilities notice **must**:

- Be provided the first time the employee takes a leave for an FMLA-qualifying reason in that designated 12-month leave year
- Be **in writing** and **must include**, as applicable:
 - Notice that the leave may be counted as FMLA leave
 - The employer's designated 12-month period for counting FMLA leave entitlement (based on one of the four counting methods: calendar, fixed, rolling forward, or rolling backward)
 - Any requirement for the employee to furnish a certification form and the consequences for failing to do so
 - Information regarding the employee's right or the employer's requirement for substitution of paid leave and conditions relating to any substitution, and the employee's right to take unpaid FMLA leave if the conditions for paid leave are not met
 - Instructions for any premium payments for maintenance of benefits that the employee must make during the leave (and potential employee liability if the employee fails to return to work after FMLA leave)
 - Notice of designation as a "key employee" and what that could mean
 - The employee's right to job restoration

Medical Certification

If the employer requests medical certification, the employee is responsible for providing a complete and sufficient certification, generally within 15 calendar days after the employer's request. The employee is responsible for paying for the cost of the medical certification and for making sure the certification is provided to the employer.

If the certification is incomplete or insufficient, the employer must give the employee a written notice stating what additional information is necessary to make the certification complete and sufficient. The employee must provide the additional information to the employer within seven (7) calendar days, in most circumstances.

- A certification is considered “incomplete” if one or more of the applicable entries on the form have not been completed.
- A certification is considered “insufficient” if the information provided is vague, unclear, or nonresponsive.

Information on the certification may include:

- Contact information for the healthcare provider
- The date the serious health condition began and how long it will last
- Appropriate medical facts about the condition
- For leave for the employee’s own serious health condition, information showing that the employee cannot perform the essential functions of the job
- For leave to care for a family member, a statement of the care needed
- For intermittent leave, information showing the medical necessity for intermittent or reduced schedule leave and either the dates of any planned leave or the estimated frequency and duration of expected incapacity due to the condition

If the employee does not provide the requested certification within the time required or fails to provide a complete and sufficient certification despite the opportunity to cure any deficiencies, the employer may deny the employee’s request for FMLA leave.

If the employee’s need for FMLA leave lasts beyond a single FMLA leave year, the employer may require the employee to provide a new medical certification in each new FMLA leave year. Employers must accept a complete and sufficient medical certification, regardless of the format. In all instances, the information requested on the certification form must relate only to the serious health condition for which the employee is seeking leave.

Employer Designation Notice Requirements

The employer is responsible in all circumstances for designating leave as FMLA-qualifying and giving notice of the designation to the employee. This notice **must**:

- Be provided in **writing within five (5) business days** of the employer having enough information to determine

whether the leave is FMLA-qualifying

- Be provided for each FMLA-qualifying reason per applicable 12-month period (additional notice is required for any changes in the designation information)
- Include the employer’s designation determination and any substitution of paid leave and/or fitness for duty requirements
- Provide the amount of leave that is designated and counted against the employee’s FMLA entitlement, if known. If the amount of leave is not known at the time of the designation, the employer must provide this information to the employee upon request but no more often than once in a 30-day period and only if leave was taken in that period.

If the requested leave is not FMLA-qualifying, the notice may be a simple written statement that the leave does not qualify and will not be designated as FMLA leave. The Department of Labor provides a designation form employers can utilize, which is linked later in this section.

If an employer is unable to determine whether a leave request should be designated as FMLA-protected because a submitted certification is incomplete or insufficient, the employer is required to state in writing what additional information is needed. The employer may use the designation notice to inform the employee that the certification is incomplete or insufficient and identify what information is needed to make the certification complete and sufficient.

Employer Policy

The employer policy must clearly define the parameters of the FMLA program which are within the employer’s control, including:

- Identifying eligibility requirements
- Identifying reasons for leave under the FMLA program
- Defining the counting method: calendar, fixed, rolling forward, or rolling backward
- Providing clear direction for how to apply
 - Employee notice requirements
 - Employee certification requirements
- Indicating the consequences of failing to follow the written policy
- Indicating the consequences of failing to return at the conclusion of the leave
- Explaining the use of paid leave
- Identifying how leave may be used, for example:
 - Whether bonding may be taken intermittently

- Whether employees who are married are required to share leave time when that requirement is up to the employer
- Identifying the employer's responsibilities
- Identifying the employee's enforcement rights
- Providing a statement on job restoration
- Stating other relevant employment policy

Eligible Employees

Not all employees are entitled to FMLA benefits. Specific criteria must first be met before the absence will be reviewed for FMLA protection.

- The employee must work for a covered employer.
- The employee must work at a location that meets the requirements.
- The employee must have worked for the employer for 1,250 hours in the months immediately preceding the leave. (*Note: Exceptions are outlined in detail within the learning modules and may be reviewed in the DOL Fact Sheet 28J found in the online resources section in this guide.*)
- The employee must have worked for the employer for one (1) year prior to the start of the absence. This service is cumulative and takes into consideration breaks in service within the previous seven (7) years.

If an employee does not meet the above FMLA eligibility requirements but the employer grants leave, the leave is not considered FMLA leave and cannot be counted against the employee's FMLA entitlement should they become eligible in the future. It is the responsibility of the employer to determine if the employee has met necessary eligibility requirements.

Employee General Notice Requirements

Ongoing communication between the employee and employer is critical throughout the FMLA process. It is important for the employee to let their employer know as soon as possible each time FMLA leave is needed and to respond to questions from the employer designed to determine if a particular leave request is FMLA-qualifying. If the employee fails to provide the employer with enough information to determine whether the leave is FMLA-qualifying, the leave may not be protected. The employee must also comply with the employer's policies for requesting leave unless unusual circumstances prevent them from doing so.

- Communication may be verbal or in writing.
- At first notice, the employee does not need to expressly mention the FMLA.

- The employee must provide enough information for the employer to know that the leave requested may be covered by the FMLA.
- Once approved, the employee must specifically reference the FMLA leave reason for additional absences.
- The employer may require the employee to communicate any changes in their need for leave, including the need to increase or decrease the term of the leave.
- The employer may require the employee to provide a periodic status report and communicate their intentions regarding their return to work.
- The employee must give the employer 30 days' advance notice of the need for a leave, if it is possible to do so.
- If the leave was unforeseeable, the employee must provide notice to the employer as soon as is possible and practical.

Employee Benefits

In addition to providing the time off from work, the employer must also provide the following in the same manner as if the employee had been at work.

Maintenance of Benefits

All benefits an employee had accrued prior to FMLA leave must be restored upon their return to work. The employee may not be required to requalify for any benefits they had prior to the leave.

An employer may only recover the employee's portion of any benefit when the employee returns to work or if the employee does not return to work for reasons within the employee's control. For example:

- The employee took time to care for their parent, but their parent's illness requires full-time care for the rest of their life and the employee moves out of state to live with that parent to care for them. The employer may NOT recover the employer's portion of premium payments.
- The employee takes time off for the birth of a healthy child and decides after the leave is exhausted to be a stay-at-home parent. The employer MAY recover both the employee's and employer's portion of any benefits they paid during a period of unpaid leave.

Benefits That Must Be Maintained During the Unpaid Leave

The employer must:

- Maintain group health insurance coverage, including family coverage, for the employee.
 - In the event the leave is unpaid, the employer may require the employee pay their normal contribution portion.

The employer does NOT need to maintain benefits if:

- The employee notifies the employer that they do not intend on returning to work at the end of the leave.
- The employee does not return when the leave is exhausted.
- The employee's premium payment is more than 30 days late; however, the employer must have given the employee at least 15 days' advanced notice informing the employee that the coverage will end if payment is not received.

Other Benefits

Other benefits may be negotiated or not covered, **provided they are treated the same way for any other unpaid absences.**

- Earned benefits such as seniority or paid leave
- Cash payments in lieu of group health insurance coverage
- Payment of life insurance premiums

Use of Paid Leave Programs

- An employer may allow an employee to choose whether they wish to use available paid leave for salary replacement during the period of FMLA leave, or the employer may require the paid leave be used during the FMLA period.
- An employer may NOT force an employee to go unpaid if paid programs are available for the leave.
- Employees must follow all of the established requirements in order to receive pay under the paid program.

Job Restoration

Following the FMLA leave, the employee must be returned to the same job or an equivalent one, with certain exceptions such as for employees designated as "key employees".

If the employee's position would have changed or been eliminated even if the employee had remained at work, then they are not entitled to a greater benefit of the position restoration.

The job must be virtually identical in terms of pay, benefits and other terms and conditions (such as shift and location).

Benefits conditional to seniority or work performed are to be granted in the same manner as applied to non-FMLA leaves. For example, if all employees receive a bonus and employees who have taken a non-FMLA leave also receive the bonus, then the employee who has taken an FMLA leave must also receive the bonus.

FMLA Process Checklist

Before FMLA leaves:

- ✓ Post FMLA poster in prominent locations at each worksite.
- ✓ Provide FMLA policy to all employees and new hires.
- ✓ Ensure notices and designation forms are up to date.
- ✓ Have current certification forms on file.
- ✓ Review all other leave policies to ensure there are no conflicts.
- ✓ Keep job descriptions up to date.

Once there is a leave request:

- ✓ Assess the request to determine if it is potentially FMLA-qualified.
- ✓ Determine if the employee followed identified notice procedures.
 - Was the leave foreseeable?
 - Did the employee provide notice as soon as practicable after becoming aware of the need?
- ✓ Respond to the employee within five (5) business days of their notice regarding their eligibility, including providing them with a notice of rights and responsibilities.
- ✓ If the leave is deemed eligible, provide written notice of procedural requirements to the employee.
- ✓ Provide the employee with the appropriate certification form, allowing a minimum of 15 calendar days for them to return it.

Upon receipt of certification (or sufficient information to make a determination):

- ✓ Within five (5) business days of receiving sufficient information, communicate if the leave will be designated, including the amount of time being designated, if known.
 - If the employee will be required to provide a certification of return to work at the conclusion of the leave, the employee must be notified of this requirement at the time of designation.
 - If the certification is incomplete or insufficient, follow the process to gather the necessary information (called the cure process).
 - If there is reason to doubt the validity of the certification or clarification is necessary, give the employee seven (7) calendar days to support the request and then have an appropriate representative contact the healthcare provider to inquire regarding the authenticity of the need.

- ✓ Assess the need for a second or third opinion.
- ✓ Follow allowable procedures for recertification.
- ✓ Follow allowable procedures for status reports and fitness for duty certification.

FMLA FORMS

The linked forms provided in the online resources table are those recommended by the Department of Labor for the administration of an FMLA job-protected leave. Though they are recommended, the exact form, and in some cases, whether they are used at all, is left to the employer's discretion. However, changing or not using any of these forms should not occur without first discussing with legal counsel.

Employee Notice of Leave Approval: This form communicates to the employee that the requested FMLA protections for their leave have been approved and the terms of the leave.

Employee Certification: This form is used to gather information from the treating medical provider to determine if the reason for the employee's absence rises to the level necessary to qualify for FMLA job protections.

Family Member Certification: Since FMLA offers job protection while caring for a family member, there is a separate form for the certification of that leave.

Employee Military Certification: This form is used when the employee requires FMLA job protection while on a leave and on active duty made necessary by a condition arising while serving in the military.

Family Member Military Certification: This form is similar to the employee version, except it applies to a family member.

Veteran Military Certification: This form is used for a condition that arises for a family member who is not on active duty but as a result of previous military service.

Eligibility Notice: This is a preliminary notice given right after the employee requests FMLA job protection for a leave. It communicates the employee's current status, eligibility, rights, and responsibilities.

FMLA Poster (in English and Spanish): This poster should be posted in an area commonly used by all employees.

ONLINE RESOURCES

RESOURCE TYPE	DESCRIPTION	URL
Fact sheet	Fact Sheet 28: Overall description of the federal FMLA regulations	https://www.dol.gov/whd/regs/compliance/whdfs28.htm
Fact sheet	Fact Sheet 28A: Protections under the federal FMLA (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28a.pdf
Fact sheet	Fact Sheet 28B: Birth, bonding, or care of a child under in loco parentis (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28b.pdf
Fact sheet	Fact Sheet 28C: Care of a parent under in loco parentis (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28c.pdf
Fact sheet	Fact Sheet 28D: Employer notifications requirement	https://www.dol.gov/whd/regs/compliance/whdfs28d.htm
Fact sheet	Fact Sheet 28E: Employee notice requirement	https://www.dol.gov/whd/regs/compliance/whdfs28e.htm
Fact sheet	Fact Sheet 28F: Qualifying reasons	https://www.dol.gov/whd/regs/compliance/whdfs28f.htm
Fact sheet	Fact Sheet 28G: Certification of a serious health condition	https://www.dol.gov/whd/regs/compliance/whdfs28g.htm
Fact sheet	Fact Sheet 28H: Explanation of 12-month period	https://www.dol.gov/whd/regs/compliance/whdfs28h.htm
Fact sheet	Fact Sheet 28I: Calculation of leave under FMLA	https://www.dol.gov/whd/regs/compliance/whdfs28i.htm
Fact sheet	Fact Sheet 28J: Special rules for airline flight crew employees	https://www.dol.gov/whd/regs/compliance/whdfs28j.htm
Fact sheet	Fact Sheet 28K: Definition of a son or daughter 18 years of age or older	https://www.dol.gov/whd/regs/compliance/whdfs28k.htm
Fact sheet	Fact Sheet 28L: Spouses working for the same employer (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28l.pdf
Fact sheet	Fact Sheet 28M: Military family leave provisions (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28m.pdf
Fact sheet	Fact Sheet 28M(a): Military caregiver for active service members (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28ma.pdf
Fact sheet	Fact Sheet 28M(b): Military caregiver for veteran service members (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28mb.pdf
Fact sheet	Fact Sheet 28M(c): Qualifying exigency	https://www.dol.gov/whd/regs/compliance/whdfs28mc.htm
Fact sheet	Fact Sheet 28N: Joint employment and primary/secondary employer rules (PDF)	https://www.dol.gov/whd/regs/compliance/whdfs28n.pdf
Fact Sheet	Fact Sheet 77B: Protection from retaliation	https://www.dol.gov/whd/regs/compliance/whdfs77b.htm
FAQs	General FAQs for the FMLA	https://www.dol.gov/whd/fmla/fmla-faqs.htm
FAQs	Military leave FAQs	https://www.dol.gov/whd/fmla/2013rule/militaryFR_FAQs.htm
FAQs	General FAQs for the ADA	https://www.eeoc.gov/eeoc/publications/adaqa1.cfm
Field Bulletin	Telemedicine and Serious Health Conditions under the FMLA	https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/fab_2020_8.pdf
Form	WH-380-E: Certification employee's health (PDF)	https://www.dol.gov/whd/forms/WH-380-E.pdf
Form	WH-380-F: Certification family member's health (PDF)	https://www.dol.gov/whd/forms/WH-380-F.pdf
Form	WH-381: Notice of eligibility/rights and responsibilities (PDF)	https://www.dol.gov/whd/forms/WH-381.pdf
Form	WH-382: Designation notice (PDF)	https://www.dol.gov/whd/forms/WH-382.pdf
Form	WH-384: Certification of qualifying exigency (PDF)	https://www.dol.gov/whd/forms/WH-384.pdf
Form	WH-385: Certification active service member (PDF)	https://www.dol.gov/whd/forms/WH-385.pdf
Form	WH-385V: Certification veteran service member (PDF)	https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/wh-385-V.pdf
Guide	DOL Employer's Guide to the Family and Medical Leave Act (PDF)	https://www.dol.gov/whd/fmla/employerguide.pdf
Guide	The Employee's Guide to Military Family Leave under the FMLA: English (PDF)	https://www.dol.gov/whd/fmla/2013rule/FMLA_Military_Guide_ENGLISH.pdf
Guide	The Employee's Guide to Military Family Leave under the FMLA: Spanish (PDF)	https://www.dol.gov/whd/fmla/2013rule/FMLA_Military_Guide_SPANISH.pdf
Poster	FMLA poster: English	https://www.dol.gov/whd/regs/compliance/posters/fmla.htm
Poster	FMLA poster: Spanish	https://www.dol.gov/whd/regs/compliance/posters/fmlaspan.htm
Regulations	DOL site listing all URLs for general guidance, fact sheets, forms, posters, and regulations	https://www.dol.gov/agencies/whd/fmla
Regulations	Regulations 29 CFR Part 285 Complete	http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr825_main_02.tpl
Regulation update	Regulatory update to definition of "spouse" – Effective 3/27/2015	https://www.dol.gov/agencies/whd/fmla/spouse
Regulation update	Regulatory update to implement amendments – Effective 2/6/2013	https://www.dol.gov/whd/fmla/2013rule/
Resources	DMEC webinar recordings, legislative updates, sample forms and policies, white papers, and more	http://dmecl.org/resources/
Resources	State and local paid sick leave laws and resources	https://www.abetterbalance.org/paid-sick-time-laws/?export
WHD locations	Directory to local state WHD Offices	https://www.dol.gov/WHd/america2.htm

FMLA POLICY

It is important to note that the sample policy provided is to identify time off under the FMLA as working with other leaves provided by the employer. While some organizations do treat the FMLA as a separate leave but run it concurrently with other leaves, that may create in the employee's mind the impression that the FMLA is additional or optional leave. This can be avoided to a large extent by consistently framing the FMLA as "job protection while on leave," rather than as a specific leave.

The FMLA provides job protection for employees on leave for reasons that specifically meet the qualifications outlined by the law. Whether the time off is paid or unpaid is irrelevant, as this qualified leave may run concurrently with other programs that can provide income replacement or use of

the employee's available vacation time. This policy addresses three distinct job protection issues: providing a definition of the term, explaining under which circumstances job protection applies, and how to apply it.

The FMLA and its regulations and associated court rulings form a "living body" of legal requirements that is in almost constant flux. In addition, many states have adopted their own versions of FMLA that are in certain areas more generous to employees than the federal statute. Of all the policies, this one must be reviewed at least annually to ensure that it is in line with current rules. In addition, depending on how many and which states you may have employees in, you may need multiple versions of this policy covering the specifics of each unique governmental entity.

Sample FMLA Policy

PAGE 1 OF 4

Purpose

The company does not consider the Family and Medical Leave Act (FMLA) and its amendments to be a separate type of leave. Rather, the company considers it to be job protection while on a leave that is otherwise specified by the company. Please see the leave of absences policy for a complete list of potential leaves.

The law does require the company to recognize certain reasons for a leave for certain employees as eligible for the FMLA job protection. This policy does not create additional leave for any employee. It simply lays out the terms under which an employee will receive job protection while on a leave.

Policy

In accordance with the FMLA, eligible employees are entitled to the following.

Basic Leave Entitlements

The FMLA requires covered employers to provide up to 12 weeks of job-protected leave to eligible employees. The company has chosen the "rolling forward" counting method for the 12-month period.

- for the birth of a child or the placement of a child with the employee for adoption or foster care;
- if the employee is needed to care for a family member with a serious health condition;
- if the employee's own serious health condition renders the employee unable to do his or her job; or
- for any qualifying exigency arising out of the fact that the employee has a spouse, son, daughter, or parent who is on covered active military duty.

Under the FMLA, employers must grant a combined total of 26 weeks of military caregiver leave in a single 12-month period to employees who are the spouse, son, daughter, parent, or next of kin of a covered service member who has sustained a serious injury or illness while on active duty so that the employee can care for the service member. There is no requirement that this leave be paid leave.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent who is on covered military active duty may use their 12 weeks of job-protected leave to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, spending time on rest and recuperation leave, and attending post-deployment reintegration briefings.

For the purposes of qualifying for job protection during an “exigency leave,” covered active duty is defined to mean:

- duty during the deployment of the member with the armed forces to a foreign country, in the case of a member of the regular component of the armed forces; and
- duty during the deployment of the member with the armed forces to a foreign country under a call or order to active duty, in the case of a member of a reserve component of the armed forces.

The FMLA also includes a special entitlement that permits eligible employees to use job protection for a leave or leaves that may take up to 26 weeks to care for a covered service member during a single 12-month period.

Definition of a Covered Service Member:

- A member of the armed forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness; or
- a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the armed forces (including a member of the National Guard or Reserves) at any time during the five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

For purposes of leave as a military caregiver, the terms *serious health condition* and *serious injury or illness* are not interchangeable. Plus, the definition of a serious injury or illness differs slightly based on whether the covered service member is a member or a veteran of the armed forces. Specifically:

- In the case of a member of the armed forces, a serious injury or illness is defined as an injury or illness that was incurred by the member in the line of duty on active duty in the armed forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the armed forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
- In the case of a veteran of the armed forces, a serious injury or illness is defined as an injury or illness that was incurred by the member in the line of duty on active duty in the armed forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the armed forces) and that manifested itself before or after the member became a veteran.

During a single 12-month period, an eligible employee is entitled to a combined total of 26 work weeks of job protection while on leave as a military caregiver or for other FMLA-qualifying reasons.

Eligibility Requirements

Employees are eligible if they have worked for the company for at least 12 months, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed at the site where they work including any other sites within 75 miles.

Definition of a Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a healthcare provider for a condition that either prevents the employee from performing the functions of the employee’s job or prevents the qualified family member from participating in school or other daily activities.

SAMPLE FMLA POLICY (PAGE 3 OF 4)

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three full consecutive calendar days combined with at least two visits to a healthcare provider or one visit and a regimen of continuing treatment; incapacity due to pregnancy; or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

As outlined in the paragraph above, the two healthcare provider visits must occur within a 30-day period, which begins with the first day of incapacity, absent extenuating circumstances that prevent the follow-up visit from occurring as planned by the healthcare provider. The first visit must occur within seven days of the first day of incapacity.

Benefits and Protections

During any leave that qualifies for FMLA job protection, the company must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

If the employee does not return to work at the expiration of family and medical leave, the company will require the repayment of health insurance premiums it paid on the employee's behalf during the leave period. Reimbursement will not be required if the employee does not return from leave because of the continuance, recurrence, or onset of a serious health condition that prevents the employee from performing his or her job or because of further circumstances that are beyond the employee's control.

Use of FMLA job protection cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

If the employee is designated a key employee, he or she may not be entitled to return to the same job at the conclusion of FMLA-protected leave. A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10% of all the employees employed by the company within 75 miles of the employee's worksite. Should the company determine that substantial and grievous economic injury would result from reinstatement at the scheduled end of leave, the employee will be notified of that fact in writing and will be given an opportunity to forgo taking the leave if leave has not yet begun or to end the leave and return to work. If the employee remains on leave after receiving notice and the opportunity to return to work, he or she will not have a right to be restored to employment at the end of the leave.

Use of Leave

An employee does not need to use his or her FMLA job protection in one block. It can be used with leaves that are taken intermittently or on a reduced schedule when medically necessary. Employees must make reasonable efforts to schedule any protected leave for planned medical treatment so as not to unduly disrupt the company's operations. Leave protection due to qualifying exigencies may also be taken on an intermittent basis.

If the employee requests intermittent leave or leave on a reduced schedule that qualifies for FMLA job protection, the company may require that the employee transfer to a temporary, alternative job for which the employee is qualified and that better accommodates the intermittent or reduced schedule leave than does the employee's regular job. The temporary position will have pay and benefits equivalent to the employee's regular job.

Substitution of Paid Leave During Unpaid Periods of Leave

The company requires employees to use accrued paid leave while taking any leave where paid leave is available, regardless of whether the leave is FMLA-protected or not. It is important to note that regardless of whether or not the paid leave is protected under the FMLA, employees must comply with the company's normal paid leave policies.

Employer Notification Requirements

The company will inform employees requesting leave whether they are eligible for FMLA job protection. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the company will provide a reason for the ineligibility.

The company will notify employees of their eligibility for FMLA job protection for a particular leave (or a change in eligibility status) within five business days after they request a leave with FMLA job protection, absent extenuating circumstances.

The company will inform employees if leave is designated as FMLA-protected and the amount of leave counted against the employee's job protection entitlement within five business days. If the company determines that the leave is not FMLA-protected, it will notify the employee. Only one designation notice is required for each FMLA-qualifying reason per leave year, regardless of whether the leave is taken as a continuous block or on an intermittent or reduced schedule basis.

Employee Notification Requirements

Employees must provide 30 days' advance notice of the need to take a leave that would qualify for FMLA job protection when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the company's normal call-in procedures.

Employees should know that use of FMLA job protection is not discretionary for the company or for the employee; the employer should designate FMLA when the leave qualifies.

Employees must provide sufficient information for the company to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a healthcare provider, or circumstances supporting the need for military caregiver leave. Employees also must inform the company if the requested leave is for a reason for which FMLA-protected leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the qualifications for protection while on leave. Employees may be required to provide fitness-for-duty certification prior to returning from leave, showing that they are able to resume work.

Unlawful Acts by Employers

The FMLA makes it unlawful for the company to:

- interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for the involvement in any proceeding under or relating to the FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

Compliance

The Family and Medical Leave Act is law, but it is changing over time through amendments, regulations, rules, and court decisions. The company makes every reasonable effort to keep this policy in compliance with all of these; however, if there is any place where this policy does not agree with the law and its interpretation, it is the company's intent to follow the law and may vary practice from this policy to do so.

Policy approved by:

Date

FMLA COMMUNICATIONS

The following section provides samples of communications that may be useful during absence and return-to-work events. Some of these communications are exclusively for the FMLA; however, some situations may require that you include ADA language that is provided in the various sections of the resource guide.

Employee Absent for Possible FMLA Circumstance

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Dear [Employee Name]:

On [date], we became aware that you have been absent from work under circumstances that may qualify for leave under the Family and Medical Leave Act (FMLA). The purpose of this letter is to provide you with information and the forms both you and your healthcare provider need to complete and return to us so that we may determine if the absence(s) may be designated as FMLA leave.

You will find enclosed the FMLA Notice and the [Company Name]'s FMLA policy. The notice includes the basic provisions of the FMLA and rights of eligible employees. [Company Name] uses a "rolling" 12-month period measured backward from the date the employee uses any FMLA leave.

Please review closely and retain both the notice and our policy, particularly the section on continuation of health insurance benefits, if you have not yet returned to work. Your portion of the health insurance premiums will be deducted from any pay you receive during your absence. If portions of your leave are unpaid, you must provide us with payment of your premium portion by the first of each month.

The following FMLA forms are enclosed:

Employee Request for FMLA Leave: You will need to complete this form and return it to us as soon as possible, but no later than 15 calendar days from the date of this notice. A return envelope is enclosed.

Certification from Healthcare Provider: You will need to give this form to your healthcare provider for completion. Your healthcare provider may return the completed form directly to us (using the enclosed return envelope) or to you for submission. Please be sure that this completed form is returned to us within 15 calendar days following the request or provide us a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. As stated in our FMLA policy, medical information received for FMLA leave is considered confidential and shall be disclosed only to those involved in the FMLA leave determination.

After receipt and review of the two forms, we will make a determination on the designation of your absence as FMLA leave. You will be notified in writing. If you have any questions or would like more information on FMLA leave, please contact [name, phone number].

Sincerely,

[Leave Administrator Name and Title]

Enclosures: Employee Request for FMLA Leave and Certification of Healthcare Provider

Copy: Employee confidential medical file

Letter Requesting Recertification

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Re: Recertification of Your Family and Medical Leave Act (FMLA) Medical Certification Form

Dear [Employee Name]:

This letter is being sent to you to request that you submit to the HR department within 15 calendar days an updated healthcare provider form, the FMLA Certification of Healthcare Provider for Employee's Serious Health Condition, WH-380.

Please give this form to your healthcare provider for completion. Your healthcare provider may return the completed form directly to us (using the enclosed return envelope) or to you for submission. Please be sure that this completed form is returned to us within 15 calendar days following the request or provide us with a reasonable explanation for the delay. Failure to provide recertification may result in a denial of your continuation of leave.

After receipt and review of the forms, we will make a determination on the continuing designation of your requested absence(s) as FMLA leave.

Please feel free to contact [name, phone number] if you have any questions or would like more information on the FMLA.

Sincerely,

[Leave Administrator Name and Title]

Enclosure: FMLA Certification of Healthcare Provider for Employee's Serious Health Condition (Form WH-380)

Copy: Employee confidential medical file

Notice of Failure to Return Certification by Deadline

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

RE: FML Certification and/or Declaration of Relationship Not Received

Dear [Employee Name]:

The Family and Medical Leave Act (FMLA) provides a type of leave intended to help employees balance work and life when a serious illness affects an employee or his or her family member. FMLA entitles eligible employees to take unpaid, job-protected leave for family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

On [date], a letter was sent to you asking you to complete and return, within 15 calendar days, the following forms related to your request under the Family and Medical Leave Act (FMLA):

[Name of Certification]

[Declaration of Relationship]

We have not yet received the completed form(s) or a reason for the delay. In order to designate your leave as approved FMLA, we need to receive the document(s) listed above. Enclosed is another [name of form(s) not received]. Please return the completed form(s) to me as soon as possible, but no later than seven (7) calendar days from this request. If a complete and sufficient certification is not received, your absences will not be designated as protected FML and may be considered unapproved.

Since your benefits may be impacted by this leave of absence, I recommend you contact the Disability Benefits Coordinator at [XXX.XXX.XXXX] for information on benefits continuation.

We wish you well and hope to see you back at work soon. Please contact me if you have any questions.

Sincerely,

[Leave Administrator Name and Title]

Enclosures: [Name(s) of form(s) enclosed]

Copy: Human Resources, Disability Benefits Coordinator

Confirmation of Conclusion of FMLA Leave

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Re: Conclusion of your Absence from Work Under the Family and Medical Leave Act

Dear [Employee Name]:

As you were notified at the beginning of your current period of absence taken under the Family and Medical Leave Act (FMLA), both the FMLA and the company's policy require you to return to work on the date on which that leave will be exhausted. Under the Family and Medical Leave Act, the maximum leave available is 12 workweeks per 12-month period, whether taken in one block or over a more extended period through the use of intermittent or reduced schedule leave.

Your leave period will conclude on [date]. Accordingly, you are expected back at work and must return on the following workday, [day and date]. Since your use of leave was linked to your own serious health condition and in accordance with our uniform company policy, you must provide certification from a healthcare provider that you are able to return to your job.

If you fail to return to work on the date indicated above, the company will conclude that you have abandoned your position, and your employment will be terminated. If there are additional circumstances that may be relevant or that you may wish to bring to the company's attention regarding your absence or your condition, please feel free to contact me in advance of your scheduled date of return.

We look forward to your return to work as scheduled or to hearing from you in advance of that date, should other circumstances be present.

Sincerely,

[Leave Administrator Name and Title]

Copy: Employee confidential medical file

Communication of Potential Interruption of Healthcare Coverage

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Re: Potential Termination of Healthcare Coverage

Dear [Employee Name]:

You were notified at the beginning of your current period of absence taken under the Family and Medical Leave Act (FMLA) that both the FMLA and the company's implementing policy require you to continue to make the same premium payments that ordinarily apply to your health insurance coverage while working, in order to maintain healthcare insurance coverage throughout your leave period.

This letter is to notify you that more than 30 days have passed since your premium was due to be received to maintain coverage for the month of [month and year].

This letter is intended to advise you that unless such payment is promptly remitted by [date] to the address previously identified, your coverage will cease 15 calendar days from the date of this letter, or [month, day, and year].

Please be advised that unless your failure to remit premiums relates to circumstances beyond your control (as defined by the U.S. Department of Labor, including the continuation, recurrence, or onset of your serious health condition or that of your covered family member), you may remain responsible for the sums advanced by the company to maintain coverage during your statutory leave. Please note, however, that even if your healthcare coverage is suspended during your period of leave, you will be restored to full coverage upon the conclusion of your leave and your return to work.

If you have any questions regarding healthcare benefits or other issues surrounding your leave, please contact the Human Resources Department.

Sincerely,

[Leave Administrator Name and Title]

Copy: Employee confidential medical file

Notice of Key Employee Status

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Re: Notice of Key Employee Status Under the Family and Medical Leave Act

Dear [Employee Name]:

On [date], you requested a leave of absence for [reason(s) for the leave].

This notice is sent to advise you that upon review, we have determined that it would cause the company substantial and grievous economic injury to reinstate you and that under the federal Family and Medical Leave Act (FMLA), we have the option of declining to reinstate you to employment because of your status as a "key employee". "Key employees" are salaried and are among the highest-paid 10% of our workforce.

We have decided to exercise that option, and you are hereby advised that the company is not able to reinstate you to your former position at the conclusion of your leave of absence. You have until [date] to inform Human Resources if you will exercise your right to leave, even though you may not be reinstated upon the conclusion. Otherwise, you will be expected to return to your position no later than [date].

Please contact [name, phone number] to discuss your options at this time or if you have any questions or would like more information about the FMLA.

Sincerely,

[Leave Administrator name and title]

Copy: Employee confidential medical file

FMLA FORMS

The following section provides additional samples of common forms used during absences being reviewed under the Family and Medical Leave Act.

Note that there may be differing requirements and restrictions between federal documentation and individual states. For example, California has stricter guidelines regarding what information may be requested and required on a medical certification.

Fitness for Duty Certification

Employee: _____

Department/Location: _____

Status: Full time Part time On leave since _____

You have my permission to contact the healthcare provider indicated on this certification for purposes of authentication and clarification related to this serious health condition, if necessary.

Signed _____ Date: _____

(Information below to be completed by healthcare provider)

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this requested fitness-for-duty certification.

Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member, or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Effective as of _____, the above-named employee is:

- released to work without restrictions; or
- able to perform all essential duties (see attached description of essential job duties); or
- released to work with restrictions (please describe restrictions as they relate to the attached description of essential job duties): _____

Name of healthcare provider: _____

Address: _____ Telephone: _____

Type of practice/specialty: _____

Signed _____ Date: _____

FMLA Leave Periodic Status Report

Employee: Please be advised that pursuant to the federal Family and Medical Leave Act, we are entitled to make periodic inquiries regarding any changes in your status and intentions to return to work at the conclusion of your leave.

Accordingly, please complete this form and return it to Human Resources, to the attention of _____, on or before _____.

Employee name: _____ Title: _____

Leave request dated: _____ Approved by: _____

Reason for leave: _____

I hereby reaffirm my intention to return to work on _____; or

You are hereby advised that I no longer intend to return to work on my scheduled return-to-work date for the following reason:

I request a new return-to-work date of _____; or

I do not intend to return to work.

Employee signature: _____ Date: _____

COMPARISON OF FEDERAL AND STATE LEAVE LAWS

Many states had laws in place that predated the federal FMLA statute. Since the passage of the federal law, other states have determined that aspects of the federal statute do not adequately protect their citizens and passed laws for their jurisdictions. As a result, there is a patchwork of laws that creates the need for a multi-faceted program for multi-state employers.

Overview

Family leave: The Family and Medical Leave Act (FMLA) provides up to 12 weeks of unpaid leave during a 12-month period to care for a newborn or adopted or foster child, to care for a family member, or to attend to the employee's own serious medical health condition. The law applies to private employers with 50 or more employees. The FMLA allows states and the District of Columbia to set standards that are more expansive than the federal law, and many have chosen to do so. For statutory provisions of jurisdictions with their own family leave laws, visit www.dmec.org/resources/state-and-local-leave-laws-resource/.

Paid family leave: As of the date of this publication, there are several states with active paid family leave laws and others that have passed but not yet enacted laws.

The first four states to pass paid family leave laws were consistent in how the programs were administered, utilized existing temporary disability insurance programs, and funded the programs through employee payroll deductions. However, as new states have added laws, we've seen wide differences in the administration and funding provisions.

As with the federal FMLA and state job protection leave laws, the newly developed paid family leave laws are similar to each other in some ways, but quite different in others. The following are the ways that these leave laws may differ:

- **Leave reason:** Essentially all the laws include bonding with a child and caring for a family member as covered leave reasons; however, some laws also include military exigency and serving as an organ or bone marrow donor as leave reasons.
- **Definition of a family member.** All the laws include child, parent, and spouse in the definition of a family member. Others offer more generous definitions, including domestic partners, grandparents, siblings, and individuals related by blood or affinity.
- **Length of leave.** The length of leave available varies from six weeks to as much as 26 weeks, depending on state provisions and the reason for leave.

- **Minimum increments of time.** One of the most complicated components of the paid leave landscape is the amount of time taken which can be compensated. States like California have no minimum, but others have requirements that the employee must initially be out for at least seven consecutive days or that the benefit will only be paid in increments of full days or one-fifth of the weekly schedule.
- **Funding source.** Essentially all the paid family leave programs require the employee pay into the program through a standard payroll deduction. Other states also have employer contribution requirements.
- **Benefit amount paid.** Almost as complex as increments of compensable time is the amount that is paid out. Some states calculate the benefit on quarterly earnings; whereas, others base it on the average weekly wage and have a "not to exceed" threshold.
- **Job protection rights:** Although the laws sometimes provide job protection, it is not always expressly stated. Some laws provide specific instructions regarding job reinstatement, but others do not have a written provision. As this is an area that differs from state to state, it is important to review other federal, state, or local laws which run concurrently that do offer job protection.

As new laws are enacted and existing laws change, it is critical for employers to remain knowledgeable on the provisions and requirements of all paid and unpaid leave laws. For up-to-date resources, visit <http://dmec.org/resources/state-and-local-leave-laws-resource/> or www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx.

Paid sick leave: Over the last several years, new paid sick leave laws have proliferated throughout the country. For the most up-to-date list of state and local laws, visit <https://www.abetterbalance.org/paid-sick-time-laws/?export>.

School activities leave: A number of states and the District of Columbia provide for a limited number of hours annually for parents to attend school-related events and activities for their children: **California**, 40 hours; **Colorado**, 18 hours; **District of Columbia**, 24 hours; **Illinois**, 8 hours; **Louisiana**, 16 hours; **Massachusetts**, 24 hours; **Minnesota**, 16 hours; **Nevada**, 4 hours; **North Carolina**, 4 hours; **Rhode Island**, 10 hours; and **Vermont**, 24 hours. **Nevada** makes it unlawful to terminate an employee for using leave to attend a child's school-related activities.

FMLA TRACKING SPREADSHEETS

Although there are increasing numbers of vendors and independent software programs to assist in tracking FMLA absences, some organizations may choose to track this time through spreadsheets. Following are a few examples of tracking spreadsheets. It is imperative that all absences are managed and tracked consistently and in a timely manner. In the event of an audit by the DOL or EEOC, the ability to provide up-to-date documentation is your number one safeguard against compliance concerns.

Individual Employee Tracking Sheet

Employee Name: _____

Employee ID: _____

Number of FMLA Weeks Available (Max: 12): x Hours Worked per Week: 40 = Total Number of Hours Available: 0

Start Date: End or Recertification Date:

Week of:	Does Not Count Toward FML Total		Counts Toward FML Total			Subtotal	FML Used for Week	Total FML Used	FML Remaining
	Hours Worked	Holiday/Other With Pay	Sick Leave Used	Vacation Used	Holiday/Other Without Pay				
3/19/2023						0	0	0	0
3/26/2023						0	0	0	0
4/2/2023						0	0	0	0
4/9/2023						0	0	0	0
4/16/2023						0	0	0	0
4/23/2023						0	0	0	0
4/30/2023						0	0	0	0
5/7/2023						0	0	0	0
5/14/2023						0	0	0	0
5/21/2023						0	0	0	0
5/28/2023						0	0	0	0
6/4/2023						0	0	0	0

Multiple Employee Tracking Sheet

Employee No.	Absence No.	Leave Reason	Designation	Family Member	Status	Absence Date	Absence Hours
123	1	EE Own Illness	FML,CFRA		Approved	9/27/2022	1
123	2	EE Own Illness	FML,CFRA		Approved	1/4/2023	9
123	3	EE Own Illness	FML,CFRA		Approved	1/5/2023	9
123	4	EE Own Illness	FML,CFRA		Approved	1/31/2023	3.5
456	1	Care of a Family Member	FML,CFRA	Spouse	Approved	12/29/2022	8
456	2	Care of a Family Member	FML,CFRA	Spouse	Approved	12/30/2022	6.5
456	3	Care of a Family Member	FML,CFRA	Spouse	Approved	1/9/2023	8
456	4	Care of a Family Member	FML,CFRA	Spouse	Approved	1/10/2023	8
456	5	Care of a Family Member	FML,CFRA	Spouse	Approved	1/11/2023	8

Common Absence Reason Codes

Company Leaves Reasons	Designation	Open/Close	Intermittent or Continuous
Employee's own illness	LOA for medical reasons	Open	Intermittent
Pregnancy	LOA for family care	Closed	Continuous
Care of a family member	LOA for bonding		
Bonding	LOA for personal reasons		
Injured service member	Education leave	Status	Family Member
Military exigency	Sabbatical leave	Pending	Child
Personal	Extended military leave	Approved	Parent
Education	PDL only	Not approved	Spouse
Sabbatical	PDL, FML		Domestic partner
Military service	FML only		Other
	FML, CFRA		
	CFRA only		
	Other		

AMERICANS WITH DISABILITIES ACT

Several resources are available to provide direction on the ADA. The U.S. Department of Justice, Department of Labor (DOL), and Equal Employment Opportunity Commission (EEOC) are a few trusted resources. One particular publication that provides a well-organized wealth of knowledge is the employer's guide from the Job Accommodation Network (JAN).

Below you will find links to all of these sites.

U.S. Justice Department	www.ADA.gov
U.S. Labor Department	https://www.dol.gov/general/topic/disability/ada
Equal Employment Opportunity Commission	https://www.eeoc.gov/eeoc/publications/fs-ada.cfm
Job Accommodation Network	https://askjan.org/
Library	https://askjan.org/ADA-Library.cfm
For employers	https://askjan.org/info-by-role.cfm
Employer's guide	https://askjan.org/publications/employers/employers-guide.cfm

In an effort to give you ease of access, the following subsections in the JAN *Employers' Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act (ADA)* are reprinted here:

ADA Basics

- What is the ADA?
- Who must comply with Title I of the ADA?
- Who is protected by Title I of the ADA?
- What is a reasonable accommodation?

Reasonable Accommodations for Applications and Job Interviews

- Job advertisements and applications
- Job interviews
- Post job offer

Reasonable Accommodation for Employees

- Policies and procedures
- Accommodation requests
- Determining effective accommodations
- Accommodation issues
 - Work-site accessibility
 - Job restructuring
 - Modified work schedules and leave
 - Modified policies
 - Equipment and services

Reasonable Accommodation for Employees on Leave and Former Employees

- Health and disability insurance
- Bonuses and promotions
- Reductions in force and layoffs

The ADA does not specifically outline required notices and forms. Therefore, in addition to the resources found within JAN, also provided are a sample policy and sample communications and forms. Each of these samples should be assessed for appropriateness for each circumstance. All communications should be reviewed by your legal counsel to ensure that they are in line with your organization's specific policies and culture.

JAN RESOURCE: ADA Basics

This section provides answers to basic questions about the ADA. Most of the answers come from formal and informal guidance from the EEOC, the federal agency that enforces the ADA. When available, links to the EEOC guidance are provided.

What is the ADA?

The ADA is a federal civil rights law that was passed in 1990 and went into effect beginning in 1992. Its purpose is to protect people with disabilities from discrimination in employment, in the programs and activities offered by state and local governments, and in accessing the goods and services offered in places like stores, hotels, restaurants, football stadiums, doctors' offices, beauty parlors, and so on. The focus of this guide is Title I of the ADA, which prohibits discrimination in employment and requires employers to provide reasonable accommodations for employees with disabilities.

For more information about the ADA, see this overview at <https://askjan.org/articles/The-Americans-with-Disabilities-Act-A-Brief-Overview.cfm>.

For a copy of Title I of the ADA, see <https://www.eeoc.gov/laws/statutes/ada.cfm>.

Who must comply with Title I of the ADA?

Only "covered entities" must comply with Title I of the ADA. The term covered entities includes employers with 15 or more employees, employment agencies, labor organizations, and joint labor-management committees. For simplicity, this guide will refer to covered entities as "employers."

For more information about covered entities, see <http://www.eeoc.gov/policy/docs/threshold.html#2-III-B>.

Who is protected by Title I of the ADA?

Title I protects "qualified employees with disabilities." The term qualified means that the individual satisfies the skill, experience, education, and other job-related requirements of the position sought or held, and can perform the essential job functions of the position, with or without reasonable accommodation.

For additional information about the definition of qualified, see <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm#spy-scroll-heading-22>.

The term *employee* means, "an individual employed by an employer." The question of whether an employer-employee relationship exists is fact-specific and depends on whether the employer controls the means and manner of the worker's work performance.

For additional information about the definition of employee, see <http://www.eeoc.gov/policy/docs/threshold.html#2-III-A-1>.

The term *disability* means: (1) a person who has a physical or mental impairment that substantially limits one or more major life activities, (2) a person with a record of a physical or mental impairment that substantially limits one or more major life activities, and (3) a person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

For additional information about the definition of disability, visit How to Determine Whether a Person has a Disability under the Americans with Disabilities Act (ADA) at https://askjan.org/publications/consultants-corner/vol05iss04.cfm?cssearch=1905805_1.

On September 25, 2008, the ADA Amendments Act (ADAAA) was passed. This Act changes the interpretation of the definition of disability. For additional information on the ADAAA, visit Accommodation and Compliance Series: The ADA Amendments Act of 2008, at <https://askjan.org/publications/Topic-Downloads.cfm?pubid=363138>.

The term *essential job functions* means the fundamental job duties of the employment position that the individual with a disability holds or desires. The term essential functions does not include marginal functions of the position.

For additional information about essential functions, visit the EEOC's Title I Technical Assistance Manual at <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm#spy-scroll-heading-29>.

What is a reasonable accommodation?

A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability.

The ADA requires reasonable accommodation in three aspects of employment: 1) to ensure equal opportunity in the application process, 2) to enable a qualified individual with a

disability to perform the essential functions of a job, and 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.

Examples of reasonable accommodations include making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant position.

For additional information about reasonable accommodation under the ADA, visit Reasonable Accommodation and Undue Hardship (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>.

JAN RESOURCE:

Reasonable Accommodations for Applications and Interviews

The ADA applies to all aspects of employment, including job advertisements, job applications, job interviews, and post-offer medical examinations. Although many of the ADA rules that apply to applicants and new hires are the same as the rules for employees, there are some differences. This section discusses the differences.

Job Advertisements and Applications

What information do employers have to provide about the ADA on job advertisements and job applications?

No specific information about the ADA is required on job advertisements or job applications. However, the EEOC advises employers to include information about the essential functions of the job in job announcements, advertisements, and other recruitment notices because specific information about essential functions will attract applicants, including individuals with disabilities, who have appropriate qualifications.

The EEOC also advises employers to consider including a statement in job advertisements and notices that they do not discriminate on the basis of disability or other legally prohibited bases. The EEOC provides the following example: “We are an Equal Opportunity Employer. We do not discriminate on the basis of race, religion, color, sex, age, national origin or disability.”

For additional information, see the EEOC’s Title I Technical Assistance Manual at <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm>.

Does the ADA require affirmative action in the hiring of people with disabilities?

No. The ADA is a nondiscrimination law. It does not require employers to undertake special activities to recruit people with disabilities. However, it is consistent with the purpose of the ADA for employers to expand their “outreach” to sources of qualified candidates with disabilities. Recruitment activities that have the effect of screening out potential applicants with disabilities may violate the ADA.

For example: If an employer conducts recruitment activity at a college campus, job fair, or other location that is physically inaccessible, or does not make its recruitment activity accessible at such locations to people with visual, hearing or other disabilities, it may be liable if a charge of discrimination is filed.

For more information, see the EEOC’s Title I Technical Assistance Manual at <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm>.

Does the ADA allow affirmative action in the hiring of people with disabilities?

Employers may invite applicants to voluntarily self-identify for purposes of the employer’s affirmative action program if the employer is undertaking affirmative action because of a federal, state, or local law that requires affirmative action for individuals with disabilities, or the employer is voluntarily using the information to benefit individuals with disabilities.

According to the EEOC, if an employer invites applicants to voluntarily self-identify in connection with providing affirmative action, the employer must state clearly that the information requested is used solely for affirmative action purposes, that it is being requested on a voluntary basis, that it will be kept confidential in accordance with the ADA, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with the ADA.

For additional information, see Pre-Employment Disability-Related Inquiries and Medical Exams at <http://www.eeoc.gov/policy/docs/preemp.html>.

Where can employers find qualified applicants with disabilities?

According to the U.S. Department of Labor, Office of Disability Employment Policy (ODEP), qualified applicants with disabilities can be located through various resources, including Vocational Rehabilitation (VR). In addition, ODEP co-sponsors the Workforce Recruitment Program (WRP) to

connect public and private sector employers nationwide with postsecondary students and recent graduates with disabilities and many colleges and universities have coordinators of services for students with disabilities who can be helpful in recruitment. Employers may also be able to locate qualified applicants with disabilities by contacting local independent living centers or organizations representing people who have specific disabilities.

For a list of VR offices by state, visit https://askjan.org/concerns/State-Vocational-Rehabilitation-Agencies.cfm?cssearch=1905928_1.

For information about WRP, visit <https://www.dol.gov/agencies/odep/program-areas/employers/workforce-recruitment-program>.

For free consulting services and resources to support the recruitment and hiring of people with disabilities, visit the Employer Assistance and Resource Network (EARN) at <http://askearn.org>.

What accommodations do employers have to provide during the application process?

Employers have an obligation to make reasonable accommodations to enable applicants with disabilities to apply for jobs. For example, information about jobs should be available in a location that is accessible to people with mobility impairments. If a job advertisement provides only a telephone number to call for information, a TDD (telecommunication device for the deaf) number should be included, unless a telephone relay service has been established. Printed job information in an employment office or on employee bulletin boards should be made available, as needed, to persons with visual or other reading impairments. Preparing information in large print will help make it available to some people with visual impairments. Information can be recorded on a cassette or read to applicants with more severe vision impairments and those who have other disabilities that limit reading ability.

For more information about making the application process accessible, see the EEOC's Title I Technical Assistance Manual at <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm>.

Do employers have to make on-line application processes accessible?

Employers must either make their on-line application processes accessible or provide an alternative means for people with disabilities to apply for jobs, unless they can show that doing so would cause an undue hardship.

For information regarding making on-line applications accessible, visit <https://askjan.org/topics/onlineapps.cfm>.

What medical questions can employers ask on job applications?

Employers cannot ask disability-related questions before an offer of employment is made. In general, this means that employers cannot ask questions on job applications that are likely to elicit information about a disability. For example, employers cannot ask whether an applicant has a physical or mental impairment, has received workers' compensation, or was ever addicted to illegal drugs. For more examples, visit Pre-Offer, Disability-Related Questions: Dos and Don'ts at <https://askjan.org/articles/EAPS/upload/preofferEAP.doc>.

For additional information about pre-employment medical questions, see Pre-Employment Disability-Related Inquiries and Medical Exams at <http://www.eeoc.gov/policy/docs/preemp.html>.

How can employers accommodate applicants with disabilities during pre-employment testing?

The method of accommodation depends on the individual applicant's limitations and the type of test involved, so each situation must be approached on a case by case basis. As a starting point, JAN put together a publication that provides a broad discussion of potential accommodations for testing. The publication is called Testing Accommodations and can be viewed at https://askjan.org/topics/test.cfm?cssearch=1985289_1.

Do employers have to have job descriptions?

According to the EEOC, the ADA does not require employers to develop or maintain job descriptions. A written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence in determining essential functions along with other relevant factors. However, the job description will not be given greater weight than other relevant evidence.

The ADA does not limit an employer's ability to establish or change the content, nature, or functions of a job. It is the employer's province to establish what a job is and what functions are required to perform it. The ADA simply requires that an individual with a disability's qualifications for a job be evaluated in relation to the job's essential functions.

For more information about job descriptions, visit Job Descriptions at <https://askjan.org/topics/jobdesc.cfm>.

Job Interviews**What medical questions can employers ask during a job interview?**

Under the ADA, employers may not ask disability-related questions or conduct medical examinations until after they make a conditional job offer to an applicant. This helps ensure that an applicant's possible hidden disability (including a prior history of a disability) is not considered before employers evaluate an applicant's non-medical qualifications. Employers may not ask disability-related questions or require a medical examination pre-offer even if they intend to look at the answers or results only at the post-offer stage.

Although employers may not ask disability-related questions or require medical examinations at the pre-offer stage, they may do a wide variety of things to evaluate whether an applicant is qualified for the job, including asking about an applicant's ability to perform specific job functions, asking about an applicant's non-medical qualifications and skills, and asking applicants to describe or demonstrate how they would perform job tasks.

For more examples, visit Job Application/Interview Stage Dos and Don'ts at <https://askjan.org/articles/Dos-and-Donts-of-Interviewing.cfm>.

For additional information, visit EEOC's Pre-Employment Disability-Related Inquiries and Medical Exams at <http://www.eeoc.gov/policy/docs/preemp.html>.

Where can employers get information about disability etiquette?

There are a variety of resources for information about disability etiquette. JAN provides a list of some of the available resources on its website at <http://askjan.org/topics/disetiq.htm>.

What accommodations must be provided for job interviews?

Employers have an obligation to make reasonable accommodations to enable applicants with disabilities to participate in the interview process. Accommodations for interviews may include: an accessible interview location for people with mobility impairments, a sign language interpreter for a person who is deaf, a reader for a person who is blind, and modified testing for a person with a learning disability.

For more information about making the job interviews accessible, see the EEOC's Title I Technical Assistance Manual at <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm>.

Post Job Offer**What constitutes a valid job offer?**

A job offer is valid if the employer has evaluated all relevant non-medical information that it reasonably could have obtained and analyzed prior to giving the offer. There may be times when an employer cannot reasonably obtain and evaluate all non-medical information at the pre-offer stage. If an employer can show that is the case, the offer would still be considered a real offer.

Employers do not have to limit offers to current vacancies; they can give offers to fill current vacancies or reasonably anticipated openings. Employers may also give offers that exceed the number of vacancies or reasonably anticipated openings, but must comply with the ADA when taking people out of the pool to fill actual vacancies. The employer must notify an individual (orally or in writing) if their placement into an actual vacancy is in any way adversely affected by the results of a post-offer medical examination or disability-related question.

If an individual alleges that disability has affected their placement into an actual vacancy, the EEOC will carefully scrutinize whether disability was a reason for any adverse action. If disability was a reason, the EEOC will determine whether the action was job-related and consistent with business necessity.

For additional information, visit EEOC's Pre-Employment Disability-Related Inquiries and Medical Exams at <http://www.eeoc.gov/policy/docs/preemp.html>.

What medical questions can employers ask once a job offer has been made?

According to the EEOC, once a conditional job offer is made and before an employee starts work, employers may ask any disability-related questions they choose and they may require medical examinations as long as this is done for all entering employees in a particular job category.

For additional information, visit EEOC's Pre-Employment Disability-Related Inquiries and Medical Exams at <http://www.eeoc.gov/policy/docs/preemp.html>.

Can employers rescind a job offer without violating the ADA?

In some cases, employers may be able to rescind a job offer without violating the ADA. If an employer rejects an applicant after a post offer disability-related question or medical examination and the applicant files a complaint with the EEOC alleging discrimination, EEOC investigators will closely scrutinize whether the rejection was based on the results of

that question or examination. If the question or examination screens out an individual because of a disability, the employer must demonstrate that the reason for the rejection is job-related and consistent with business necessity.

In addition, if the individual is screened out for safety reasons, the employer must demonstrate that the individual poses a “direct threat.” This means that the individual poses a significant risk of substantial harm to them or others, and that the risk cannot be reduced below the direct threat level through reasonable accommodation.

JAN RESOURCE: Reasonable Accommodation for Employees

One of the key non-discrimination requirements of Title I of the ADA is the obligation to provide reasonable accommodation for employees with disabilities. This section provides information about what policies and procedures might be useful, how to recognize and handle accommodation requests, how to determine effective accommodations, and what types of accommodations might be reasonable.

JAN RESOURCE: Policies and Procedures

Are there specific policies and procedures employers must follow when trying to accommodate an employee with a disability?

There are no specific policies or procedures that employers must follow when trying to accommodate an employee with a disability. However, employers may want to develop formal policies and procedures for several reasons. First, if supervisors, managers, and HR professionals have formal policies and procedures to refer to, they are more likely to handle accommodation requests properly and consistently. Second, a formal policy that is shared with employees helps employees know what to expect if they request an accommodation and also helps them understand that other employees might be requesting and receiving accommodations. Finally, formal procedures help employers document their efforts to comply with the ADA.

Where can employers get sample accommodation policies and procedures?

JAN and the EEOC have sample accommodation policies and procedures on their websites:

Sample policies at https://askjan.org/topics/Sample-and-Partner-Examples.cfm?cssearch=1905943_1.

Five Practical Tips for Providing and Maintaining Effective Job Accommodations at <https://askjan.org/articles/EAPS/upload/FivePracticalTips.doc>.

Establishing Procedures to Facilitate the Provision of Reasonable Accommodation at http://www.eeoc.gov/policy/docs/accommodation_procedures.html.

EEOC’s Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures under Executive Order 13164 at http://www.eeoc.gov/policy/docs/implementing_accommodation.html.

Do employers have any obligation to provide temporary accommodations while researching an employee’s accommodation request?

According to informal guidance from the EEOC, there is no definite answer to this question; it depends on the situation. In some circumstances, it may be a violation of the ADA for an employer to fail to make temporary arrangements to keep an employee working while the employer researches the employee’s accommodation request. From a practical standpoint, employers should try to make temporary accommodations, even beyond the requirements of the ADA, because doing so demonstrates the employer’s good faith efforts to accommodate. For example, if an employee cannot perform an essential function of his job and requests an accommodation that requires some research, the employer should consider temporarily removing the essential function until a permanent accommodation can be made. If an employer chooses to do this, the employer should make clear to the employee that the interim accommodation is temporary.

Accommodation Requests

How can employers recognize an accommodation request?

According to the EEOC, an individual may use “plain English” and need not mention the ADA or use the phrase “reasonable accommodation” when requesting an accommodation. Therefore, any time an employee indicates that they are having a problem and the problem is related to a medical condition, the employer should consider whether the employee is making a request for accommodation under the ADA.

The EEOC provides the following examples:

Example A: An employee tells her supervisor, “I’m having trouble getting to work at my scheduled starting time because of medical treatments I’m undergoing.” This is a request for a reasonable accommodation.

Example B: An employee tells his supervisor, “I need six weeks off to get treatment for a back problem.” This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

For additional EEOC examples and supporting information, visit <http://www.eeoc.gov/policy/docs/accommodation.html>.

Who should handle accommodation requests?

Initially, the person receiving an accommodation request should respond, even if the response is merely to explain the company’s accommodation process and refer the employee on to the appropriate person to handle the request. Employers may want to designate a person to handle accommodation requests and then train all supervisors, managers, foremen, crew leaders, HR representatives, and others in positions that involve supervision of employees to consult with that designated person if they receive an accommodation request.

Can employers ask an employee whether he/she needs an accommodation?

According to the EEOC, an employer may ask an employee with a known disability whether he/she needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. For example, an employer could ask a deaf employee who is being sent on a business trip if he/she needs reasonable accommodation. Or, if an employer is scheduling a luncheon at a restaurant and is uncertain about what questions he/she should ask to ensure that the restaurant is accessible for an employee who uses a wheelchair, the employer may first ask the employee. An employer also may ask an employee with a disability who is having performance or conduct problems if he/she needs reasonable accommodation.

Does the ADA have specific accommodation request forms that employers must use?

No, there are no official request forms under the ADA. For employers that want to have a written request, JAN developed a sample request form located at <https://askjan.org/topics/Sample-Forms.cfm#spy-scroll-heading-1>.

What should employers do when they receive an accommodation request?

According to the EEOC, the employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual’s functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, he/she does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained. Employers can always contact JAN free of charge.

What medical information can employers ask for when an employee requests accommodation?

Under the ADA, employers must limit the scope of a medical inquiry in response to an accommodation request. When the disability or need for accommodation is not obvious, an employer may require that the employee provide medical documentation to establish that the employee has an ADA disability, to show that the employee needs the requested accommodation, and to help determine effective accommodation options. Although the ADA limits the scope of medical requests, it does not include specific forms for requesting medical information. For employers who want to develop a form, JAN provides a sample format that employers can use as a guide. The form is located at <https://askjan.org/topics/Sample-Forms.cfm#spy-scroll-heading-1>.

Determining Effective Accommodations

How can employers determine effective accommodations?

In most situations, employers should first consult with the

employee who requested the accommodation to clarify what the individual needs and identify the appropriate reasonable accommodation. Often the employee will be the best resource for information about accommodation needs. When the employee does not have all the necessary information or when an employer wants to explore other options, the next step may be to request medical information from the employee's healthcare provider.

By talking with the employee who requested the accommodation and obtaining medical information if needed, the employer should be able to identify what the problem is, which is the first step in determining effective accommodation solutions. The employer needs to know what specific symptoms and functional limitations are creating barriers to accessing the workplace, performing job tasks, or benefiting from an equal employment opportunity. It may also be helpful to know if the employee's limitations are predictable, subject to change over time, stable, or progressive. While this information may not always be known, when available, the information can be very helpful in selecting a long-term, effective accommodation solution.

Once the employee's limitations and abilities are identified, the next step is to determine how they impact the employee's ability to perform the job. To make this determination, the employer needs to consider what specific job tasks, work environments, equipment, or policies are creating barriers to successful job performance. A good job description is a starting point, but does not always provide all the information needed. Sometimes it may be necessary to go beyond the traditional job description and consider other factors, such as what equipment is used to perform a task, where the work is performed, and why certain policies are being followed.

After the employer identifies the employee's limitations and abilities and determines how they impact job performance, the employer is ready to consider accommodation options.

For more information on the accommodation process, visit

JAN's Five Practical Tips For Providing And Maintaining Effective Job Accommodations at <https://askjan.org/articles/EAPS/upload/FivePracticalTips.doc> and JAN's Interactive Process at <https://askjan.org/topics/interactive.cfm>.

Where can employers get information about the types of accommodations that might be useful?

JAN provides free consulting services for employers seeking accommodation ideas. JAN also maintains an extensive website with accommodation idea publications and a Searchable Online Accommodation Resource (SOAR),

which allows employers to independently search for accommodation solutions. JAN's website for SOAR is <https://askjan.org/soar.cfm>.

Who chooses an accommodation?

According to the EEOC, employers get to choose among effective accommodation options. If more than one accommodation would be effective for the individual with a disability, or if the individual would prefer to provide his or her own accommodation, the individual's preference should be given first consideration.

What accommodations are not considered reasonable?

Reasonable accommodation does not include removing essential job functions, creating new jobs, and providing personal need items such as eye glasses and mobility aids. Nothing in the ADA prohibits employers from providing these types of accommodations; they simply are not required accommodations.

If an employer provides an accommodation the ADA does not require, will that set a precedent for the next time an employee needs the same type of accommodation?

The EEOC encourages employers to go beyond the requirements of the ADA if they choose and will not penalize them for doing so. However, if employers choose to do more than required under the ADA, they should do so in a non-discriminatory manner. For example, employers should not do more only for employees with physical disabilities and not for people with mental disabilities.

Accommodation Issues

Work-Site Accessibility

Do employers have to modify the work-site if they do not have an employee with a mobility impairment?

Under Title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's work needs. The employer does not have to make changes to provide access in places or facilities that will not be used by that individual for employment-related activities or benefits. However, private employers that occupy commercial facilities or operate places of public accommodation and state and local governments must conform to more extensive accessibility requirements under Title III and Title II when making alterations to existing facilities or undertaking new construction.

When making changes to meet an individual's needs under Title I, an employer will find it helpful to consult the applicable Department of Justice accessibility guidelines as a starting point. It is advisable to make changes that conform to these guidelines, if they meet the individual's needs and do not impose an undue hardship, since such changes will be useful in the future for accommodating others. However, even if a modification meets the standards required under Title II or III, further adaptations may be needed to meet the needs of a particular individual.

For example: A restroom may be modified to meet standard accessibility requirements (including wider door and stalls and grab bars in specified locations) but it may be necessary to install a lower grab bar for a very short person in a wheelchair so that this person can transfer from the chair to the toilet.

Although the requirement for accessibility in employment is triggered by the needs of a particular individual, employers should consider initiating changes that will provide general accessibility, particularly for job applicants, since it is likely that people with disabilities will apply for jobs in the future.

From the EEOC's Title I Technical Assistance Manual, chapter 3, section 3.1 at <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm#spyscroll-heading-33>.

For a copy of the ADA Accessibility Guidelines, visit <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/adaag>.

Do employers have to provide accommodations for emergency evacuation?

If an employer has an emergency evacuation plan for employees, the plan should include employees with disabilities. If an employer does not have an evacuation plan for all employees, the employer must consider accommodations on a case by case basis for any employee with a disability who requests accommodations for emergency evacuation.

For information about accommodating employees during emergency evacuation, visit Emergency Evacuation Procedures for Employees with Disabilities at <https://askjan.org/topics/emevac.cfm>.

For information about emergency preparedness and people with disabilities, visit <https://www.dol.gov/agencies/odep/publications/fact-sheets/effective-emergency-preparedness-planning-addressing-the-needs-of-employees-with-disabilities>.

Do employers have to provide parking as an accommodation?

Parking is considered a benefit of employment. Under the ADA, employers must make reasonable accommodations that enable employees with disabilities to enjoy equal benefits of employment. Therefore, if an employer provides parking for all employees, then it must provide parking for employees with disabilities, unless it would pose an undue hardship to do so. A tougher question is whether an employer has to provide parking for employees with disabilities when it does not provide parking for other employees.

There are two ways to look at this issue. First, you could argue that an employer is only required to provide reasonable accommodations that eliminate barriers in the work environment and parking is outside the work environment. Therefore, an employer would not have to provide parking as an accommodation, unless parking is provided for other employees. Alternatively, you could argue that an employer is required to provide parking as an accommodation because otherwise some employees with disabilities would not be able to access the work-site, and therefore providing parking is a way to provide equal employment opportunities to employees with disabilities. Unfortunately, we cannot say which argument is correct.

For more information, visit Parking and the ADA, Act I at <https://askjan.org/topics/parking.cfm>.

Do employers have to provide transportation to and from work as an accommodation?

As mentioned in the prior section, an employer is required to provide reasonable accommodations that eliminate barriers in the work environment only, not ones that eliminate barriers outside of the work environment. Therefore, an employer would not be required to provide transportation as a reasonable accommodation for a commute to work, unless the employer generally provides transportation for its employees. However, where an employer's policy regarding work schedules creates a barrier for an individual whose disability interferes with his or her ability to commute to work, the employer must modify that policy as a reasonable accommodation unless it would impose an undue hardship. For example, an individual who uses a wheelchair and commutes by public transportation may need a later arrival time in inclement weather.

From an EEOC informal guidance letter dated June 15, 1997.

Job Restructuring

According to the EEOC, job restructuring includes modifications such as: reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and altering when and/or how a function, essential or marginal, is performed.

An employer never has to reallocate essential functions as a reasonable accommodation, but can do so if it wishes.

How do employers determine what job duties are essential?

JAN put together a publication called Job Descriptions at <https://askjan.org/topics/jobdesc.cfm>, which includes a discussion about how to determine whether a job duty is essential.

The EEOC also provides information about determining essential functions at section 2.3(a) of its Title I Technical Assistance Manual at <https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm#spy-scroll-heading-29>.

Do employers have to provide light duty for employees with disabilities?

The term “light duty” has a number of different meanings in the employment setting. Generally, “light duty” refers to temporary or permanent work that is physically or mentally less demanding than normal job duties. Some employers use the term “light duty” to mean simply excusing an employee from performing those job functions that he/she is unable to perform because of an impairment. “Light duty” also may consist of particular positions with duties that are less physically or mentally demanding, created specifically for the purpose of providing alternative work for employees who are unable to perform some or all of their normal duties. Further, an employer may refer to any position that is sedentary or is less physically or mentally demanding as “light duty.”

In the following discussion, the term “light duty” refers only to particular positions created specifically for the purpose of providing work for employees who are unable to perform some or all of their normal duties.

An employer need not create a light duty position for a non-occupationally injured employee with a disability as a reasonable accommodation. The principle that the ADA does not require employers to create positions as a form of reasonable accommodation applies equally to the creation of light duty positions. However, an employer must provide other forms of reasonable accommodation required under the ADA. For example, subject to undue hardship, an

employer must: 1) restructure a position by redistributing marginal functions that an individual cannot perform because of a disability, 2) provide modified scheduling (including part time work), or 3) reassign a non-occupationally injured employee with a disability to an equivalent existing vacancy for which he/she is qualified. Accordingly, an employer may not avoid its obligation to accommodate an individual with a disability simply by asserting that the disability did not derive from an occupational injury.

On the other hand, if an employer reserves light duty positions for employees with occupational injuries (does not create new light duty jobs when needed), the ADA requires it to consider reassigning an employee with a disability who is not occupationally injured to such positions as a reasonable accommodation. This is because reassignment to a vacant position and appropriate modification of an employer’s policy are forms of reasonable accommodation required by the ADA, absent undue hardship. An employer cannot establish that the reassignment to a vacant reserved light duty position imposes an undue hardship simply by showing that it would have no other vacant light duty positions available if an employee became injured on the job and needed light duty.

Note that an employer is free to determine that a light duty position will be temporary rather than permanent.

For more information, visit Workers’ Compensation and the ADA (EEOC) at <http://www.eeoc.gov/policy/docs/workcomp.html>.

Modified Work Schedules and Leave

In its publication on reasonable accommodation and undue hardship, the EEOC discusses modified work schedules and leave as accommodations. The information is available at <http://www.eeoc.gov/policy/docs/accommodation.html>. However, some issues regarding work schedules and leave are not addressed in the guidance.

Do employers have to change full-time jobs to part time as an accommodation under the ADA?

Although part-time work is a form of reasonable accommodation, employers probably do not have to change existing full-time jobs to part time as an accommodation under the ADA. According to informal guidance from the EEOC, when an employee is asking to cut their hours significantly, then, in essence, the employee is asking for a reassignment to an existing part-time job. The precise legal rationale has been debated in courts, but any way you look at it, you fundamentally change a job when you significantly cut the hours (i.e., in half). One argument is that cutting a job in half necessarily entails cutting essential functions if “essential function” embodies the amount of work to be accomplished.

You could also say that you would be cutting the production standard, which is not simply an hourly standard, but also a standard that measures how much should be produced in a full day.

Another legal argument is to say that significantly reducing the hours of a job would be changing a qualification standard of the job; specifically, the ability to work full time. The employer should always be able to show that it created a full-time position because there is sufficient work that requires working full time. As such, the qualification to work full time meets the business necessity standard, and thus it is not a reasonable accommodation to cut the hours in half.

That is why a request for part-time work by an employee often ends up really being a request for a reassignment to an existing part-time job. If there is only a minimal cut in hours, it might be possible to show that the essential functions, the productivity standard, and/or a qualification standard of the position will not be changed, despite the slight decrease in hours. In this case, an employer might need to eliminate marginal functions to permit the employee to complete all the essential functions.

If an employer chooses to change a full-time job to part time, does the employer have to maintain the employee's full-time pay and benefits?

No, not under the ADA unless the employer maintains pay and benefits for employees without disabilities whose jobs change from full time to part time. Employers should consider whether other laws apply, such as wage and hour laws.

How much leave time must an employer provide as an accommodation under the ADA?

Unlike the Family and Medical Leave Act (FMLA), which requires covered employers to provide up to 12 weeks of leave, there is no specific amount of leave time required under the ADA. Instead, leave time is approached like any other accommodation request: the employer must provide the amount of leave needed by the employee unless doing so poses an undue hardship.

For additional information regarding the interplay between the ADA and the FMLA, visit FMLA, ADA, and Title VII (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/fmlaada.html>.

Modified Policies

Can employers apply a no-fault attendance policy?

No. If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must

modify its “no-fault” leave policy to provide the employee with the additional leave, unless it can show that: 1) there is another effective accommodation that would enable the person to perform the essential functions of their position, or 2) granting additional leave would cause an undue hardship. Modifying workplace policies, including leave policies, is a form of reasonable accommodation.

From Reasonable Accommodation and Undue Hardship (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>.

Can employers have 100% restriction-free policies?

According to informal guidance from the EEOC, requiring an employee to be 100% restriction-free can violate the ADA when applied to an employee with a disability. Although some courts have characterized such policies as per se violations of the ADA, most courts require that the employee meet the definition of disability before being allowed to challenge the policy under the ADA. If an employee does not meet the first two prongs, he may be able to show that his employer regarded him as having a disability, typically by relying on evidence that the employer would not let him return to his regular job or any other job in a class of jobs or broad range of jobs in various classes.

Can employers enforce conduct rules?

An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability. An employer must make reasonable accommodation to enable an otherwise qualified employee with a disability to meet such a conduct standard in the future, barring undue hardship, except where the punishment for the violation is termination. Since reasonable accommodation is always prospective, an employer is not required to excuse past misconduct even if it is the result of the individual's disability.

From Reasonable Accommodation and Undue Hardship (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>.

For additional information, visit The ADA: Applying Performance and Conduct Standards to Employees with Disabilities at <http://www.eeoc.gov/facts/performance-conduct.html>.

Do employers have to modify dress codes or hygiene requirements as an accommodation?

Most authorities (including the EEOC) treat dress codes and hygiene requirements as “conduct rules”, but classify them as the type of conduct rule that must be justified as job-related and consistent with business necessity before being enforced. Therefore, if a person with a disability requests modification of a dress code or hygiene requirement as an accommodation, an employer must consider allowing the modification unless the employer can show that the dress code or hygiene requirement is necessary for the job at issue.

For information about handling hygiene issues in the workplace, visit <https://askjan.org/disabilities/Body-Odor.cfm>.

For additional information, visit The ADA: Applying Performance and Conduct Standards to Employees with Disabilities at <http://www.eeoc.gov/facts/performance-conduct.html>.

Do employers have to consider allowing employees to work at home as an accommodation?

Yes. Changing the location where work is performed may fall under the ADA’s reasonable accommodation requirement of modifying workplace policies, even if the employer does not allow other employees to telework. However, an employer is not obligated to adopt an employee’s preferred or requested accommodation and may instead offer alternate accommodations as long as they would be effective.

For more information about work at home as an accommodation, visit Work at Home/Telework as a Reasonable Accommodation at <http://www.eeoc.gov/facts/telework.html>.

Equipment and Services

If an employer requires work equipment, such as steel-toed work boots or stethoscopes, and an employee with a disability needs specialized equipment that costs more than the regular equipment (e.g., customized boots or amplified stethoscopes), does the employer have to pay the extra cost for the specialized equipment?

If the equipment or device is a personal-use item, then the employer does not have to provide it. For example, if an employee has to wear a special type of boot all the time, the employer does not have to pay for it. Common items that fall into this category are hearing aids, glasses, and medication.

On the other hand, if the boots are necessary only for work and constitute an accommodation, the employer would have to pay the entire cost of the boot, unless it would be an undue hardship to do so.

There is also a tool of the trade issue here. If the boots constitute a tool of the trade, that is the boots are necessary to get the job done, then the employer must pay for the specialized boot as a form of equal treatment if the employer provides the boots for other employees. However, if other employees buy their own boots and they own them, then an employee with a disability can be required to buy his own boots even if they cost more.

If an employee has a limitation such as a hearing impairment, but chooses not to purchase a hearing aid, does the employer then have an obligation to provide a hearing aid at work?

The fact that an individual chooses to forego personal use items at home (a wheelchair, hearing aids, protective clothing) does not mean that such items become work-related because they are needed on the job. The limitations prompting the need for the hearing aids exist on and off the job and thus they remain personal use items.

However, employers may still have to provide a reasonable accommodation even though they are not obligated to provide personal use items. For example, an employer might have to provide an amplified telephone or alternative means of communication for an employee with a hearing impairment who does not choose to use hearing aids.

Do employers have to allow employees with disabilities to use personal need items (canes, walkers, wheelchairs, hearing aids) or services (personal attendant care, service animals) in the workplace?

Allowing an employee with a disability to use a personal need item or service in the workplace is a form of reasonable accommodation. For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee.

From EEOC regulations for Title I at: <https://www.eeoc.gov/laws/statutes/ada.cfm>.

Do employers have to provide personal assistance services (PAS) under the ADA?

The term PAS can include a wide variety of services. The Ticket-to-Work and Work Incentives Improvement Act defines PAS as “a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.” Under the ADA, reasonable

accommodation can include PAS in the form of work-related assistance, but generally does not include PAS in the form of personal attendant care at the work-site. Work-related PAS can include task-related assistance at work, such as readers, interpreters, help with lifting or reaching, page turners, a travel attendant to act as a sighted guide to assist a blind employee on occasional business trips, and re-assignment of non-essential duties to co-workers.

For additional information, visit Personal Assistance Services (PAS) in the Workplace at https://askjan.org/solutions/Personal-Assistance-Services.cfm?cssearch=1906535_1.

Do employers have to provide personal attendant care for work-related travel?

According to informal guidance from the EEOC, the ADA does not require employers to provide personal attendant care on the job because reasonable accommodation does not require employers to provide personal need items or services. However, when an employee travels for work and incurs personal attendant care expenses beyond their usual expenses when not traveling for work, there is a good argument that the employer must pay the added costs.

What if coworkers voluntarily assist employees with disabilities with personal needs? For example, coworkers assist an employee who uses a wheelchair to transfer from her car into her wheelchair when she arrives at work. Do employers have to allow coworkers to assist or can they prohibit them from doing so?

According to informal guidance from the EEOC, in general, employers can decide how employees use their time at work. Therefore, employers can probably prohibit coworkers from providing personal assistance to employees with disabilities without violating the ADA outright. However, from a practical standpoint, the EEOC recommends that employers take a case by case approach and consider allowing coworkers to voluntarily assist employees with disabilities when the employer does not have any liability for resulting injuries and the assistance does not substantially disrupt the workplace.

The EEOC suggests the following approach:

When deciding whether to allow coworkers to provide personal assistance, employers may first want to determine whether they have any liability for resulting injuries. To make that determination, employers should check with appropriate legal advisors — the EEOC does not advise employers about the extent of their liability for on the job injuries. If an employer determines that it is liable for injuries, it can prohibit coworkers from providing the personal assistance.

If, on the other hand, the employer determines it is not liable, then the employer should look at other factors such as how much disruption there will be to the workplace if coworkers are allowed to provide personal assistance. If not liable and little, if any, disruption would result, then the employer should consider allowing coworkers to assist an employee with a disability, at least with minor activities such as taking off and putting on a coat and eating. When more difficult assistance is needed, such as toileting transfers or administering medications, the employer may want to ensure that coworkers are properly trained before allowing them to provide this type of assistance.

In contrast, under the ADA's reasonable accommodation obligation, employers must consider allowing employees with disabilities to have their own personal attendant in the workplace, absent undue hardship.

Is it a reasonable accommodation to provide a job coach?

Yes. An employer may be required to provide a temporary job coach to assist in the training of a qualified individual with a disability as a reasonable accommodation, barring undue hardship. An employer also may be required to allow a job coach paid by a public or private social service agency to accompany the employee at the job site as a reasonable accommodation.

From Psychiatric Disabilities and the ADA (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/psych.html>.

Do employers have to provide accommodations for on-the-job travel such as driving to home visits?

According to the EEOC, employers must consider accommodations such as alternative methods of transportation for work-related travel when driving is not an essential function of the job. For example, an employer must consider alternative transportation for a social worker who cannot drive due to vertigo; the essential function is completing the home visits, not driving.

JAN RESOURCE: Reasonable Accommodation for Employees on Leave and Former Employees

The ADA requires employers to provide accommodations to ensure that employees with disabilities receive equal benefits of employment. For employees on leave and former employees, benefits of employment may include health and disability insurance, job protection, and bonuses and promotions.

Health and Disability Insurance

Does the ADA apply to employer-sponsored benefits such as health insurance and short- and long-term disability?

According to the EEOC, the interplay between the nondiscrimination principles of the

ADA and employer-sponsored benefits such as health insurance and short- and long-term disability can be very complex. The EEOC has two publications that may help employers understand how the ADA applies to employer-sponsored benefits:

Interim Enforcement Guidance On the Application of the Americans with Disabilities Act of 1990 to Disability-Based Distinctions in Employer Provided Health Insurance at <http://www.eeoc.gov/policy/docs/health.html>.

Employee Benefits at <http://www.eeoc.gov/policy/docs/benefits.html>.

When employers offer long-term disability insurance, can they condition the receipt of payments on termination of employment? Does this potentially violate the ADA's requirement that employers consider holding jobs for people who take leave as an accommodation (assuming the employee has a disability and plans to return to work at some point)?

Generally, this practice does not violate the ADA. Long-term disability is a benefit of employment that employers are free to offer or not. As such, employers set the parameters of the benefit. An employer might violate the ADA if the employer's purpose was to evade its obligations under the ADA, but that would be difficult to prove since the employer did not have to offer the benefit in the first place.

Can an employer terminate or reduce an individual's health insurance benefits because he or she is working fewer hours due to a disability?

Yes, according to the EEOC. The ADA does not prohibit the adoption of health insurance eligibility requirements that do not discriminate on the basis of disability, as long as such requirements are applied in the same manner to all employees. A requirement that employees work a certain number of hours to remain eligible for health insurance benefits does not discriminate on the basis of disability. It limits both individuals with and without disabilities. Thus, for example, an employee who works reduces hours for some other reason, such as attending school, would also be subject to a reduction or loss of health insurance benefits.

From an EEOC informal guidance letter dated January 4, 1995.

Bonuses and Promotions

If an employer bases bonuses or promotions on employee performance records and attendance, can the employer penalize an employee for work missed during leave taken as a reasonable accommodation?

No, according to the EEOC, to do so would be retaliation for the employee's use of a reasonable accommodation to which he/she is entitled under the law. Moreover, such punishment would make the leave an ineffective accommodation, thus making an employer liable for failing to provide a reasonable accommodation.

From Reasonable Accommodation and Undue Hardship under the ADA, question 19, at <http://www.eeoc.gov/policy/docs/accommodation.html>.

Reductions in Force and Layoffs

Does the ADA protect employees with disabilities from termination during a reduction in force or from being laid off when business is slow?

Although the ADA protects individuals with disabilities against discrimination on the basis of disability, employees with disabilities are not protected against non-discriminatory layoffs. When deciding to terminate or lay off employees, employers need to make sure that their decisions are based on business needs, rather than on a desire to get rid of employees with disabilities. For example, employers can base their layoff decisions on such non-discriminatory criteria as productivity, seniority, or job category. However, if an employer bases its layoff decisions on productivity of employees, it cannot penalize employees for accommodations that were provided under the ADA. The EEOC gives the following example:

Company X is having a reduction in force. The company decides that any employee who has missed more than four weeks in the past year will be terminated. An employee took five weeks of leave for treatment of his disability. The company cannot count those five weeks in determining whether to terminate this employee.

From Reasonable Accommodation and Undue Hardship under the ADA, question 19, at <http://www.eeoc.gov/policy/docs/accommodation.html>.

Are former employees covered by the ADA?

Former employees are protected by the ADA when they are subjected to discrimination arising from the former employment relationship. For example, an employer cannot release confidential medical information about a former employee.

From Threshold Issues (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/threshold.html>.

This excerpt was developed by the Job Accommodation Network, funded by a contract agreement from the U.S. Department of Labor, Office of Disability Employment Policy (DOL079RP20426). The opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Labor. Nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Department of Labor.

ADA POLICY

Sample Managing Medical Accommodations Policy

Purpose: The purpose of this policy is to ensure that all requests for medical accommodations are considered and implemented where reasonable. This policy applies to all U.S. and Puerto Rico employees.

General Policy: The company provides equal employment opportunities for individuals with disabilities as a good business practice and in compliance with the Americans with Disabilities Act (ADA), the Rehabilitations Act, and all other applicable federal, state, and local laws. An employee or applicant with a medical condition, whether or not that medical condition is a disability, may request accommodations needed to enable him or her to apply for and perform jobs for which they are qualified. This policy is designed to provide the best workplace environment for all employees, whether or not they have an eligible disability that is protected under the ADA.

Procedure: When an employee requests a change in the job or working conditions and relates the need to a medical condition, or notifies the company of medical restrictions, the manager or supervisor should engage with HR to begin and document an interactive communications process with the aim of providing the employee with the assistance he or she needs to perform the essential functions of their job. The manager or supervisor should identify the essential functions of the job and work with the employee to understand what accommodations the employee believes would allow him or her to perform the essential functions. HR, in partnership with the manager or supervisor, should then consider if the employee's requested accommodation can be implemented and effectively enable the employee to perform the essential functions of the job, without disrupting or fundamentally altering the nature or operation of the business. If not, HR and the employee should attempt to find alternative accommodations that could be utilized. If unable to arrive at an alternative reasonable accommodation, continue working with stakeholders to determine if other options should be considered.

Roles and Responsibilities:

Applicants: May request reasonable accommodations to assist them in the application process or to enable performance of the essential functions of the position for which they are applying and are otherwise qualified to perform.

Employees: Must let the manager, supervisor, employee relations know that he or she needs an accommodation or adjustment at work due to a medical condition, in order to perform his or her job.

Supervisors/Managers: Once an employee states that he or she has a medical restriction or requests a change or accommodation and relates that request to a medical condition, the manager or supervisor should engage with HR to begin and document an interactive communication process with the employee. There should be an exchange of information to determine what accommodation would allow the employee to effectively perform the essential functions of their job. Employee relations may be consulted. Any request for accommodation that the manager or supervisor intends to deny should be reviewed with employee relations prior to communicating a refusal.

Human Resources: Will serve as a liaison between employee relations and the employee's or candidate's physician and will provide input to the employee's or candidate's request for a medical restriction and/or accommodation as it relates to the job requirements and working conditions, when appropriate. HR will verify and/or clarify the employee's claim of a medical and/or medical restriction, when necessary, once an accommodation is requested. They will also monitor the need for the restriction beyond the expiration date of the restriction.

Health and Safety: Will recommend ergonomic and other changes to the workplace, if appropriate.

Recruiting: Will assist HR in identifying potential work assignments for which the employee is qualified. They will also ensure accommodations are made available for the application process.

ADA Definitions

Term	Definition
Medical condition	Means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of major life function or any mental or psychological disorder.
Medical restriction	Means a limitation in the essential job function(s) of the individual to perform a job due to a medical condition.
Reasonable accommodation	Any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with medical restrictions to participate in the application process or to perform essential job functions. Examples include making facilities physically accessible; job restructuring; allowing alternative work arrangements and schedules; acquiring or modifying equipment; adjusting tests, training materials, or policies; providing qualified readers or interpreters; and reassigning an individual to a vacant position in which they can perform the essential function. Reasonable accommodations also include adjustments to assure that qualified individuals with medical conditions have the same rights and privileges in employment as other employees.
Essential functions	Means the job duties necessary to achieve the required or expected results, including those duties that no one else or few others perform. Essential functions do not necessarily include the methods used to achieve the results.

ADA COMMUNICATIONS AND FORMS

Accommodation Interactive Process

 Applicant or Employee Name Applicant or Employee Telephone No.

Today's Date _____

Date of Request _____ Employee Bldg./Dept. _____

Person Who Received Request _____

Bldg./Dept. _____ Telephone No. _____

ACCOMMODATION REQUESTED: Be as specific as possible (e.g., adaptive equipment, reader, interpreter, etc.)

REASON FOR REQUEST: If accommodation is time sensitive, please explain.

RECORD OF COMMUNICATIONS: Please summarize all conversations had regarding the request for an accommodation. Add entries as needed.

DATE:
 PARTIES:
 NOTES:
 ACTION ITEMS OR DETERMINATION:

Note: Do not include medical information on this form. Place all documentation in the employee's central file.

Denial of Accommodation Request

Must complete numbers 1-4 (complete number 5 if it applies)

1. Name of individual requesting accommodation:

2. Type(s) of accommodation requested:

3. Request for accommodation denied because: (may check more than one box)

Accommodation ineffective

Medical documentation inadequate (circle one)

Employee has not substantiated a medical impairment.

Employee has not substantiated that the impairment necessitates a restriction.

Employee has not substantiated that the impairment necessitates the restriction requested.

Accommodation would require removal of an essential function.

Accommodation would require lowering of performance or production standard.

The restriction does not impact the job (i.e., the employee is not required to do the restricted activity within the course of the job).

Other (please identify)

4. Detailed reason(s) for the denial of accommodation (must be specific, i.e., why accommodation is ineffective or causes undue hardship):

5. If the individual proposed one type of accommodation that is being denied, but rejected an offer of a different type of reasonable accommodation, explain the reasons for denial of the requested accommodation and why you believe that the offered accommodation would be effective.

Name of Deciding Official: _____

Date Accommodation Denied: _____

Note: Do not include medical information on this form. Place all documentation in the employee's central file.

Accommodation Information Reporting Form

Name of individual requesting accommodation: _____

Bldg./dept. of requesting individual: _____

Accommodation: (check one)

- Approved
 Denied (If denied, attach copy of the written denial letter/memo)

Date accommodation was requested: _____

Who received request: _____

Date accommodation request referred to Human Resources/Employee Relations: _____

Name of Human Resources/Employee Relations representative: _____

Date accommodation approved or denied: _____

Date accommodation provided (if different from date approved): _____

If delays in the accommodation process were experienced, please explain why:

Job held or applied for by individual requesting accommodation: (including grade level and division)

Accommodation needed for: (check one)

- Application process
 Performing job functions or accessing the work environment
 Accessing a benefit or privilege of employment (e.g., attending a training program or social event)

Type(s) of accommodation requested (e.g., adaptive equipment, staff assistant, removal of architectural barrier):

Type(s) of accommodation provided (if different from what was requested):

Was medical information required to process this request? If yes, explain why:

Comments:

Submitted by: _____ Date: _____

Note: Do not include medical information on this form. Place all documentation in the employee's separate medical file.

Request for Medical Information for Accommodation Consideration

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Dear [First Name],

In an effort to evaluate your request for an accommodation, it will be necessary for you to provide the following medical information:

[Insert requested information]

Please have your healthcare provider direct this information to HR by [date]. Failure to provide this information may result in denial of your accommodation request.

Should you have any questions about this request, please contact [name, contact information]. I will contact you after the documentation is received and when a determination has been made.

Thank you for your cooperation.

Sincerely,

[Leave Administrator name and title]

Copy: Employee confidential medical file

Reassignment Process Notification

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Dear [First Name],

As we've discussed, we are currently working with you to identify an open position within the organization that meets your current qualifications and medical restrictions. In order to ensure that you have every opportunity to review job openings on a regular, on-going basis, I have arranged for the following:

As we agreed, on [date], please report to [location] at [time].

As you review the job listing, make note of the requisition number and job title of all positions that you believe you may be qualified for and able to perform, with or without accommodation. On [the next day], please contact me at [phone number] to discuss any positions you identified or to ask questions about any position for which you require additional information. Feel free to leave this information on my voicemail if you are unable to reach me directly.

I will work with the necessary individuals to follow up on any positions that you identify, and I will contact you to discuss the status. Any positions for which you are qualified and that meet your medical restrictions will be pursued for potential placement.

Please plan to report to [location] every other week following your scheduled appointment on [date], to ensure that you are able to view all posted positions (job postings run for [date]). You should review the job listing and contact me the next day to discuss positions you've identified. Be sure to contact me even if you do not identify any positions to pursue.

If you are not able to review the job listing on your scheduled date and time, please contact me to reschedule your appointment. It will be your responsibility to arrange for a time to review the listing on another day that week.

In order to familiarize you with this process, I will meet you on [date] at [time] at [location]. We will discuss how to use the job listing, and I can answer any questions that you have at that time.

You are currently scheduled to review the job listings at [time] on the following dates:

If a placement has not occurred as of [date], we will schedule additional dates at that time.

I have attached a separate sheet that outlines the above process for your reference. I look forward to seeing you on [date]. Please feel free to contact me in advance if you have any questions.

Sincerely,

[Leave Administrator name and title]

Copy: Employee Personnel/Central File

Reassignment Process: Reviewing Open Jobs Listing

[Date]

[Employee Name]

[Street Address]

[City, State, Zip Code]

Dear [First Name],

On your scheduled date and time, report to [contact] at [location]. Review the open jobs listing, making note of the requisition number and job title of any positions you feel you are qualified for and able to perform, with or without an accommodation.

Contact [name, contact information] the next day to discuss the position you have identified or have questions about. You will be contacted to discuss the status of the positions you have identified.

Positions for which you meet the minimum qualification and which meet your medical restrictions, with or without reasonable accommodation, will be pursued for placement.

Sincerely,

[Leave Administrator name and title]

Copy: Employee Personnel/Central File

GENERAL ABSENCE MANAGEMENT COMMUNICATIONS AND FORMS

The sample forms in this section are for non-FMLA protected absences, but they can also be used in conjunction with FMLA-protected absences in some cases.

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FIGURE 1: ADA/FEHA Notice

Date

Employee Name
Address
Address

RE: Disability Interactive Process

Dear Employee Name,

The Organization requests your assistance to determine if you are in need of reasonable accommodations to perform the essential functions of your position safely and fully. We would like to clarify your request for accommodation so that additional interactive process activities can continue for your support. This request is being made as part of a Good Faith Interactive Process that the Organization has begun with you to ensure that all reasonable accommodation options are explored to best support you in accordance with Title I of the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA).

Under the ADA and FEHA, the Organization is essentially required by law to do the following:

1. Provide reasonable accommodation for employees or applicants who, because of their disability, are limited in or unable to perform one or more of the essential functions of their job.
2. Engage in a timely Good Faith Interactive Process with employees/applicants in need of reasonable accommodation.

Please schedule an appointment with your physician and request that they review the essential functions/job analysis/job description for your position of POSITION TITLE and complete the attached medical questionnaire form. **Please submit this completed form to my attention no later than 4:00 p.m. on DATE.** Please ensure that no information pertaining to any medical condition or treatment plan is shared with the Organization. We only want to determine if you have a serious medical condition and, if so, what work restrictions are in need of accommodation to support you in safely and completely performing the essential functions of your position.

Once the medical questionnaire form is received, it will be reviewed to determine what, if any, additional interactive process activities are needed. These activities may include additional medical follow-up with your physician, direction to attend a Fitness for Duty examination by a physician, or the scheduling of an accommodations meeting. Please note that if the medical questionnaire is not received by the date indicated (and if you have not requested additional time to submit this information), the Organization may schedule you for a Fitness for Duty examination to obtain the information needed to determine our obligations, if any, under the ADA/FEHA to provide you with reasonable accommodation.

I am very pleased to work with you so that the Organization can better understand your work restrictions/functional limitations so, together, we can explore accommodations for you. Please do not hesitate to contact me if you have any questions and thank you in advance for your attention to this matter.

Sincerely,

Name
Title

cc: Employee's Reasonable Accommodation / Medical File

Enc.: Essential Functions Job Analysis / Job Description
Medical Questionnaire

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 2: Employer Guidance on Medical Requests (PAGE 1 OF 3)

**QUESTIONS AND ANSWERS:
ENFORCEMENT GUIDANCE ON DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS OF
EMPLOYEES UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)**

Taken From: <http://www.eeoc.gov/policy/docs/qanda-inquiries.html>

1. Are the rules about when an employer may make disability-related inquiries and require medical examinations the same for employees and applicants?

- No. The ADA limits an employer's ability to make disability-related inquiries or require medical examinations at three stages: **pre-offer**, **post-offer**, and **during employment**. The rules concerning disability-related inquiries and medical examinations are different at each stage.
 - At the first stage (**prior to an offer of employment**), an employer may not ask any disability-related questions or require any medical examinations, even if they are related to the job.
 - At the second stage (**after an applicant is given a conditional job offer, but before he or she starts work**), an employer may ask disability-related questions and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category.
 - **At the third stage (after employment begins), an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.**

2. What is a disability-related inquiry?

- A disability-related inquiry is a question that is likely to elicit information about a disability, such as asking employees about whether they have or ever had a disability, the kinds of prescription medications they are taking, and the results of any genetic tests they have had.
- Disability-related inquiries also include asking an employee's co-worker, family member, or doctor about the employee's disability.
- Questions that are *not* likely to elicit information about a disability are always permitted, and they include asking employees about their general well-being, whether they can perform job functions, and about their current illegal use of drugs.

3. What is a medical examination?

- A medical examination is a procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual's physical or mental impairments or health. Medical examinations include vision tests; blood, urine, and breath analyses; blood pressure screening and cholesterol testing; and diagnostic procedures such as x-rays, CAT scans, and MRIs.

4. Are there any procedures or tests employers may require that would not be considered medical examinations?

- Yes. There are a number of procedures and tests that employers may require that are not considered medical examinations including blood and urine tests (to determine the current illegal use of drugs), physical agility and physical fitness tests, and polygraph examinations.

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 3: Employer Guidance on Medical Requests (PAGE 2 OF 3)

JOB RELATED AND CONSISTENT WITH BUSINESS NECESSITY

5. ***When may an employer ask an employee a disability-related question or require an employee to submit to a medical examination?***
 - Generally, an employer only may seek information about an employee's medical condition when it is **job related and consistent with business necessity**. This means that the employer must have a reasonable belief based on objective evidence that:
 - an employee will be unable to perform the essential functions of his or her job because of a medical condition or
 - the employee will pose a direct threat because of a medical condition.
 - Employers also may obtain medical information about an employee when the employee has requested a **reasonable accommodation** and the disability or need for accommodation is not obvious.
 - In addition, employers can obtain medical information about employees when they:
 - are required to do so by another **federal law or regulation** (e.g., DOT medical certification requirements for interstate truck drivers)
 - offer **voluntary** programs aimed at identifying and treating common health problems such as high blood pressure and cholesterol
 - are undertaking **affirmative action** because of a federal, state, or local law that requires affirmative action for individuals with disabilities or voluntarily using the information they obtain to benefit individuals with disabilities.

6. ***What should an employer do if it learns about an employee's medical condition from someone else?***
 - First, the employer should determine whether the information learned is **reliable**. The employer should consider how well the person providing the information knows the individual, the seriousness of the medical condition, and how the person learned the information.
 - The employer should then determine whether the information gives rise to a reasonable belief that the employee in question will be unable to perform the essential functions of his or her job because of the medical condition or will pose a direct threat because of the condition.
 - If the information does give rise to such a reasonable belief, then the employer may make disability-related inquiries or require a medical examination as permitted by the Guidance.

7. ***May an employer ask all employees what prescription medications they are taking?***
 - Generally, no. In limited circumstances, however, employers may be able to ask **employees in positions affecting public safety** about their use of medications that may affect their ability to perform essential functions and **thereby result in a direct threat**.
 - For example, an airline could require pilots to report when they are taking medications that may affect their ability to fly. A fire department, however, could not require employees in administrative positions to report their use of medication because it is unlikely that these employees would pose a direct threat as a result of an inability, or impaired ability, to do their jobs.

8. ***What may an employer do if it believes that an employee is having performance problems because of a medical condition, but the employee won't answer any questions or go to the doctor?***
 - The employer may discipline the employee for his or her performance problems just as it would any other employee having similar performance problems.

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 4: Employer Guidance on Medical Requests (PAGE 3 OF 3)

SCOPE AND MANNER OF INQUIRIES AND EXAMINATIONS

9. ***May an employer have an employee who is requesting a reasonable accommodation be examined by its own health care provider?***
- In some instances, yes. If the employer has explained what type of documentation is needed and the employee fails to provide it or provides insufficient documentation, the employer may require the employee to see a health care professional of the employer's choice.
 - Even when an employee initially provides insufficient documentation, the employer should consider asking the employee's health care provider for additional information before requiring an examination by the employer's health care professional. This is because an employee's health care provider frequently is in the best position to provide information about the employee's limitations.
10. ***May an employer have an employee who it reasonably believes will pose a direct threat be examined by its own health care provider?***
- Yes. This is because the employer is responsible for assessing whether an employee poses a direct threat based on a reasonable medical judgment that relies on the **most current medical knowledge and/or best objective evidence**.
 - The health care professional the employer chooses should have expertise in the employee's specific medical condition and be able to provide medical information that allows the employer to determine the effects of the condition on the employee's ability to perform his or her job.
 - If the employer's health care professional believes that the employee poses a direct threat, but the employee's own doctor disagrees, the employer should evaluate the conflicting medical information by considering the area of expertise of each medical professional, the kind of information each provided, and whether the information provided is consistent with the employer's own observations of or knowledge about the employee.

DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS RELATED TO LEAVE

11. ***May an employer request that an employee provide a doctor's note or other explanation when the employee has used sick leave?***
- Yes. An employer is entitled to know why an employee is requesting sick leave. An employer may ask an employee to provide a doctor's note or other explanation as long as it has a policy or practice of requiring all employees to do so.
12. ***May an employer ask disability-related questions or require a medical examination when an employee who has been on leave for a medical condition wants to return to work?***
- Yes, if an employer has a reasonable belief that an employee's **present** ability to perform essential functions will be impaired by a medical condition or that he or she will pose a direct threat because of a medical condition.
 - Any inquiries or examination, however, must be limited in scope to what is needed to determine whether the employee is able to work.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 5: Employee Fitness for Duty Appointment Notice

Date

Employee Name
Address
Address

RE: Notice of Scheduling of Fitness for Duty Examination

Dear Ms. _____,

As you are aware, the Organization has been engaging with you in a *Good Faith Interactive Process* in compliance with Title I of the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). The Organization has determined that additional medical information is needed to best support you and this interactive process. To obtain this, you will receive a Fitness for Duty examination with an Organization appointed physician. The Organization can coordinate a Fitness for Duty examination with a qualified Occupational Medicine Physician, Psychologist, or Psychiatrist in the event that the Organization determines that the need to do so is job related and consistent with business necessity (42 USC § 12112(d)(4)(A); Gov. Code § 12940(f)(2); add any BP/AR specific to organization) and there are objective facts that:

- A. The employee may have a medical or psychological condition that could result in a direct physical threat or other liability to themselves, a co-worker, or the public.
- B. The employee may have a physical condition or injury that impacts their ability to perform the essential functions of their classification and it is unclear as to what type of reasonable accommodation is necessary.

Your Fitness for Duty examination is scheduled as follows:

Date of Exam: _____	Address: _____	Address
Time of Exam: _____ a.m./p.m.	Contact: _____	Name / Phone Number
Location: Name of Facility	Physician: _____	Name

The reason for scheduling this Fitness for Duty Examination is the following:

- List specific reasons here

The physician will be requested to indicate if you have a serious medical condition that limits your ability to perform a major life function such as work. If so, she/he will be requested to list any functional limitations/work restrictions that must be accommodated to support you to safely perform the essential functions of your job.

Please be advised that you are being directed to attend this appointment. You will be paid for your time to attend the appointment and reimbursed for your mileage to and from the facility.

Please contact my office if you have any questions about the above notice. I can be reached at XXX.XXX.XXXX.

Sincerely,

Name
Title

cc: Employee's Reasonable Accommodation or Medical File
Other (Interactive Process Representatives or Participants)

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 6: Physician Fitness for Duty Appointment Request (PAGE 1 OF 3)

Date

Name of Facility **SENT VIA FAX TO XXX.XXX.XXXX**
 Address
 Address
 Attention: Name

RE: Fitness for Duty Examination / First Name, Last Name, Job Title
Employer:
DOB:
Employee Address:
Employee Phone:

Dear Dr. Name:

The Organization is requesting your assistance to complete a Fitness for Duty examination for Employee Name.

An employer may coordinate a Fitness for Duty examination with a qualified Occupational Medicine Physician, Psychologist, or Psychiatrist in the event that the employer determines that the need to do so is job-related and consistent with business necessity (42 USC § 12112(d)(4)(A); Gov. Code § 12940(f)(2):

- A. The employee may have a medical or psychological condition that could result in a direct physical threat or other liability to themselves, a co-worker, or the public.
- B. The employee may have a physical condition or injury that impacts their ability to perform the essential functions of their POSITION and it is unclear as to what type of reasonable accommodation is necessary.

The Organization has determined that a Fitness for Duty examination is needed to determine what functional limitations/work restrictions may be needed to support Employee Name to safely return to work or continue to work. Specifically, the following reasons have predicated the decision to schedule this examination with you:

1. (List specific reasons – objective and statements that can be seen by the employee.)
2. (List specific reasons – objective and statements that can be seen by the employee.)

In addition to the above, attached to this report are documents in support of this process. Please review these documents prior to your examination.

Please also be advised that the Organization only seeks information regarding Employee Name’s work restrictions / functional limitations. Do not provide any information regarding diagnosis, medical condition, or treatment. Your discussion should be limited to the employee’s limitations or need for restrictions, if any, that you may identify and the duration for such limitations. You can share this information by completing the attached questionnaire.

Please submit your completed questionnaire and billing for this examination to my attention via fax at XXX.XXX.XXXX. I can be reached at XXX.XXX.XXXX if you have any questions about this request.

Thank you very much for agreeing to perform this important examination.

Sincerely,
 Name
 Title

Enc.: Essential Functions Job Analysis
 FFD Medical Questionnaire Form
 Medical Notes Submitted to Employer by Employee
 Related Documents

cc: Employee
 Employee’s Reasonable Accommodation / Medical File

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 7: Physician Fitness for Duty Appointment Request (PAGE 2 OF 3)

Fitness For Duty Examination

MEDICAL QUESTIONNAIRE

Physician: Name

Employee Name was evaluated at my office on DATE. Through an interview with the employee, review of medical notices and provided documents, I find the following:

(Check boxes and insert text as appropriate)

1. Does Employee Name have a medical and/or psychological impairment that limits their ability to engage in a major life activity, such as the ability to work, care for themselves, perform manual tasks, walk, see, hear, eat, sleep, or engage in social activities? (Pursuant to the FEHA amendments that went into effect on January 1, 2001, a condition can be said to “limit” a person if the condition makes the achievement of a major life activity more difficult. Work is considered a major life activity.)
 - NO, EMPLOYEE NAME does not have a physical or mental impairment that limits their ability to engage in a major life activity.
 - YES, EMPLOYEE NAME has a PHYSICAL and/or MENTAL impairment that limits their ability to engage in a major life activity.

2. If the answer to question number one is yes, does the impairment currently affect Employee Name’s ability to perform the essential functions of an POSITION TITLE as described in the job analysis/job description provided?
 - NO, Employee Name’s impairment does not limit their ability to perform all of the essential functions of their position as defined in the Essential Functions Job Analysis provided.
 - YES, Employee Name’s impairment does affect their ability to perform **one or more** of the essential functions of the position of POSITION TITLE as defined in the Essential Functions Job Analysis provided.

3. If the answer to question number two is yes:
 - a. **Is Employee Name Fit for Duty at this time?**
 - YES, Employee Name may resume working at this time with **NO WORK RESTRICTIONS / FUNCTIONAL LIMITATIONS**
 - YES, Employee Name may resume working at this time **WITH** the following **WORK RESTRICTIONS / FUNCTIONAL LIMITATIONS** (list below and under question 3.b.)
 - NO, Employee Name needs to remain off work at this time and minimally through _____ (date). (Provide additional information on page 5 under question 8. if needed.)
 - OTHER: _____
 - _____
 - _____
 - _____

 - b. **If you answered YES, WITH RESTRICTIONS to question # 3.a., please list what work restriction(s) / functional limitations or Leave Needs her disability produces?** Please be as specific as possible. (e.g. listing activities, environments and/or interactions are limited, etc.) List all necessary work restrictions with sufficient detail so all parties will understand how to interpret and apply them. Any recommended accommodations must be supported with clear work restrictions that make the accommodation needed medically:
 - _____
 - _____

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 8: Physician Fitness for Duty Appointment Request (PAGE 3 OF 3)

Fitness For Duty Examination

MEDICAL QUESTIONNAIRE

Physician: Name

c. The above work restrictions / functional limitations or Need for Leave form work are:

Restrictions / Leave **TEMPORARY** through _____ (date) **PERMANENT**

4. Does Employee Name’s continued assignment to the job of an Classification pose a significant risk of substantial harm to the health and safety of the employee or others?

- NO
- YES, complete question # 6 and # 7 below.

5. If the answer to question number four is yes, identify the duration, nature, severity, likelihood and imminence of each specific risk.

6. If the answer to question number four is yes, identify any specific work restrictions(s), that if accommodated, would reduce or eliminate the risk(s) described in question number four.

7. Additional Restrictions / Accommodation Suggestions: Please use the space below to include any additional information that you believe would be helpful to the interactive process for this employee. **Please do not list any information pertaining to medical condition or diagnosis.**

Dr. Name’s Original Signature

Date

RETURN A COPY OF THIS FORM VIA FAX TO:

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 9: Request for Medical Information (PAGE 1 OF 3)

DATE

Employee's Personal Physician's Name

SENT VIA FAX TO XXX.XXX.XXXX

Address

Address

SUPPLEMENTAL MEDICAL QUESTIONNAIRE REQUEST

Dear Dr. NAME:

The ORGANIZATION is requesting your assistance in obtaining the information needed to explore reasonable accommodations for your patient in compliance with the requirements of the Fair Employment and Housing Act (Government Code § 12940) and consistent with the organizational goals of the ORGANIZATION to assist employees to remain at work with reasonable accommodations.

The ORGANIZATION is currently engaging with your patient to discuss all reasonable accommodation. As part of this process, we would appreciate your assistance to help us ensure that we have a full and correct understanding of any and all work restrictions / functional limitations that may be in need of accommodation to support your patient.

The Organization is in receipt of your report dated _____ for patient EMPLOYEE NAME in which you provide the following: *summarize the report, return to work, restrictions and duration, etc.*

OR

The Organization has been informed by your patient that you are the treating physician and that you would be the correct person to provide the information needed in support of this process.

To this end, please assist with completing the attached Medical Questionnaire Form. **Please note that as part of this process, we are only seeking a listing of work restrictions/functional limitations and their duration, if any. Please do not provide any information pertaining to medical condition, diagnosis, or treatment.**

Thank you for your assistance in this matter. As further decisions regarding accommodation are pending your reply, I look forward to your response as soon as possible and **not later than _____ DATE.**

Sincerely,

Name

Title

cc: Employee
Employee's Reasonable Accommodation / Medical File

Enc.: Essential Functions Job Analysis / Job Description
Medical Questionnaire

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 10: Request for Medical Information (PAGE 2 OF 3)

Date of Examination:

MEDICAL QUESTIONNAIRE

I have reviewed the Job Description/Job Analysis for EMPLOYEE NAME’s position of POSITION TITLE and can provide the following clarification **(Check boxes and insert text as appropriate):**

1. [REMOVE IF ACCEPTED WORKERS' COMPENSATION CLAIM] Does EMPLOYEE NAME have a physical or mental impairment that limits their ability to engage in a major life activity such as the ability to work; care for themselves; perform manual tasks; walk, see, hear, eat, sleep; or engage in social activities?
 - NO, EMPLOYEE NAME does not have a physical or mental impairment that limits their ability to engage in a major life activity.
 - YES, EMPLOYEE NAME has a PHYSICAL and/or MENTAL impairment that limits their ability to engage in a major life activity.

2. [REMOVE IF ACCEPTED WORKERS' COMPENSATION CLAIM] If the answer to question 1 is yes, does the impairment currently affect EMPLOYEE NAME’s ability to perform the essential functions of a POSITION TITLE (see attached job description)?
 - NO, EMPLOYEE NAME’s impairment does not limit their ability to perform all of the essential functions of the position.
 - YES, EMPLOYEE NAME’s impairment does affect their ability to perform the essential functions of the position.

3. [CUSTOMIZE THIS QUESTION UNLESS YOU DON'T KNOW THE RESTRICTIONS/LEAVE] If the answer to question 2 is yes, what work restrictions or functional limitations does their disability produce that are in need of accommodation? Please be as specific as possible (e.g., if providing a restriction to standing, how many minutes can the subject stand before they would need to sit for X minutes). **List all necessary work restrictions with sufficient detail so all parties will understand how to interpret and apply them.**
 - Restrictions are **TEMPORARY** through _____ (date) Restrictions are **PERMANENT**

List all physical activity restrictions.

- | | |
|--|---|
| <input type="checkbox"/> NO repetitive lifting/carrying of _____ lbs. or more | <input type="checkbox"/> NO repetitive bending/stooping > ____ times/row |
| <input type="checkbox"/> NO lifting/carrying of _____ lbs. or more | <input type="checkbox"/> NO repetitive squatting/kneeling > ____ times/row |
| <input type="checkbox"/> NO repetitive pushing/pulling of _____ lbs. or more | <input type="checkbox"/> NO prolonged standing in excess of ____ min. |
| <input type="checkbox"/> NO pushing/pulling of _____ lbs. or more | <input type="checkbox"/> NO prolonged sitting in excess of ____ min. |
| <input type="checkbox"/> NO at (or above) shoulder level reaching > ____ sec./min. | <input type="checkbox"/> Must alternate sitting/standing every ____ min. |
| <input type="checkbox"/> NO repetitive keyboarding in excess of ____ min. per hour | <input type="checkbox"/> NO running / jumping / climbing (circle your answer) |
| <input type="checkbox"/> NO prolonged walking in excess of ____ minutes | |
| <input type="checkbox"/> Other (please be specific) | |

ADDITIONAL CLARIFICATION/ RESTRICTIONS _____

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 11: Request for Medical Information (PAGE 3 OF 3)

4. Does EMPLOYEE NAME's continued assignment to the job of POSITION TITLE pose a significant risk of substantial harm to the health and safety of the employee or others?

NO

YES, complete questions 5 and 6 below.

5. If the answer to question 4 is yes, identify the duration, nature, severity, likelihood, and imminence of each specific risk.

6. If the answer to question 4 is yes, identify any specific work restrictions(s) that, if accommodated, would reduce or eliminate the risk(s) described in question 5.

7. Please use the space below to include any additional information that you believe would be helpful to the interactive process for this employee.

Dr. NAME's Original Signature

Date

Print Physician's name

Physician's license number

PLEASE RETURN A COPY OF THIS FORM VIA FAX TO:

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 12: Follow-Up Request for Medical Information (PAGE 1 OF 2)

Employee's Doctor's Name
Address
Address

SUPPLEMENTAL MEDICAL QUESTIONNAIRE REQUEST

Dear Dr. _____:

The Organization requests your assistance to ensure that reasonable accommodation options are able to be explored for your patient, Employee Name.

Employee Name is currently on a leave of absence as a form of reasonable accommodation, utilizing available and appropriate paid and unpaid leaves. The Organization requests your assistance to provide an estimate on when your patient may be medically expected to be able to return to work. As such, **we respectfully request that you provide the following clarification:**

1. Is it expected that Employee Name will be released to work, regular or modified, prior to _____?
2. If so, what, if any work restrictions will be in need of accommodation?
3. If not, what is the expected duration of their leave needs?

To best support you to easily provide answers to the above, I have attached a simple questionnaire for your responses. **You can fax your completed questionnaire to my attention at (XXX)XXX-XXXX or provide it to your patient who will provide it to me.**

Thank you for your assistance in this matter. As further decisions regarding accommodation(s) are pending your reply, I look forward to your response as soon as possible. Please contact me if you have any questions at (XXX)XXX-XXXX.

Sincerely,

Name
Title

Enc.: Supplemental Medical Questionnaire
Essential Functions Job Analysis / Classification

cc: Organization
Employee
Insurance Company
Applicant Attorney
Defense Attorney

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 13: Follow-Up Request for Medical Information (PAGE 2 OF 2)

SUPPLEMENTAL MEDICAL QUESTIONNAIRE (When TTD or requires a LOA)

Dr. Name

I have reviewed the supplemental medical questionnaire and Essential Functions Job Analysis on behalf of [Employee Name]. Please find clarification as follows:

LEAVE NEEDS CLARIFICATION: [Employee Name] is currently off work on a leave of absence as a form of reasonable accommodation from their position of _____.

1. (Remove if not TTD) You indicate that [Employee Name] is Totally Temporarily Disabled from work at this time and through _____ (date). Is it correct for the employer to assume that you have restricted [Employee Name] Name from ALL work and not just their usual and customary or current position?

- YES, [Employee Name] is to be off work completely and is not able to work at this time in any capacity/position.
- NO, [Employee Name] is able to work as long as the following work restrictions / functional limitations are fully accommodated: (please list) _____

2. When do you expect [Employee Name] to be able to return to work of any kind, either modified or alternative?

- Date Specific:** I anticipate that she will be released to work on _____ (date)
 - With** work restrictions / functional limitations (as listed under question 2)
 - Without** any work restrictions / functional limitations
- Unknown:** I am unable to estimate how long [Employee Name] will need to be COMPLETELY OFF WORK.
- Additional Information / Other:** _____

3. Additional Clarification: **Do not list any information pertaining to diagnosis, condition or treatment.**

 Dr. Name's Original Signature

 Date

RETURN A COPY OF THIS FORM VIA FAX TO:

Disclaimer: Sample Document Only. Participants are encouraged to contact their legal counsel prior to relying on any sample documents or forms.

Source: Shaw HR Consulting, Inc., 2018, www.shawhrconsulting.com

FIGURE 14: Activity Prescription Form

Sample Restrictions and Limitations: Form 1

The following Activity Prescription Form is recommended for workers' compensation claims. It is an excellent model that can be used with any absence, work-related or not. It focuses on getting information about what the employee can do, rather than on what they cannot do.

Note: This form may require more information than is strictly permissible under FMLA claims and would be utilized in conjunction with gathering information for a compensable claim.

ACTIVITY / PRESCRIPTION FORM (APF)

General Information	Employee's Name: _____ Date of Visit: ____/____/____ Claim # _____																																																																																																													
	Healthcare Provider's Name: _____ Date of Injury: ____/____/____ Diagnosis: _____																																																																																																													
REQUIRED: Release for Work	Key Objective Findings: _____																																																																																																													
	_____: Workers is released to return to work WITHOUT restrictions on (date) ____/____/____. _____: Worker may perform modified duty , if available, from (dates) ____/____/____ to ____/____/____. _____: Worker may work limited hours of _____ hours per day, from (dates) ____/____/____ to ____/____/____. _____: Worker is NOT returned to work any duties from (dates) ____/____/____ to ____/____/____. _____: Worker's prognosis is poor for return to work at any date in the foreseeable future.																																																																																																													
REQUIRED: Identification of Worker's Capabilities	Capacity Duration: (days) ____ 1-10 ____ 11-20 ____ 20-30 ____ 30+ ____ Permanent																																																																																																													
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Worker CAN (blank space = no restriction)</th> <th style="text-align: center;">Never</th> <th style="text-align: center;">Seldom 1-10%</th> <th style="text-align: center;">Occasional 11-33%</th> <th style="text-align: center;">Frequently 34-66%</th> <th style="text-align: center;">Regularly 67-100%</th> </tr> </thead> <tbody> <tr><td>Sit</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Stand / Walk</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Climb (ladder / stairs)</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Twist</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Bend / Stoop</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Squat / Kneel</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Crawl</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Reach</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td colspan="6" style="text-align: center;">Left, Right, Both</td></tr> <tr><td>Work above shoulders</td><td>L, R, B</td><td></td><td></td><td></td><td></td></tr> <tr><td>Keyboard</td><td>L, R, B</td><td></td><td></td><td></td><td></td></tr> <tr><td>Wrist (flexion/extension)</td><td>L, R, B</td><td></td><td></td><td></td><td></td></tr> <tr><td>Grasp (forceful)</td><td>L, R, B</td><td></td><td></td><td></td><td></td></tr> <tr><td>Fine manipulation</td><td>L, R, B</td><td></td><td></td><td></td><td></td></tr> <tr><td>Operate foot controls</td><td>L, R, B</td><td></td><td></td><td></td><td></td></tr> <tr><td>Vibratory tasks: high impact</td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>Vibratory tasks: low impact</td><td></td><td></td><td></td><td></td><td></td></tr> </tbody> </table>		Worker CAN (blank space = no restriction)	Never	Seldom 1-10%	Occasional 11-33%	Frequently 34-66%	Regularly 67-100%	Sit						Stand / Walk						Climb (ladder / stairs)						Twist						Bend / Stoop						Squat / Kneel						Crawl						Reach						Left, Right, Both						Work above shoulders	L, R, B					Keyboard	L, R, B					Wrist (flexion/extension)	L, R, B					Grasp (forceful)	L, R, B					Fine manipulation	L, R, B					Operate foot controls	L, R, B					Vibratory tasks: high impact						Vibratory tasks: low impact					
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OTHER Rx / RESTRICTIONS / INSTRUCTIONS: _____																																																																																																														
Employer notified of capacities? ____ YES ____ NO Contact Date: ____/____/____																																																																																																														
Name of Contact / Additional Notes: _____																																																																																																														
REQUIRED: Plans	Worker's Progress: ____ As expected ____ Slower than expected (provide additional comments on back)																																																																																																													
	Rehabilitation: ____ PT ____ OT ____ Home Exercise ____ Other: _____ Surgery: ____ N/A ____ Possible ____ Planned (date / comments: _____) Next Visit: (days / weeks / specific date): _____ Treatment Ended: ____ Permanent Impairment? ____ Yes ____ No ____ Possible Care Transferred To: _____ Consultation Needed: _____ Study Pending: _____																																																																																																													
Signature (required): _____ Phone: (____) _____-_____																																																																																																														
Date of Signature: ____/____/____ Doctor ____ ARNP ____ PA-C																																																																																																														
Copy of APF given to worker: ____ Yes ____ No Additional Notes on Back of Form: ____ Yes ____ No																																																																																																														

FIGURE 15: Return to Work Form A

Sample Restrictions and Limitations: Form 2

This is a typical request for restrictions and limitations used by many companies. It is not complex and generally gathers enough information to determine a strategy for managing a return to work.

ABC Company – Return to Work Form			
Patient Name:		Age	Phone
Supervisor: Please indicate which requirements are essential to the job (Y=yes, N=no) and indicate under "Frequency" how often it must be done (C=constant, F=frequent, O=occasional)		Provider: For each Duty checked "Y", please indicate any restriction or limitations applicable. If the patient has no restrictions or limitations, please note that you are releasing them to return to full duty in the "Provider Notes" section below.	
Duty?	Requirement	Freq	Restriction (leave blank if none)
Y N	Work 8 hrs	Daily	
Y N	Work 5 days	Weekly	
Y N	Lift >45lbs	C F O	
Y N	Lift 15-45lbs	C F O	
Y N	Lift <15lbs	C F O	
Y N	Pulling	C F O	
Y N	Bending	C F O	
Y N	Grasping	C F O	
Y N	Walking	C F O	
Y N	Sitting	C F O	
Y N	Standing	C F O	
Y N	Keyboarding	C F O	
Y N	Speaking	C F O	
Y N	Reading	C F O	
Y N		C F O	
			Expected duration of any limitations:
Provider Notes: () If checked, I am releasing the patient to full duty w/o restriction on ____ / ____ / ____			
Provider Name & Signature		Date	Office Phone

FIGURE 16: Return to Work Form B

Sample Restrictions and Limitations: Form 3

This is a minimal form that gathers very high-level information. It may be appropriate for use in nonindustrial situations in which there are not significant physical job demands.

ABC Company - Return to Work Form			
Patient Name		Age	
		Phone	
Check one of the following:			
	Patient may return to work with no restrictions/limitations on ____/____/____		
	Patient may return to work ____/____/____ with the following restrictions		
Activity	Restriction or Limitation		
Duration of Work Day			
Lifting			
Duration of Standing			
Walking			
Seated			
Driving			
Activities to be avoided			
Other			
Comments/Notes:			
Provider Name		Phone	
Signature		Date	____/____/____
When complete, fax to:			

FIGURE 17: Job Analysis

Simple Job Analysis

This form is a guide to developing a bare-minimum job analysis that can be used in helping the treatment provider obtain an objective view of the job. A job description can be used but often will be too complex and include verbiage of little or no use to the treatment provider, so it likely will go unread. This one-page form is a good place to start bringing together the salient elements of a job.

ABC Company – Job Analysis					
Job Title:					
			Department:		
F/PT:		Hrs/Day:		Days/Wk:	
				Contact:	
General Job Description:					
Brief Statement of Essential Duties:					
Machines/Tools/Equip:					
Average Time Spent: (if job does not require it, note "0" as the percent)					
Activity	% Day	Activity	% Day	Activity	% Day
Sitting		Keyboarding		Pulling	
Walking		Reading		Bending	
Standing		Speaking		Grasping	
Lifting >45lbs		Lifting 15-45lbs		Lifting <15lbs	
Notes on Activities:					
Work Environment:					
Can this job can be modified temporarily () Yes () No					
Job Analyst:					
				Date:	

ABSENCE POLICIES

The following section provides generic absence policies that may be used as a baseline template for developing a comprehensive absence policy.

There are many variations on these policies, and it is not the purpose of this resource guide to discuss each variation and which may be best for an organization. However, in some of these policies, we offer alternative wording. The intent is to make you aware of a few popular variations and the advantages and disadvantages of each in general.

DMEC is not a law firm and cannot provide legal advice. No employer should implement recommendations or policies from the DMEC Resource Guide without first reviewing them with appropriate legal counsel. All forms are provided without warranty of effectiveness, compliance, or legality. We recognize that there is no such thing as a perfectly safe and effective policy, form, or communication, so the balance of risk and reward is yours to determine. However, we also realize that it is difficult to start with a blank sheet of paper, so these samples are offered to get you started.

ATTENDANCE POLICY

Attendance at work, either in person or remotely (i.e., working from home), is considered an (if not “the”) essential function of almost any job. Therefore, if there is a need for clarity, this would be the area. It starts with a statement of what the expectation of the organization is with regard to attendance. This may seem obvious or even unnecessary, but including attendance as an expected behavior is critical to all that follows. It is also critical for the policy to note where the work is to be performed, and notification requirements if/when the employee needs to request a change in location (either permanent move or temporary change).

The two major forms of attendance administration (absence administration) are “excused/unexcused” and “no fault”. The major difference between the two lies in how absences are considered. The first generally only counts an “unexcused” absence toward an absence penalty. The latter counts all absences, regardless of whether they are excused or not, toward an absence penalty.

Clearly, the “no fault” has a higher threshold before a corrective action is taken as every type of absence is considered in the total, including those absences that are planned and excused (i.e., vacation).

The “excused/unexcused” approach requires the employer to be the judge of where any particular absence falls. Generally, this scheme requires very precise definitions and clarity as to notification requirements as well as excellent documentation by the employee’s direct supervisor. Those may be considered downsides; the upside, however, is that benign absences such

as vacations are not used to determine the quality or quantity of an employee's attendance record. It is worth noting that an often-cited unintended consequence of this system is that there is a hidden but substantial motivation for an employee to do whatever is necessary to justify an absence as excused. This influence becomes more pronounced as employees get closer to the trigger limits. This often takes the form of retroactively declaring an absence as covered under a job protection statute, which means it cannot be used to determine discipline (e.g., FMLA, kin care, or other family leave).

The "no fault" version eliminates most of the administrative overhead except for the need for record keeping. Since the organization is no longer the arbiter of excused versus unexcused, the designation is less critical to the employee. However, the use of protected leave status under a "no fault" system may be just as effective.

Note: The sample attendance policy also includes wording regarding job abandonment. This can be made into a separate policy.

Attendance Policy

(PAGE 1 OF 4)

Purpose

The company recognizes that employees are a critical component of their business and a valuable resource. The purpose of this policy is to provide a framework that supports the employee's need for a "work/life balance" with the company's need to be able to depend on consistent, timely employee attendance to achieve business goals. This policy sets out the major guidelines for determining what is expected of all employees with regard to their attendance at work.

Policy

It is the expectation of the company that every employee will make a good faith effort to come to work at their agreed upon work location on a timely basis as scheduled. Any requests for change to the agreed upon work location should be submitted in writing to the employee's manager and human resources.

Attendance is considered an essential job requirement and an essential duty of every position. Failure to satisfactorily meet this requirement could result in disciplinary action up to and including termination of employment.

In general, absences increase costs for the company; therefore, the company has a valid financial interest in controlling, whenever possible, when and if absences occur. When employees are absent, their share of the work must be performed by others. In most instances, absent employees are paid for time not worked. In addition, others who must substitute and accomplish the necessary work frequently receive extra and higher compensation in the form of overtime pay. No additional work is accomplished for these added costs. Therefore, absences represent a business expense that contributes to or detracts from the earnings of the company. As such, it is appropriate for the company to provide for the management of absences.

Definition of Absence

An employee is absent when he or she fails to report for and/or remain at work as scheduled. Lateness (or tardiness) is a short absence at the beginning of the workday. Leaving early, even with permission, before the regularly scheduled work period ends, is also an absence. Absence includes all time lost from the work schedule, whether avoidable or unavoidable, voluntary or involuntary.

Planned Absence

As soon as the need for time away from work is known, employees should submit the request and get approval from their supervisor, providing as much advance notice as is reasonably possible. At a minimum, the company considers [XX] business days as adequate notice, whenever possible.

Unplanned Absence

When an absence is necessary but is unforeseen, it is considered unplanned (e.g., due to illness, an emergency, or some similar cause). Employees must report the absence to their supervisor as soon as it is apparent they will miss work but in no event later than at least [XX] hours prior to the beginning of the first shift to be missed. If due to the circumstances that is not possible, notice should be given as soon after as is reasonably possible along with the reason earlier notice could not be made.

ATTENDANCE POLICY (PAGE 2 OF 4)

Employee Responsible for Notice

All absences, planned and unplanned, require notice. Except where the employee is unable to make the call due to the nature of the emergency or reason for the absence, notice from anyone else is not acceptable.

Ongoing Notice

Once the initial notice of an absence is given by the employee, it is the responsibility of the employee to stay in touch with the company in the event the absence lasts more than [XX] business days. If the absence exceeds that duration, the employee is expected to call in at least once every [XX] business days as long as the absence continues. The employee may call in more frequently than that and would be expected to do so in any situation where the details of their absence change (e.g., a change in the severity or expected duration of the absence).

Certification

Employees should be prepared to substantiate the reasons for their absences if asked. A physician's statement or a fitness-for-duty certificate may be required where the absence is continuous for over [XX] working days. It may also be required when an absence is due to a serious illness or an accident, regardless of the length of absence. However, a medical statement or other documentation may be requested for any absence of any length at the discretion of Human Resources.

It is expected that, when requested by the company, the employee will furnish (on a timely basis) documentation acceptable to the company of the reason for the absence. This includes, but is not limited to, medical certification from his or her healthcare provider. Failure to provide suitable documentation on a timely basis may be grounds for disciplinary action up to and including termination of employment.

Excused Absence

(This section is to be used when the company has an attendance policy that differentiates between "excused" and "unexcused" absences.)

An "excused" absence may include vacation, holidays, personal or family illness, jury duty, bereavement, voting, medical leave, military service, or other reasons that would require an employee to miss all or part of a scheduled workday for which adequate notice has been provided and has been approved.

Unexcused Absence

Any absence that is not "excused" is considered unexcused and may be subject to disciplinary action up to and including termination. This would include an absence that might otherwise have been considered "excused" but for which the employee fails to give proper notification of his or her absence or if his or her supervisor considers the reason unacceptable. However, under no circumstances will an absence that qualifies for the Family and Medical Leave Act (FMLA) or other similar state or local law be considered "unexcused."

Discipline for Unexcused Absence

Any employee who fails to give proper notification will be charged with an unexcused absence. If notice of the absence is given and the company does not think it justifies the absence, the absence will be considered unexcused. The following shows the discipline that will be administered for unexcused absences in any 12-month period. *(Having a window or "look back" period is optional but recommended.)*

First absence = No impact

Second absence = Verbal warning (noted in file)

Third absence = Written warning (noted in file)

Fourth absence = Second written warning, institution of a performance improvement plan

Fifth absence = Termination

ATTENDANCE POLICY (PAGE 3 OF 4)

Excessive Absences, Tardies, and Late Arrivals

Even when properly reported, these may also be grounds for discipline or dismissal. Unsatisfactory attendance will have an adverse effect on any promotion considerations.

No Fault Attendance Plan

(This section is to be used when the company has an attendance policy that does not differentiate between “excused” and “unexcused” absences but rather considers all absences “occurrences” and bases disciplinary actions on a specific number of occurrences during a specific period of time.)

The company has established a no-fault attendance plan in order to encourage good attendance. Under this plan, employees are permitted [XX] number of absences in a [XX]-month period without penalty. Absences in excess of this number during that period will be considered as grounds for disciplinary action up to and including termination.

Absence Counting

Each absence of more than four (4) hours is recorded as one absence point. Note that a multi-day absence (e.g., Tuesday-Wednesday or Friday-Monday) counts as one absence point. But two separate absences (e.g., Tuesday and Friday) count as two absence points.

Each instance of tardiness of less than four (4) hours counts as half of an absence point. Tardiness includes reporting to work late or returning to work late from an absence during the shift (i.e., lunch).

Leaving work for less than [X] hours for non-business reasons once the employee has reported to work, including leaving and returning to work during the day, leaving early, or failing to work less than [XX] hours of an assigned overtime shift, counts as a half absence point.

An employee may accumulate up to [X] absence points without penalty per year. [X] or more absence points will result in the following discipline.

- [X] absence points = Verbal warning
- [X+1] absence points = Written warning
- [X+2] absence points = Second written warning
- [X+3] absence points = Subject to dismissal

(The following is an optional element of this plan that allows for absence “credits” through which perfect attendance can “erase” points. While common, this is not recommended as marginal employees often use minimal “perfect attendance” to avoid dismissal, even though overall attendance is problematic.)

The absence points may be “erased” by maintaining perfect attendance for a calendar month to receive an absence credit. Each absence credit erases an absence point. Continuous perfect attendance can result in accumulation of up to five absence credits. When that has been achieved, absences or tardiness are charged against the individual’s absence credits without penalty before additional absence points are accumulated. The absence credit rewards an employee for good attendance. Our no-fault attendance plan helps ensure that all attendance matters are handled on an objective basis.

(The following is an alternative option that simply allows points to expire after a predetermined period, thereby ensuring a more consistent attendance record.)

Absence points are cumulative and penalties are determined by the number of points accumulated in the immediately preceding 12 months. Once a point has “aged” more than 12 months, it is no longer counted in this attendance policy.

ATTENDANCE POLICY (PAGE 4 OF 4)

Job Abandonment

Employees who are absent from work for three (3) consecutive business days or more without calling in and notifying their supervisor of the reason for their absence are deemed to have abandoned their jobs. Job abandonment also occurs when employees fail to return to work or directly notify their supervisor of the reason for their absence within three (3) consecutive business days after the end of any approved leave of absence, disciplinary suspension, or recall from layoff status.

When an employee is absent without notice, his or her supervisor will take immediate steps to contact the employee to ensure there are no extenuating circumstances concerning the absence. If attempts to reach the employee are unsuccessful, the supervisor will notify Human Resources (HR) to ensure that all appropriate procedures are followed. HR will attempt to call the emergency contact number listed in the employee's personnel file.

If all attempts at contacting the employee are unsuccessful, HR will notify the employee in writing by registered mail of the intent to terminate employment unless there is a response within [X] business day of receipt of the letter. The letter may be sent on the [X] day of absence without notice.

Extenuating circumstances, such as a medical emergency, that prevent an employee from contacting the company regarding an absence will be given appropriate consideration.

When an employee is considered to have abandoned his or her job, the employee shall be considered to have voluntarily resigned and will be ineligible for rehire.

Records

An attendance record for each individual reporting to them is to be kept by managers in a readily accessible place. These records must be updated daily and reviewed regularly. All absences, including late arrivals and leaving work early, are to be entered on the attendance record with all related information.

Policy approved by:

Date:

BEREAVEMENT LEAVE POLICY

Some companies do not have a separate bereavement leave and expect employees to use available vacation or other paid leave to fund such an absence. On the other end of the spectrum, companies that have a pooled leave plan, often called paid time off, often have an allowance for bereavement leave built into the plan accruals. These are certainly acceptable ways to handle it. But even if bereavement leave is not separate, that does not mean that a separate bereavement leave policy isn't necessary.

Specifying the conditions under which such leave is taken, the amount of leave that is considered "acceptable" for the death of people in various relationships, and the discretion both the employee and the employer have in the terms of that leave avoids the potential for a serious misunderstanding at an extremely vulnerable time in an employee's life.

Also, the mention of the need for documentation and the stipulation that the leave must be used for bereavement purposes serve as "sentinels" for those who might be tempted to fabricate the need for such a leave.

The amount of leave allowed as shown in the sample policy is neither a recommendation nor what is usual or customary for employers. It is just an example of what could be done. It is important, considering that this leave is not something that happens often in the life of an employee, to be as sensitive as possible in the amount of leave allowed. For example, if the leave requires significant travel time to attend the funeral, the employer may want to grant more leave than suggested to allow for that out-of-the-ordinary travel time.

Bereavement Policy

(PAGE 1 OF 2)

Purpose

The company recognizes that the death of a family member is a significant event in any employee's life and desires to support the employee's need for time away from work to deal with the physical, financial, and emotional impacts of such an event.

Policy

Employees have up to 10 working days of paid leave available for use when a family member dies or is expected to die within that time. The amount of time varies based on the relationship with the person.

- A spouse or child: 10 days
- Parent, guardian, parent-in-law, or sibling: 7 days
- Grandparents, grandchild, or other in-laws: 5 days
- Other non-immediate family: 3 days

For all other bereavement requests or for leave in excess of the above, it is expected that the employee would use available paid time off for salary continuation purposes.

Eligibility

All permanent full- and part-time employees are eligible for paid bereavement leave. Seasonal, temporary, or contract employees will be provided the equivalent time off but without pay.

Benefit

Regular salary will be continued for full-time employees, whether salaried or hourly. Part-time employees will receive whatever their pay for the regularly scheduled hours for the days missed would be. Part-time employees will not receive pay for any day of leave that occurs on a day for which they are not regularly scheduled. Shift differentials and other incentive pay (but not overtime) will be paid if it would have been earned had the employee been at work. Time off must be taken in consecutive days. Unused bereavement leave is not carried over, nor is it paid out at the end of the year.

BEREAVEMENT POLICY (PAGE 2 OF 2)

Notice

The company recognizes that advance notice is rarely possible for bereavement leave. However, as a general rule, an employee should give management notice if there is a reasonable possibility that bereavement leave will be necessary and, in any event, as soon as is practically possible once the need is known. Bereavement leave is granted for the express purpose of dealing with the impact of the death of a loved one, and it is the company's expectation that it will be used solely for that purpose. While the company will make every effort to approve the leave, there may be instances in which an obituary or other notice of death may be requested.

Policy approved by:

Date: Notice

ORGAN AND BONE MARROW DONATION LEAVE POLICY

Organ and bone marrow donation and recovery protections exist in some states, and may differ based on the type of leave required. When an organization is regulated by state-mandated provisions, offering all employees, regardless of location, the level of coverage dictated by regulation may ease administrative burden.

Additionally, the leave may be protected under the federal Family and Medical Leave Act and/or run concurrently with the company's disability plan. A company policy covering such time away from work should align with the provisions of all other applicable policies and regulations.

Organ and Bone Marrow Leave Policy

Purpose

The company provides eligible employees up to [XX days] in a 12-month period of paid leave to donate an organ to another person, and up to [XX days] in a 12-month period of paid leave to donate bone marrow to another person.

Eligibility

All employees who have worked for the company for at least [length of service] are eligible for organ or bone marrow donation leave.

Additionally, the company may require written certification that the employee is a bone marrow or organ donor and that the procedure is medically necessary.

Employees [will be required to/may] use up to [XX hours/days] of their accrued paid time off for leave under this policy to donate bone marrow, and up to [XX hours/days] of their accrued paid time off for leave to donate an organ.

Any available and applicable federal, state, or local laws will be adhered to, to the full extent of the law(s). All applicable laws and policies will run concurrently if allowed. Where company policy may not be in accordance with a law, the law will supersede it.

Requirements for Applying

Employees requesting leave under this policy must comply with the following requirements:

- Employees must provide his or her supervisor 30 days' notice of the requested leave (or as much notice as practicable if the leave is not foreseeable) and submit the leave request forms to the human resources department.
- In support of their request for leave under this policy, employees must complete a company leave request form and provide human resources with appropriate written certification that they are organ or bone marrow donors and that there is a medical necessity for the donation.

During leave under this policy, the company will maintain benefit coverage for employees and their family members who participate in the company's group health plan on the same terms as if the employees had continued to work. If applicable, employees must pay their share of health plan premiums while on leave. In some instances, the company may recover premiums it paid to maintain health coverage or other benefits for employees and their families.

Benefits and Pay

Use of leave under this policy will not result in the loss of any employment benefit that accrued prior to the start of the leave. Employees should consult the applicable plan document for all information regarding eligibility, coverage, and benefits.

Upon returning from leave under this policy, an employee will typically be restored to their same or equivalent position, with equivalent pay, benefits, and other employment terms and conditions.

Leave request forms may be obtained from human resources. The employee must remain in contact with their supervisor regarding any change in their need for leave and return-to-work dates. Extension requests must follow the same process as the initial absence request. All questions may be directed to [contact information].

Policy approved by:

Date:

JURY DUTY POLICY

Most states have laws around employees responding to a jury summons or serving on a jury. Some of these laws require the employer to pay the employee while fulfilling this duty.

It is important to ensure your company policy is in compliance with any local laws. A strong company policy will include details around handling specific events such as responding to a summons, being “on standby” but not physically present for a summons, and being selected on a jury.

Jury Duty Policy

(PAGE 1 OF 2)

Purpose

The company considers itself a member of every local community in which it employs people. Accordingly, it encourages and supports employees who are asked to perform a civic duty, especially jury duty.

Policy

Employees have up to 10 days of paid leave for the satisfaction of their responsibilities for jury duty. The paid leave does not have to be taken in a continuous amount. It may be that the employee may be “on call” for a period of days or weeks but only have to be present periodically. The 10 days is a cumulative limit for a single summons to jury duty.

Paid leave for jury duty is dependent on the requirement for the employee to be physically present to serve. A requirement that an employee be “available” or “on stand-by” is not sufficient to qualify for paid leave in most cases.

Should an employee be placed on a jury for a legal proceeding that requires an absence of more than 10 work days, the company will make a determination, on a case-by-case basis, of the extension of time to cover the full term of service.

Eligibility

All permanent full- and part-time employees are eligible for paid leave for jury duty. Seasonal, temporary, or contract employees will be excused for jury duty under the terms of this policy but will not receive pay for days missed.

Benefit

Regular salary will be continued for full-time employees, whether salaried or hourly. Part-time employees will receive whatever their pay for the regularly scheduled hours for the days missed due to jury duty would be. Part-time employees will not receive pay for any jury duty that occurs on a day for which they are not regularly scheduled. Shift differentials and other incentive pay will be paid if it would have been earned had the employee been at work.

Notice

Employees must give advance notice of the need for time off for jury duty by notifying their immediate supervisor as soon as possible after they receive notice of jury duty. The company requires a copy of the proof of jury service and the jury summons in order to approve the leave.

Conflicts with Work

If an employee’s absence would result in a hardship to the company, the company may petition the court to excuse the employee from jury duty.

If employee is excused from jury duty early or is not required to be present in court, the employee is expected to be on the job during regularly scheduled working hours.

JURY DUTY POLICY (PAGE 2 OF 2)

Compliance

The company does not discriminate against, penalize, threaten, or coerce employees who are on or have been called for jury duty. The company observes all federal, state, and local regulations regarding time off for public service.

Policy approved by:

Date:

MILITARY LEAVE POLICY

Military leave is provided for under the federal FMLA. Your organization's compliance under the federal statute and any state provisions that apply is critical. A company policy provides documented guidance for both the employees who may need to request time off for military service, and the organization's leaders who may field the initial request.

A strong company policy will include details around eligibility, notice, how the employee/servicemember's benefits will be impacted by the leave, pay provisions (if applicable), and reinstatement.

Military Leave Policy

(PAGE 1 OF 2)

Purpose

The company is committed to protecting the job rights of employees absent on military leave. In accordance with federal and state law, it is the company's policy that no employee or prospective employee will be subjected to any form of discrimination based on that person's membership in or obligation to perform service for any of the Uniformed Services of the United States.

Eligibility

Employees taking part in a variety of military duties are eligible for benefits under this policy. Such military duties include leaves of absence taken by members of the uniformed services, including Reservists and National Guard members, for training, periods of active military service, and funeral honors duty as well as time spent being examined to determine fitness to perform such service. Subject to certain exceptions under the applicable laws, these benefits are generally limited to five years of leave.

Procedures for Military Leave

Unless military necessity prevents it, or is otherwise impossible or unreasonable, an employee should provide the company with notice of the need for leave as far in advance as is reasonable under the circumstances. Written or verbal notice should be provided to human resources.

Benefits

If an employee is absent from work due to military service, benefits will continue as follows:

An employee on extended military leave may elect to continue group health insurance coverage for the employee and covered dependents under the same terms and conditions for a period not to exceed 31 days from the date the military leave of absence begins. The employee must pay, per pay period, the premium normally paid by the employee. After the initial 31-day period, the employee and covered dependents can continue group health insurance up to 24 months at 100% of the overall (both employer and employee) premium rate. An employee must ensure that they select coverage and make the required payments to the benefits department in a timely manner to continue coverage.

- The group term life/AD&D insurance, not included in the group health insurance policy, provided by the company, will terminate the day the employee becomes active military.
- The group long-term disability insurance, not included in the group health insurance policy, provided by the company, will terminate the day the employee becomes active military.
- Vacation, personal leave, and/or sick leave are considered non-seniority benefits and [will/will not] accrue while the employee is on military leave of absence. Employees may use any accrued paid leave time available but will not be required to.

With respect to the company's retirement plan, upon reemployment, employees who have taken military leave will be credited for purposes of vesting with the time spent in military service and will be treated as not having incurred a break in service. Immediately upon reemployment, the employee may, at the employee's election, make any or all employee contributions that the employee would have been eligible to make had the employee's employment not been interrupted by military service. Such contributions must be made within a period that begins with the employee's reemployment and that is not greater in duration than three times the length of the employee's military service. Employees will receive all associated company match for such contributions.

MILITARY LEAVE POLICY (PAGE 2 OF 2)

Voluntary supplemental life/AD&D insurance will terminate the day the employee becomes active military. Converting to an individual policy may continue voluntary dependent life insurance coverage. To exercise this conversion option, dependents must submit a written application and the first premium payment within 31 days immediately following the termination of coverage.

Reemployment

Upon an employee's prompt application for reemployment, an employee will be reinstated in accordance with the requirements mandated under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA).

Application for Reemployment

An employee who has engaged in military service must, in order to be entitled to the reemployment rights set forth above, apply for reemployment according to the following schedule:

- If service is less than 31 days (or for the purpose of taking an examination to determine fitness for service), the employee must report for reemployment at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours after a time for safe transportation back to the employee's residence.
- If service is for 31 days or more but less than 181 days, the employee must apply for reemployment with human resources no later than 14 days following the completion of service.
- If service is over 180 days, the employee must apply for reemployment with human resources no later than 90 days following the completion of service.
- If the employee is hospitalized or convalescing from a service-connected injury, the employee must apply for reemployment with human resources no later than two years following completion of service.

Exceptions to Reemployment

In addition to the employee's failure to apply for reemployment in a timely manner, an employee is not entitled to reinstatement as described above if any of the following conditions exist:

- The company's circumstances have so changed as to make reemployment impossible or unreasonable.
- Reemployment would pose an undue hardship upon the company.
- The employee's employment prior to the military service was merely for a brief, non-recurrent period, and there was no reasonable expectation that the employment would have continued indefinitely or for a significant period.
- The employee did not receive an honorable discharge from military service.

General Benefits Upon Reemployment

Employees reemployed following military leave will receive seniority and other benefits determined by seniority that the employee had at the beginning of the military leave, plus any additional seniority and benefits the employee would have attained, with reasonable certainty, had the individual remained continuously employed. An employee's time spent on active military duty will be counted toward their eligibility for FMLA leave once they return to their job at the company. Additionally, upon reemployment, a covered employee will not be discharged except for cause for up to one year following reemployment.

Documentation

The employee will be asked to provide the company with military discharge documentation to established the timeliness of the application for reemployment, the duration of the military service, and the honorable discharge from the military service.

Leave request forms may be obtained from HR.

The employee must contact their supervisor regarding any change in their need for leave. Extension requests must follow the same process as the initial absence request.

All questions may be directed to [contact information].

Policy approved by:

Date:

FAMILY AND MEDICAL LEAVE POLICY

A company that qualifies under the Family and Medical Leave Act (FMLA) should have a policy outlining the regulation's key requirements and provisions. As a well-defined federal job protection regulation, the FMLA frequently intersects with other leave laws at the federal, state, and local level as well as other company policies. These intersections may result in confusion for employees who need leave, and for supervisors who are unsure of how to support and direct leave requests.

A clearly-defined policy can ease confusion and increase compliance. A thorough policy will include several elements, including eligibility requirements, the company's chosen calculation method, notification rules, certification requirements, circumstances for concurrent paid leave, impact to benefits while on leave, and reinstatement considerations.

Coupled with consistent application, a well-crafted policy can provide compliance protection for an employer. It is important to have your FMLA policy reviewed by experienced employment counsel, either in-house or external. Regular audits of your policy and actual practices is also recommended to avoid potentially costly mistakes in policy and application.

Family and Medical Leave Policy

(PAGE 1 OF 4)

Purpose

The company will provide leave per the federal Family and Medical Leave Act (FMLA) to its eligible employees.

The function of this policy is to provide employees with a general description of their rights under the FMLA. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

Eligibility

The eligibility requirements are mandated by the federal FMLA and may not be modified or waived. To qualify to take family or medical leave under this policy, the employee must meet all the following conditions:

1. The employee must have worked for the company for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave.
3. The employee must work in a worksite where 50 or more employees are employed by the company within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

Types of Leave Covered

To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below:

1. The birth of a child and in order to care for that child
2. The placement of a child for adoption or foster care and to care for the newly placed child
3. To care for a spouse, child, or parent with a serious health condition (described below)

FAMILY AND MEDICAL LEAVE POLICY (PAGE 2 OF 4)

4. The serious health condition of the employee. A serious health condition is defined as:
- A condition that requires inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed healthcare provider.
 - Illnesses of a serious and long-term nature, resulting in recurring or lengthy absences.
 - A chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the healthcare provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic healthcare visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the company's sick leave policy are encouraged to consult with human resources.

5. Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to covered active military duty. The qualifying exigency must be one of the following:

- Short-notice deployment
- Military events and activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on the timing and duration of the leave

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard or Reserve who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserve, or members on the permanent disability retired list.

6. To care for a covered servicemember or veteran with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered individual.

Amount of Leave

An eligible employee can take up to 12 weeks for FMLA circumstances 1 through 5 above under this policy during any 12-month period. The company will measure the 12-month period as [counting method].

An eligible employee can take up to 26 weeks for FMLA circumstance 6 above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the company will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

[If a husband and wife both work for the company and each wishes to take leave for the birth of a child, adoption, or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may be required to take a combined total of 12 weeks of leave, though the employer may allow them separate allotments if they wish to be more generous. If a husband and wife both work for the company and each wishes to take leave to care for a covered injured or ill servicemember, the husband and wife may only take a combined total of 26 weeks of leave.]

FAMILY AND MEDICAL LEAVE POLICY (PAGE 3 OF 4)

Employee Status and Benefits During Leave

While an employee is on leave, the company will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the company will require the employee to reimburse the company the amount it paid for the employee's health insurance premium during the leave period.

Under current company policy, the employee pays a portion of the healthcare premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received by the [XX] day of each month. If the payment is more than 30 days late, the employee's healthcare coverage may be terminated. The employer will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether the employee returns to work.

Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from a healthcare provider.

Use of Paid and Unpaid Leave

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member [may/must] use all paid vacation, personal, or sick leave prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

Disability leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with the FMLA.

While on military FMLA leave for a qualifying exigency, an employee [may/must] use all available paid time off. The same applies for an employee using FMLA military caregiver leave.

Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks; may use the leave intermittently; or under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember) over a 12-month period.

The company may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

The company [does/does not] allow use of intermittent leave for bonding in the birth, adoption, or foster care of a child. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to schedule appointments in a manner which is as least disruptive to business operations as possible.

FAMILY AND MEDICAL LEAVE POLICY (PAGE 4 OF 4)

Certification Requirements

The company will require certification for all absences under the FMLA. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation if there is a delay. Failure to provide certification may result in a denial of continuation of leave. The company has the right to ask for a second opinion if it has reason to doubt the certification.

Recertification

The company may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly; if the employer receives information casting doubt on the reason given for the absence; or if the employee seeks an extension of his or her leave. The company may provide the employee's healthcare provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to human resources. Within five (5) business days after the employee has provided this notice, [contact person/administrator] will provide the employee with the Department of Labor's (DOL) Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the company's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Designation of FMLA Leave

Within five (5) business days after the employee has submitted the appropriate certification form, human resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL's Designation Notice.

Intent to Return to Work from FMLA Leave

Employees on leave are required to keep the company apprised of any changes to the status of their leave or readiness to return to work, with or without accommodation(s). The company may require medical documentation to support the employee's ability to return to work.

Extension requests must follow the same process as the initial absence request.

All questions may be directed to [contact information].

Policy approved by:

Date:

PAID FAMILY AND MEDICAL LEAVE POLICY

With employee caregiving responsibilities on the rise, more employers are looking to company-sponsored paid family leave programs to provide support for their employees and reinforce their organization's commitment to work-life balance. Moreover, employers are seeing the positive impact such programs can have on their recruitment/retention efforts and diversity initiatives.

State-mandated paid family leave laws have also rapidly expanded in recent years. Where companies are subject to state mandates, many choose to structure their company policy to follow state/municipal mandates and make it available to all their employees. This approach can reduce the organization's administrative burden.

Company-sponsored paid family leave programs may include parental leave provisions; however, the policies are generally structured to also encompass other types of relationships and caregiving reasons. While paid parental leave is specific to new mothers, fathers, and adoptive parents, paid family leave programs often include caregiving leave for domestic partners, children, and any step-children or step-relationships that may exist within the family.

Paid Family and Medical Leave Policy

(PAGE 1 OF 2)

Purpose

The company recognizes there may be times when an employee needs time off for serious medical events affecting family members or for the birth, adoption, or foster care placement of an employee's child.

An employee's family members include [eligible relationships]. Eligible relationships [does/does not] include step-family relationships.

This policy is not intended to be used for short-term absences for which sick leave is available and does not replace other company policies but instead, offers an additional benefit to provide wage replacement and job guarantee for family events as identified below.

Eligibility

All employees who have worked for the company for at least [length of service] are eligible for paid family leave.

Any available and applicable federal, state, or local laws will run concurrently. Employees will receive the greatest benefit available under the company policy or other leave laws.

Paid Leave

The company provides [XX days/weeks] of paid leave for the following purposes:

- Birth of an employee's child and to care for the child
- Placement of a child with the employee for adoption or foster care
- To care for the employee's family member who has a serious health condition
- To care for an injured service member who is the employee's spouse, child, or parent
- [Additional leave reason(s)]

Leave will be paid at [XX percent] of pay based on a 40-hour workweek for full-time employees. Part-time employees will receive paid family and medical leave on a prorated basis determined by their average weekly hours over the preceding eight weeks. Paid leave will apply to the first [amount of time no less than two weeks] of qualifying leave.

Employees may use other paid-time-off (PTO) hours during the two weeks of paid family leave, not to exceed a total of 100% of pay. Employees [may/must] use available PTO hours for leave exceeding two weeks.

PAID FAMILY AND MEDICAL LEAVE POLICY (PAGE 2 OF 2)

Paid family leave will run concurrently with leave provided under the Family and Medical Leave Act (FMLA) when applicable.

Requirements for Leave Request

The employee must provide his or her supervisor 30 days' notice of the requested leave (or as much notice as practicable if the leave is not foreseeable) and submit the leave request forms to the human resources department.

Leave request forms may be obtained from [instructions].

The employee must remain in contact with their supervisor regarding any change in their need for leave. Extension requests must follow the same process as the initial absence request.

All questions may be directed to [contact information].

Policy approved by:

Date:

PAID SICK LEAVE POLICY

A paid sick leave policy is only appropriate in a leave program that separates sick time off from vacation. If your organization uses a pooled leave plan such as paid time off, you should not use this paid sick leave policy. Most paid time off plans have both vacation and sick days built into the total accruals and make this separate policy unnecessary.

Paid sick leave can be either accrued or awarded. It is a common practice to provide employees with a sick leave “award” (given upfront each year) rather than accruing it over the course of the year. We use the word award in lieu of accrued to distinguish this. The rationale for this type of eligibility is that unlike vacations, illness and injury are most often unplanned and so employers want employees to have the full allotment of sick time available immediately.

Another area of concern for employers is what to do with sick leave that is earned but not used by the employee at the end of the year. Employers are not consistent in their policies regarding carrying over unused paid sick leave. There are roughly three different types of policies: no carryover (often called “use it or lose it”), carryover of unused hours with or without a limit (“paid sick leave banks”), and “payouts” of unused paid sick leave. “Use it or lose it” is the most common plan, followed by banks with no limits (the theory being that this leave can be used for only illnesses, so a limit is unnecessary). A very few companies use payouts and then typically only upon retirement and often at a discount, so we have left that option out.

The award schedules provided are for example only.

Make sure your sick leave policy takes into account any state or municipal requirements that may differ from your company policy.

Paid Sick Leave Policy

(PAGE 1 OF 2)

Purpose

The purpose of this policy is to make paid sick leave available to employees in the event of their own illness, to care for a family member, or to attend medical appointments.

Eligibility

All full-time employees working 40 hours per week are eligible to request the use of available paid sick leave.

Award

Employees accrue sick leave as follows:

- All regular full-time employees accrue sick leave from the date of hire, for a total of 10 days per year.
- Part-time employees are not entitled to sick leave accrual.

Sick leave may be accrued to a maximum of 40 hours. Employees can only carry over a maximum of 40 hours of accrued sick leave to the subsequent calendar year.

Employees who are regularly scheduled to work fewer than 20 hours per week are not eligible for paid sick leave time, unless otherwise available by law.

Use of Paid Sick Leave

Sick leave may be used in accordance with the following provisions:

- Sick leave may not be used prior to accrual.
- If sick leave is exhausted, annual leave will be used in its place.
- Sick leave may be used for an employee’s personal illness and well-care, medical, and dental appointments. Sick leave also may be used for illness and well-care of a member of an employee’s immediate family (including the employee’s spouse, children, mother, and father).

PAID SICK LEAVE POLICY (PAGE 2 OF 2)

- If the employee is on leave under the Family and Medical Leave Act (FMLA), paid sick leave or paid annual/vacation leave must be used initially as part of the FMLA leave.
- An employee who has a sick leave absence in excess of three (3) consecutive work days must present medical documentation for the absence.
- If the employee is absent unexpectedly due to personal or a family member's illness, the employee should notify his or her supervisor or the director of Human Resources as soon as reasonably possible.

Future Awards

Eligibility for paid sick leave continues even when an employee is out on such leave. If an employee is out of work on an approved paid sick leave as of the first of the year, the full award of the new year will be made available to him or her without the need for the employee to return to active duty to qualify for it.

Unused Paid Sick Leave

("Use it or lose it")

All paid sick leave is offered on an "if needed" basis. If it is not needed, it should not and cannot be used. Any unused paid sick leave is forfeited at the end of the year in which it is accrued.

(Carryover with no limit)

All paid sick leave is offered on an "if needed" basis. If it is not needed, it should not and cannot be used. However, the company will allow employees to carry over any unused paid sick leave for possible use in future years. Unused paid sick leave can continue to be carried over without limit. However, no unused paid sick leave will be paid out upon termination or retirement.

Notice and Documentation

Employees must submit a written request to their supervisors explaining the reason for the request and the anticipated length of the absence if the reason for paid sick leave is known in advance (e.g., certain elective surgeries or treatments). Advance notice of 10 days is required when foreseeable.

When it is not possible to provide advance notice, notice is required on or as soon after the first day of absence as is practically possible. When notice cannot be provided by the employee due to their incapacitation, notice should be provided by a family member or other person with knowledge of the absence.

Submission of timely notice does not constitute or ensure approval by management. All leaves must be approved by management.

When requested, the employee is required to secure documentation of the need for paid sick leave. Such documentation can include, but is not limited to, a healthcare provider's certification and may require the employee to submit to an examination by a qualified medical practitioner (at the company's expense).

Other Conditions

Any abuse of paid sick leave policy may be subject to disciplinary action up to and including termination.

During any paid sick leave taken, employees are expected to inform their supervisors of their intentions, including any changes in their expected date of return, as soon as the employees become aware of the need for such a change.

During a paid sick leave of more than one week, employees are required to check in with their supervisors weekly to inform them of any changes in their situation.

All leaves, approved or unapproved, are subject to the absence/attendance policy to the extent allowed by law, rule, or regulation of a governmental entity.

Policy approved by:

Date:

PAID TIME OFF POLICY

Paid time off (PTO) is a pooled design that includes a total “pool” of days that can be used for a variety of purposes. Most plans have, at a minimum, days for both vacation and sick time. Common variations add in holidays (either some or all), personal days (floating holidays), jury duty, bereavement, and/or other types of typical paid leaves.

Similar to paid sick and paid vacation, PTO can be awarded or accrued. By far the majority of employers choose the accrual method with increments of the total year’s available time being awarded periodically throughout the year. Using pay periods as an accrual point is common. When PTO is awarded all at once, if the employee leaves employment at any point during the year in many states, the entire unused portion of the award must be paid to the employee. With an accrual method, unaccrued PTO does not have to be paid out, regardless of jurisdiction.

Again, as with paid sick and paid vacation, another area of concern for employers is what to do with PTO that is earned but not used by the employee at the end of the year. Employers are not consistent in their policies regarding carrying over unused PTO. There are roughly three different types of policies: no carryover (often called “use it or lose it”), carryover of unused hours with or without a limit (“PTO banks”), and payouts of unused PTO. “Use it or lose it” is the most common plan but is not legal in all jurisdictions. Next are banks with limits (the liability of accrued but unused PTO being a valid financial concern). Organizations often will allow carryovers up to a certain maximum amount and then “freeze” accruals until the employee uses up some of the accrued PTO. Then, the accrual of new PTO will resume until the upper limit is reached again. This strategy operates similar to a “use it or lose it” policy but is accepted by many jurisdictions that require payouts of unused time because the employee cannot lose what they have not accrued.

A very few companies use payouts as a means to keep the liability of unused PTO to a minimum. Often these companies do not have particularly generous plans to start with.

Paid Time Off Policy

(PAGE 1 OF 3)

Purpose

Employees may find that personal, health, or family problems make it necessary to be absent from work for extended periods. In addition, the company recognizes the need for periodic time off for employees for the purposes of vacation, rest and relaxation, family time of a non-medical nature, and other restorative activities.

The company provides a pool of days that may be used for a number of different types of absences. Employees may use this time for vacation, absences due to their own or family member’s medical conditions, time away from work for personal commitments, and/or any need to be away from work for a day or less.

Policy

Managers and employees have the responsibility to plan schedules that meet operating requirements of the department and the time-off needs of the staff. To balance and meet service and staffing requirements, workers and supervisors should plan time-off schedules well in advance, with the exception of unplanned illnesses and emergencies.

Eligibility

(This section assumes only full-time employees are eligible for PTO. If part-time employees are eligible, remove the word “full-time” and substitute the words “scheduled for more than [X] hours per week” where [X] is the minimum number of hours to qualify.)

All full-time employees working 40 hours per week are eligible to request the use of accrued PTO following 90 days after their date of hire. New hires will accrue PTO from the date of hire provided they are hired in a class eligible for PTO. Accrued time off is not available until after the completion of 90 days of continuous employment in an eligible class. Any time taken in the first 90 days of employment, regardless of how much accrual the employee has, will be unpaid.

PAID TIME OFF POLICY (PAGE 2 OF 3)

Accrual

Employees accrue PTO at a rate based on years of service from the date when they began continuous employment in an eligible class with the company. Accruals are granted pro rata per pay period, and PTO will accrue at the following rates (in hours) for fulltime employees.

(Include the following section only if you provide PTO to part-time employees. There are several schemes for doing this, but the most prevalent is "pro-rata".)

All eligible part-time employees who are scheduled to work 20 or more hours per week will accrue PTO time based on the scheduled number of hours they work per week. Part-time employees will accrue only a "pro-rata" portion of the annualized accrual based on tenure when compared with a 40-hour work week. For example, an employee regularly scheduled to work 20 hours a week will accrue 50% of the accrual of a full-time employee.

Hourly employees who are regularly scheduled fewer than 20 hours per week are not eligible for PTO time. Hourly part-time employees will be paid an amount equal to their regularly scheduled hours per PTO day used. "Regularly scheduled hours" will be determined weekly per pay period and the accrual computed accordingly. For any week an employee is not scheduled to work a minimum of 20 hours, he or she will not receive an accrual for that week.

Employees are NOT allowed to borrow against PTO that has not yet been accrued. However, all employees will continue to accrue PTO while out on PTO, so any time that is accrued while on PTO is available to the employee, subject to management approval.

Accrual Increases/Changes

Increases in accruals due to a move from one tenure band to another will become active as of the first of the year in which the change in accrual is due to take place, provided the employee is actively at work in an eligible class at that time. Employees on any type of leave, paid or unpaid, will not realize their change in accrual until after the first full day of work in that year.

Use of PTO

PTO will be charged in full-day and half-day increments only. PTO cannot be used in hourly increments except by hourly employees who are eligible for PTO.

(Use it or lose it)

All PTO is intended to be used in the year it is accrued. The company encourages employees to take the time off they have accrued and as such does not allow any carryover, nor do we pay out unused PTO. Any unused PTO is forfeited at the end of the year in which it is accrued, unless otherwise prohibited by law

(Carryover with a limit)

All PTO is intended to be used in the year it is accrued. However, the company recognizes this may not always be possible and so allows for a carryover of up to 40 hours of unused PTO, which can be used in future accrual periods. Once the bank of carried-over hours reaches 40, accruals will be suspended when the total of the current year's accrual and the bank equals the total potential accrual for the year. For example, an employee who is eligible for 80 hours of PTO carries over 40 unused hours from year [X] into year [X+1]. When the current unused accrual for year [X+1] equals 40 hours and is added to the 40 hours in the bank, the total equals 80 hours. At this point, the employee's accrual is frozen until some hours are used, unless otherwise prohibited by law.

(Payout)

All PTO is intended to be used in the year it is accrued. However, the company recognizes this may not always be possible and so will pay the employee for the unused hours during the first pay period of the following year.

Notice

Employees must submit a written request to their supervisors, along with the anticipated length of the absence. Advance notice of 10 days is required when foreseeable or as soon as need for the leave is known. When it is not possible to provide advance notice, notice is required on or as soon after the first day of absence as is practically possible. When notice cannot be provided by the employee due to his or her incapacitation, notice should be provided by a family member or other person with knowledge of the absence.

PAID TIME OFF POLICY (PAGE 3 OF 3)

Submission of timely notice does not constitute or ensure approval by management. All leaves must be approved by management. Management will take into consideration the business and operational needs of the unit. This is not a consideration for PTO requested due to an unforeseen illness or emergency.

Other Conditions

The company reserves the right to request certification for any time off due to a medical condition. In addition, the company may require an examination by its own qualified medical professional at the company's expense.

Leaves of absence are not intended for employees who are leaving their employment and do not plan to return to work at the company. Any employee who has given notice of intent to leave employment or who has a specific separation date due to a job elimination may not initiate a leave of absence without express approval from management during that period, unless that absence is due to unforeseeable circumstances. Employees in this situation will have any accrued and unused PTO paid to them at termination.

Normally, an employee won't be able to request a leave of more than two (2) continuous weeks, although management may make exceptions under certain circumstances. During any leave taken, employees are expected to inform their supervisors of their intentions, including any changes in their expected date of return, as soon as the employees become aware of the need for such a change.

All leaves, approved or unapproved, are subject to the absence/attendance policy to the extent allowed by law, rule, or regulation of a governmental entity.

Policy approved by:

Date:

PAID VACATION POLICY

A paid vacation policy is only appropriate in a leave program that separates sick time off from vacation. If your organization uses a pooled leave plan such as PTO, you should not use this paid vacation policy. Most PTO plans have both vacation and sick days built in to the total accruals and make this separate policy unnecessary.

Similar to paid sick leave and PTO, paid vacation can be awarded or accrued. By far the majority of employers choose the accrual method with increments of the total year's available time being awarded periodically throughout the year. Using pay periods as an accrual point is common. When paid vacation is awarded all at once, if the employee leaves employment at any point during the year, in many states, the entire unused portion of the award must be paid to the employee. With an accrual method, unaccrued paid vacation does not have to be paid out, regardless of jurisdiction.

Again, as with paid sick leave and PTO, another area of concern for employers is what to do with paid vacation that is earned but not used by the employee at the end of the year. Employers are not consistent in their policies regarding carrying over unused paid vacation. There are roughly three different types of policies: no carryover (often called "use it or lose it"), carryover of unused hours with or without a limit ("vacation banks"), and payouts of unused paid vacation.

"Use it or lose it" is the most common plan but is not legal in all jurisdictions. Next are banks with limits (the liability of accrued but unused paid vacation being a valid financial concern). Organizations often will allow carryovers up to a certain maximum amount and then "freeze" accruals until the employee uses up some of the accrued paid vacation. Then the accrual of new paid vacation will resume until the upper limit is reached again. This strategy operates similar to a "use it or lose it" policy but is accepted by many jurisdictions that require payouts of unused time because the employees cannot lose what they have not accrued.

A very few companies use payouts as a means to keep the liability of unused paid vacation to a minimum.

Paid Vacation Policy

(PAGE 1 OF 3)

Purpose

The company recognizes the need for periodic time off for employees for the purposes of vacation, rest and relaxation, family time of a non-medical nature, and other restorative activities as well as other absences that are not of a medical nature but that do not fall into another category of leaves that the company provides. As such, the company provides a number of paid days off that can be used for these purposes

Policy

Managers and employees have the responsibility to plan schedules that meet operating requirements of the department and time off needs of the staff. To balance and meet service and staffing requirements, workers and supervisors should plan time off schedules well in advance, with the exception of unplanned illnesses and emergencies.

Eligibility

(This section assumes only full-time employees are eligible for paid vacation. If part-time employees are eligible, remove the word "full-time" and substitute the words "scheduled for more than [X] hours per week" where [X] is the minimum number of hours to qualify.)

All full-time employees working 40 hours per week are eligible to request the use of accrued paid vacation 90 days after their date of hire. New hires will accrue paid vacation from the date of hire, provided they are hired in a class eligible for paid vacation. Accrued time off is not available until after the completion of 90 days of continuous employment in an eligible class. Any time taken in the first 90 days of employment, regardless of how much accrual the employee has, will be unpaid.

PAID VACATION POLICY (PAGE 2 OF 3)

Accrual

Employees accrue paid vacation at a rate based on years of service from the date when they began continuous employment in an eligible class with the company. Accruals are granted pro rata per pay period, and paid vacation will accrue at the following rates (in hours) for full-time employees.

(Include the following section only if you provide paid vacation to part time employees. There are several schemes for doing this, but the most prevalent is "pro-rata".)

All eligible part-time employees who are scheduled to work 20 or more hours per week will accrue paid vacation time based on the scheduled number of hours they work per week. Employees will accrue only a "pro-rata" portion of the annualized accrual based on tenure when compared with a 40-hour work week. For example, an employee regularly scheduled to work 20 hours a week will accrue 50% of the accrual of a full-time employee.

For hourly employees, employees who are regularly scheduled fewer than 20 hours per week are not eligible for paid vacation time. Hourly part-time employees will be paid an amount equal to their regularly scheduled hours per paid vacation day used. "Regularly scheduled hours" will be determined weekly per pay period and the accrual computed accordingly. For any week an employee is not scheduled to work a minimum of 20 hours, he or she will not receive an accrual for that week.

Employees are NOT allowed to borrow against paid vacation that has not yet been accrued. However, all employees will continue to accrue paid vacation while out on paid vacation, so any time that is accrued while on paid vacation is available to the employee, subject to management approval.

Accrual Increases/Changes

Increases in accruals due to a move from one tenure band to another will become active as of the first of the year in which the change in accrual is due to take place, provided the employee is actively at work in an eligible class at that time. Employees on any type of leave, paid or unpaid, will not realize their change in accrual until after the first full day of work in that year.

Use of paid vacation

Paid vacation will be charged in full-day and half-day increments only. Paid vacation cannot be used in hourly increments except for hourly employees who are eligible for paid vacation.

When an employee is on an approved period of paid vacation and becomes ill or injured, those days where the employee is incapacitated due to that illness or injury may, with the approval of management, be converted into paid sick leave and the unused days restored to the employee's available vacation time.

Unused paid vacation

("Use it or lose it")

All paid vacation is intended to be used in the year it is accrued. The company encourages employees to take the time off they have accrued and as such does not allow any carryover, nor do we pay out unused paid vacation. Unless otherwise prohibited by law, any unused paid vacation is forfeited at the end of the year in which it is accrued.

(Carryover with a limit)

All paid vacation is intended to be used in the year it is accrued. However, the company recognizes this may not always be possible and so allows for a carryover of up to 40 hours of unused paid vacation that can be used in future accrual periods. Once the bank of carried-over hours reaches 40, accruals will be suspended when the total of the current year's accrual and the bank equals the total potential accrual for the year. For example, an employee who is eligible for 80 hours of PTO carries over 40 unused hours from year [X] into year [X+1]. When the current unused accrual for year [X+1] equals 40 hours and is added to the 40 hours in the bank, the total equals 80 hours. At this point, the employee's accrual is frozen until some hours are used.

(Payout)

All paid vacation is intended to be used in the year it is accrued. However, the company recognizes this may not always be possible and so will pay the employee for the unused hours during the first pay period of the following year.

PAID VACATION POLICY (PAGE 3 OF 3)

Notice

Employees must submit a written request to their supervisors, along with the anticipated length of the absence. Advance notice of 10 days is required when foreseeable, or as soon as need for the leave is known. When it is not possible to provide advance notice, notice is required on or as soon after the first day of absence as is practically possible. When notice cannot be provided by the employee due to their incapacitation, notice should be provided by a family member or other person with knowledge of the absence.

Submission of timely notice does not constitute or ensure approval by management. All leaves must be approved by management. Management will take into consideration the business and operational needs of the unit. This is not a consideration for paid vacation requested due to an unforeseen illness or emergency.

Other Conditions

Leaves of absence are not intended for employees who are leaving their employment and do not plan to return to work at the company. Any employee who has given notice of intent to leave employment or who has a specific separation date due to a job elimination may not initiate a leave of absence without express approval from management during that period, unless that absence is due to unforeseeable circumstances. Employees in this situation will have any accrued and unused paid time off paid to them at termination.

Normally, an employee won't be able to request a leave of more than two continuous weeks, although management may make exceptions under certain circumstances. During any leave taken, employees are expected to inform their supervisors of their intentions, including any changes in their expected date of return, as soon as the employee becomes aware of the need for such a change.

All leaves, approved or unapproved, are subject to the absence/attendance policy to the extent allowed by law, rule, or regulation of a governmental entity.

Policy approved by:
Date:

PROBATIONARY PERIOD POLICY

A policy that covers the first period of employment (typically 90 calendar days) is often a good absence management strategy, especially for companies with very rich employee benefits.

In addition, having a probationary period allows both the employer and the employee to determine if there is a good fit between them.

Probationary Period Policy

Purpose

The company endeavors to find the best employees through its comprehensive hiring practices. However, the company realizes that even with the best of intentions, the employee and the company may not be a match. The company provides a period of time for the employee and the company to evaluate the employment relationship.

Policy

All new full- and part-time employees (except seasonal, temporary, or contract employees) are hired under a 90-day probationary period. During this period, the employee's direct manager will work closely with the employee on all aspects of their training and help them in assuming the full responsibilities of the position. The employee's supervisor may offer advice and counseling when a problem becomes apparent but is not required to do so. If an employee and their supervisor cannot resolve some area of dissatisfaction during the introductory period, either party may terminate the employment relationship without prior notice.

Employee Responsibilities

New employees are encouraged to review the benefit descriptions and policies before making any plans to access any benefits during this period. Some benefits that the employee would otherwise be eligible for may not be available to the employee during the probationary period. The employee should also use this time to determine whether or not the position meets his or her expectations.

Company Responsibilities

Similarly, the company will use the period to determine whether or not the employee has the knowledge and skills necessary to ultimately perform the job satisfactorily and is a "good fit" for his or her work unit.

Former Employees

Employees who are being rehired after having left employment with the company may be required to satisfy another probationary period. Any returning employee whose last day of employment was more than five (5) years previous to the rehire date will be subject to the probationary period. However, the company reserves the right to require a probationary period for any rehired employee, regardless of the interval, at its sole discretion.

If the rehired employee left the company as the result of a layoff, job elimination, or other reason for which he or she was not responsible and was otherwise performing at an acceptable level as demonstrated by periodic reviews, the probationary period can be shortened or waived entirely by the appropriate Human Resource representative with approval from the hiring manager.

Terms of Employment

After the successful completion of the introductory period, unless otherwise prohibited by law, employment with the company is considered to be "at will". Either party may terminate the employment relationship at any time, for any reason or no reason at all, with or without cause.

Policy approved by:

Date:

RETURN TO WORK POLICY

Most employers consider return to work (RTW) as a program rather than a benefit or a leave and so do not have a policy that serves as a foundation for it. This is not wise as too often the outcome of an RTW intervention has negative employment consequences, while the program process can impact compliance with the Americans with Disabilities Act (ADA) and overlay on the administration of the FMLA. Having a well-thought-out policy foundation increases the chances for success and reduces the likelihood of litigation.

Return to Work Policy

(PAGE 1 OF 4)

Purpose

Employees who become medically restricted and are unable to perform the essential functions of their job for a temporary period may be considered for job modifications to enable a return to work (RTW) during that period of time. This policy and process applies to all U.S. full- and part-time employees.

Goals of the RTW Program

The goals of the company's RTW program are:

- to reduce lost time or significant work disruption due to injury or illness, and
- to encourage employees who are off work due to an injury or illness to return to work as part of the normal recovery process.

The company desires to do this by creating a uniform but flexible program that:

- Supports a timely and medically safe return to work
- Creates a systematic way for managers to address the issues concerned with returning employees to work
- Enables the continued productivity and safety of those employees with chronic conditions

Policy

The company is committed to retaining its valuable workforce and is interested in protecting the health and welfare of all employees. Return-to-work arrangements are a temporary measure intended to allow employees with medical restrictions or impairments to continue in a modified-duty assignment or to bridge the gap between full absence and a return to full duty. RTW arrangements are provided for both occupational and non-occupational illness or injury.

Our company-wide RTW policy outlines our program, key resources, and where to go for help. All requests for RTW will be reviewed on a case-by-case basis and will recognize the unique circumstances of each employee and the business needs of the work group.

The company's RTW policy helps strengthen its competitive position and helps ensure employees receive their valuable benefits — with the help of health, disability, and Human Resource representatives who will assist throughout the process.

The company takes a team approach to return to work. The RTW team is comprised of:

- The employee's direct supervisor
- A site leadership representative
- The company's health professional (if applicable)
- RTW coordinator
- Safety professional
- Human Resource representative

Intent

The intent of return to work is to provide temporary transitional work assignments for employees with medical restrictions that impact their ability to do the essential functions of their job following an illness or injury.

RETURN TO WORK POLICY (PAGE 2 OF 4)

Duration

RTW arrangements are considered on a case-by-case basis, depending on the employee's present condition and capabilities. Such work arrangements are temporary and short-term (typically two (2) weeks in initial duration). In some circumstances, based on an employee's progress and ability to function at work, temporary modified duty may be extended to support continued recovery but is not to exceed two (2) months.

If an employee's impairment is expected to be long-term or indefinite, the company will work with the employee in an interactive process to determine whether a long-term accommodation under the Americans with Disabilities Act is feasible.

Transitional Work Assignments

If an employee is currently working but becomes medically restricted, a transitional work assignment (TWA) will be considered, allowing the employee to continue productive work in a modified assignment. Often such modified duty speeds the recovery process for the employee and allows the business unit to retain a valued and skilled employee. An example of modified duty may be a situation in which an employee incurs an injury at home over the weekend but is still able to work, provided lifting activities can be limited for two (2) weeks.

Job modifications will be based on the employee's current capabilities and function and will take into account normal job responsibilities and essential functions. In addition, business needs will be reviewed and the impact on the work group considered, ensuring goals can be met during the requested transitional work assignment period.

The priority of consideration for transitional work is as follows:

1. Full schedule with limited duties
2. Limited schedule with full duties
3. Full or limited schedule with modified duties
4. Full or limited schedule with a medically acceptable task list

It is expected that an employee will engage in a transitional work assignment with their original team and department. However, if there are no medically acceptable transitional work duties available, that employee will be placed with a different department in the same geographic location as an alternative. Should no medically acceptable duties be available at the regular work site, the company will work with the individual to find suitable work-hardening opportunities outside the regular place of employment.

Examples of Transitional Work Assignments

TWAs may involve modifications to the physical or cognitive demands of a job, work schedule, and ergonomic requirements. Some examples of modifications are:

- Flexible or reduced work schedule
- Limits to physical job demands (e.g., lifting, bending, stretching, standing)
- Reassigned job duties or sharing job duties with other employees
- Ergonomic adjustments and/or equipment
- Assistive technology (e.g., screen reader, enlarged text, closed captioning)

TWAs generally do not address restrictions such as:

- Commute to work must be no more than 10 miles
- Must be assigned to a new supervisor
- Cannot meet current productivity standards

How TWA Works*Temporary Job Modifications*

If an employee is currently working and requires a job modification based on an illness or injury (on or off the job) or an employee is currently on disability and is able to return to work in a modified capacity, *then...*

The employee advises their supervisor of the current medical restrictions, and the supervisor, in turn, alerts the company's RTW Coordinator. In many cases, the local supervisor can provide an adequate TWA with no additional support needed.

RETURN TO WORK POLICY (PAGE 3 OF 4)

If not...

The employee or their treating healthcare provider advises the company's RTW Coordinator or local RTW representative and job modifications are explored.

If...

The employee or the treating healthcare provider forwards information regarding the employee's medical restrictions to the company's health professional directly, *then...*

The RTW coordinator and local RTW representative review the medical restrictions (and any recommended job modifications) provided by the healthcare provider. The RTW coordinator or the local RTW representative may send a copy of the employee's job description and/or essential functions to the healthcare provider, if necessary.

If...

The employee discusses the medical restrictions, job duties, and possible alternatives with their supervisor, the local RTW representative, or the RTW coordinator, *then...*

The supervisor and local RTW representative with the support of the RTW coordinator will work with other members of the RTW team to consider job modifications within the employee's current work assignment. The team takes into account the business unit's ability to provide modified duty. Start and end dates are established when a job modification is agreed upon and approved.

If...

The employee either remains at work in a modified job assignment or is disabled but returns to work with a job modification, *then...*

The supervisor and local RTW representative will assess the employee's ability to do the transitional work assignment, based on job functioning, and will work with the employee and the RTW team to consider further modifications, if necessary.

If...

The employee remains medically restricted, *then...*

The supervisor and the local RTW representative discuss the employee's ongoing medical restrictions and job functioning with the employee and request additional medical information from the treating healthcare provider, if necessary. The supervisor and the local RTW representative, with the input from the RTW committee, determine whether the TWA can be extended and whether the business unit is able to support a longer temporary job modification.

If...

The employee's condition improves to a full-duty release status and they return to full duty within the approved period, *then...*

The local RTW representative secures a release from the healthcare provider confirming that the employee is able to resume normal job functioning.

If...

The employee remains medically restricted after two (2) months of modified duty, *then...*

The supervisor and the local RTW representative refers the employee to RTW coordinator so that a long-term solution may be considered.

Long-Term Modifications and/or Reassignment

If...

An employee has medical restrictions that are indefinite or long-term, *then...*

The employee is referred to RTW coordinator and the RTW committee for further consideration

The RTW committee will work in conjunction with the employee's treating healthcare provider to gather additional information regarding the employee's current functioning and recommendations for long-term accommodations.

RETURN TO WORK POLICY (PAGE 4 OF 4)

If...

The employee is able to continue in his or her current assignment and do the essential functions of the job with modifications, *then...*

The RTW coordinator will discuss the potential job accommodation with the supervisor and site leadership, as appropriate. If a job accommodation can be agreed upon based on the employee's functional capacity, the RTW committee will approve the request. Long-term accommodations may be reviewed annually or more frequently, as necessary by the RTW committee.

If...

The employee cannot be accommodated in their current position, *then...*

The RTW coordinator may recommend that, if benefits have already been approved, they be continued while a job search is conducted for a modified assignment. A job search will be conducted for up to 60 days.

If...

The employee can be placed in a position with job accommodations or cannot be accommodated after a job search of 60 days, *then...*

The supervisor and the local RTW representative will arrange for the employee to be reassigned to another position with job accommodations. If that is not possible, the employee's employment may be terminated.

Declining an Offer of a TWA

If an employee is actively at work and declines a TWA designed to fit the employee's particular functional capacity and determined to be medically safe to engage in, the employee will be placed on an unpaid leave of absence that cannot exceed six (6) months.

If an employee is receiving short-term disability (STD) benefits and the employee is offered appropriate transitional work and does not return to work, the employee may no longer be eligible for STD benefits and/or the employee may be terminated.

If there is a difference of opinion between the company's RTW committee and the treating healthcare provider, a referral for a functional capacity exam, fitness-for-duty evaluation, or independent medical exam may be necessary to resolve the difference in perspectives. The costs of such exams may be the responsibility of the employee or ABC Company, depending on the nature of the issue.

During the period of time where medically approved transitional work has been offered but the employee has yet to accept that offer, the employee will be placed on an unpaid leave of absence for up to six (6) months and will potentially forfeit short-term disability and/or workers' compensation benefits.

Benefits and Job Protection

Employees are protected against job loss for up to 12 weeks, if eligible under the Family and Medical Leave Act (FMLA) and they have not used up their allotment in the preceding 12 months. During TWAs, only the time not worked will be counted against the FMLA allotment.

If an employee's absence extends beyond six (6) months and his or her former position is no longer available, efforts will be made to assist the employee in finding a vacant position that is consistent with the employee's job qualifications.

In those cases involving workers' compensation (WC), state requirements will vary, and it will be important for employees to speak with their supervisor, HR representative, and/or the WC representative to fully understand their benefits.

Additional Resources

Company Absence Reporting Line: XXX.XXX.XXXX

HR Service Center: XXX.XXX.XXXX (for all questions regarding time reporting, pay, and/or benefits)

RTW Coordinator: XXX.XXX.XXXX

Safety and Health: XXX.XXX.XXXX

Employee Assistance Program: XXX.XXX.XXXX

Policy approved by:

Date:

HOLIDAY LEAVE POLICY

The number of holidays leave is provided for and which ones vary from company to company, with 10 named holidays commonly designated. Often “floating holidays” are included in holiday policies, allowing employees to elect to take time off on other days. Some companies include holidays in a very broad paid time off plan.

The idea of holidays is very simple, but the execution is often complex. Organizations that are closed in their entirety for certain holidays have the simplest administration, whereas those with multiple workforces, some of which work 24/7, have people who are scheduled for holiday work. How that is handled varies from industry to industry.

In addition, the terms for the handling of floating holidays are often very different from company to company.

The sample policy provides a framework within which these and other considerations may be handled.

Holiday Leave Policy

(PAGE 1 OF 2)

Purpose

The company provides paid time off in observance of nine holidays.

Policy

(The following is an example of a typical holiday schedule in which there are eight named holidays and one “floating holiday”)

Holidays Observed

The company observes the following eight (8) paid holidays:

- New Year’s Day (Jan. 1)
- Memorial Day (the last Monday in May)
- Juneteenth (June 19)
- July 4
- Labor Day (the first Monday in September)
- Thanksgiving (the fourth Thursday in November)
- Friday after Thanksgiving
- Christmas Day (Dec. 25)
- A floating holiday

Before Jan. 1 of each year, the company will publish a list of holidays for that year.

Guidelines

Should a paid holiday fall on a weekend, the nearest weekday will be considered the date for that holiday.

Employees who are scheduled to work on a holiday but who cannot get the time off due to business necessity as determined by their immediate supervisor will have the option of converting that holiday into an additional floating holiday to be used after the date of the scheduled holiday, or they may elect “holiday pay” for that day, which would provide them with their regular daily pay plus holiday pay.

An employee’s refusal to work on a holiday when requested to do so is considered an unexcused absence.

Except for work units that are not closed on a given holiday, paid holidays cannot be worked and additional floating holidays taken or holiday pay elected. If the work unit is off that day, there is no option to work.

The floating holiday awarded by the company is available from the first day of the year and may be taken at any time with management approval. Any floating holiday that is elected by the employee because he or she was scheduled to work that day may be taken only after that holiday has occurred. All floating holidays may only be used with adequate notice to and approval from management.

Should an employee be out on an approved paid leave (i.e., paid sick leave) on a regularly scheduled holiday, that day will be paid as holiday leave and not counted as the original leave. An unused floating holiday will be paid out at the end of the year. Floating holidays cannot be carried over.

HOLIDAY LEAVE POLICY (PAGE 2 OF 2)

Seasonal, temporary, or contract employees are not eligible for a paid holiday.

Part-time employees will receive holiday pay in the amount that is equivalent to the number of hours they would have worked, had it not been for the holiday. Part-time employees whose regular schedule would not have them at work on a date when a holiday occurs will not be eligible for that paid holiday.

Holiday pay will include any shift differential or other additional incentive pay (other than overtime) the employee would have earned, had he or she worked that day.

The company recognizes and honors the diversity of its workforce and realizes that there may be religious holidays other than those authorized by this policy for which an employee would like time off. The company will make every reasonable effort to accommodate those holidays through the use of floating holidays or other paid leave time the employee may be entitled to. If all appropriate paid leave time has been exhausted, the company will consider granting additional unpaid time off on a case-by-case basis.

Policy approved by:

Date:

LEAVE OF ABSENCE POLICY

There are three leaves covered in this policy statement for which there are no separate policy statements: unpaid sick leave, discretionary leave, and personal days.

The first two are discretionary. Unpaid sick leave covers periods of time that may be FMLA-eligible but for which there is no longer any remaining paid leave (regardless of whether it is paid sick leave, paid vacation, or PTO). Discretionary leave is a catch-all for leaves for purposes that are deemed appropriate but that do not fall into any existing leave bucket in order to allow for continued employment. Because both are discretionary, there is no need for a separate policy statement to present the terms, as they will vary from case to case.

The third, personal days (or floating holidays), can be a separate leave policy (or covered in the holiday leave policy section as noted in the sample policy).

Other than these three leaves, this is an omnibus policy that acts as a control for all the separate statements of the types of leave an organization provides its employees. It serves as a high-level resource for communication and planning purposes and can call attention to critical components of each individual type of leave.

Leave of Absence Policy

(PAGE 1 OF 4)

Purpose

Employees may find that personal, health, or family problems make it necessary to be absent from work for extended periods. In addition, the company recognizes the need for periodic time off for employees for the purposes of vacation, rest and relaxation, family time of a non-medical nature, and other restorative activities.

The company is committed to supporting employees by providing time off from work through various types of leaves that are described in this policy. In general, leaves of absence will be financially supported whenever possible through either continuation of pay or by payment of benefits. In some cases, requests for leaves of absence without pay for limited periods will be considered by management, depending on the reasons and circumstances for the request.

Policy

It is the policy of the company to provide leaves of absence subject to the conditions stated in this leave of absence policy.

Notice

Employees must submit a written request to their supervisors explaining the reason for the request and the anticipated length of the absence.

Advance notice of 10 days is required when foreseeable or as soon as need for the leave is known. When not possible to provide advance notice, notice is required on or as soon after the first day of absence as is practically possible.

When notice cannot be provided by the employee due to their incapacitation, notice should be provided by a family member or other person with knowledge of the absence.

Submission of timely notice does not constitute or ensure approval by management. All leaves must be approved by management.

Other Conditions

Any abuse of any leave policy may be subject to disciplinary action up to and including termination.

The company may require certification for any leaves for which the cause is a medical condition. The company reserves the right to conduct its own examination by an appropriately qualified medical practitioner at its own expense.

LEAVE OF ABSENCE POLICY (PAGE 2 OF 4)

Leaves of absence are not intended for employees who are leaving their employment and do not plan to return to work at the company. Any employee who has given notice of intent to leave employment or who has a specific separation date due to a job elimination may not initiate a leave of absence without express approval from management during that period, unless that absence is due to unforeseeable circumstances.

Normally, an employee will not be able to request a leave of more than two (2) continuous weeks, although management may make exceptions under certain circumstances.

During any leave taken, employees are expected to inform their supervisors of their intentions, including any changes in their expected date of return, as soon as the employee becomes aware of the need for such a change.

All accrued paid leave remaining at the time the leave of absence begins must be used at the beginning of the leave. After those days are used, the remaining leave becomes unpaid.

All leaves, approved or unapproved, are subject to the absence/attendance policy to the extent allowed by law, rule, or regulation of a governmental entity.

Management retains the right to deny the requested leave of absence, unless required under any applicable federal, state, county, or municipal law.

Types of Leaves

(Use the following if your company has a "pooled leave" approach, commonly referred to as PTO.)

Paid Time Off

Employees are provided with a pool of paid time that they may use for vacation, absences due to their own or family member's medical conditions, time away from work for business and personal commitments, or any need to be away from work for a day or less. Please see the paid time off policy for eligibility, accrual, and other rules regarding this leave.

Unless the leave is specifically provided under another leave policy, all leaves are considered as paid time off.

(If your PTO plan includes jury duty, bereavement, and other types of leave often handled separately, then do not include any of the following leave descriptions that are included in your PTO plan.)

(Only use the following two leaves if your company has a segregated leave approach.)

Paid Vacation

Employees are provided with paid time that they may use for vacation, time away from work for business and personal commitments, or any need to be away from work for a day or less. Please see the paid vacation policy for eligibility, accrual, and other rules regarding this leave.

Unless the leave is specifically provided under another leave policy, all leaves are considered as vacation. In addition, available vacation leave must be used whenever pay for any other leave described in this policy is exhausted.

Paid Sick Leave

(Many companies do not allow the use of sick leave for care of a family member; however, this practice is changing due to the increased use of the FMLA and the growing number of state and municipal laws requiring such. Therefore, these policies are written with this in mind.)

Employees are provided with paid time that will be used to provide salary continuation when an employee is absent due to their own or a family member's significant illness. Please see the paid sick leave policy for eligibility, accrual, and other rules regarding this leave.

(The following leaves are typical of many leave policies but should not be included if they are part of a PTO plan.)

Unpaid Sick Leave

Additional leave due to a medical condition of the employee or family member may be granted on an unpaid basis to the employee in certain circumstances once eligible paid leaves are exhausted.

LEAVE OF ABSENCE POLICY (PAGE 3 OF 4)

When paid sick leave is exhausted, any available paid vacation leave must be used. When paid vacation leave is exhausted, the company may provide, at its discretion, additional unpaid leave for the serious medical conditions of the employee or family member.

It is important to note that unpaid sick leave is not discretionary on the part of the employee. An employee may not elect to use unpaid sick leave in lieu of paid sick leave or in lieu of using any remaining paid vacation leave. Unpaid sick leave is only available with express management approval and only once all paid sick leave and paid vacation leave are exhausted.

If an employee is on approved unpaid sick leave and subsequently becomes eligible for additional paid vacation or sick time, unpaid sick leave will be put on hold and the paid leaves will be paid out until exhausted. Once these other leaves are exhausted, unpaid sick leave may resume, if approved.

It is not the intention of the company to guarantee unpaid leave to every employee every time or to provide unlimited unpaid leave, once leave has been granted. Unpaid leave is granted at the company's sole discretion, and if granted, the company will review the employee's need for continued leave periodically and make a decision as to whether to continue that leave or not. This decision will be based on the balance between the employee's likelihood of returning to work in the foreseeable future with the company's need for productivity, and will be informed by the applicable laws, rules, and regulations that may govern that leave.

Tenure	Annualized Accrual (in hours)
First year	40 hours
2-4 years	80 hours
5-9 years	120 hours
10+ years	160 hours

There is no separate policy statement for unpaid sick leave.

Bereavement Leave

Employees have up to seven (7) days of paid leave available for use when an immediate family member dies or is expected to die within that time. Bereavement leave, like all leave, is subject to management approval. Unused bereavement leave is not carried over, nor is it paid out at the end of the year.

Please refer to the bereavement leave policy for specific information on the details of this leave.

Jury Duty

Employees have up to 10 days of paid leave for the satisfaction of their responsibilities for jury duty. Leave for jury duty is dependent on the requirement for the employee to be physically present in order to serve. A requirement that an employee be "available" or "on stand-by" is not sufficient to qualify for jury duty in most cases.

Should an employee be placed on a jury for a legal proceeding that lasts more than 10 work days, the company will make a determination, on a case-by-case basis, of the extension of time to cover the full term of service.

Please see the jury duty leave policy for specific information on the details of this leave.

Discretionary Leave

The company may, at its sole discretion, provide unpaid leave for any reason for an employee once all paid leave is exhausted. Discretionary leave is provided based on the need of the employee to be absent from work, the length of time the employee is likely to be absent, and the ability of the employee's work unit to absorb the absence.

Discretionary leave requires the approval of both HR and Executive Management. There is no separate policy statement for discretionary leave.

Holidays

The company provides certain paid days off for specific holidays. These are not technically considered leaves and do not require advance notice of absence unless your work unit is required to work on the date of that holiday. In such case, a substitute day off with equivalent pay will be granted based on the need of the work unit and with immediate supervisor approval.

(Some companies may want to include the following provision for holidays.)

LEAVE OF ABSENCE POLICY (PAGE 4 OF 4)

In the event a holiday is not available to an employee due to the demands of the work unit, the employee has the option to elect "double time" pay for work done on that holiday. However, if the employee elects that option, the holiday time is no longer available for substitution for another day.

Personal leave

(This leave is not recommended for companies that have PTO plans. Often referred to as floating holidays, generally the purpose of this leave is to be used as compensation for certain holidays for that may not be part of the paid holiday leave policy. Patriot's Day or Martin Luther King Day are examples. If the leave is considered, it should not be considered as either a type of vacation or sick time and thus not included in the run out of paid leave for eligibility for unpaid leave. In this group of sample policies, this leave is covered under the holiday policy as floating holidays.)

Employees have up to three (3) days of paid personal leave to be used, with advance notice and approval, without regard to purpose. These days are not accrued but are available at the first day of the year. If unused, they are not paid out at the end of the year, nor are they carried over.

Please see the paid personal leave policy for specific information on the details of the leave.

Family and Medical Leave Act

The company does not consider the FMLA (and any other mandated job protection law, rule, or regulation) as a type of leave. It is mandated job protection while on a leave and as such does not constitute a leave separate from any of the leaves listed in this policy.

It is the company's policy to extend FMLA job protection concurrent with the appropriate paid or unpaid leaves for which a qualifying medical condition may be eligible.

For more information and details regarding FMLA job protection while on leave, please refer to the FMLA policy.

Policy approved by:

Date:

TOOLS FOR SUCCESS

“An ounce of prevention is worth a pound of cure.” - BENJAMIN FRANKLIN

It requires a great deal of advanced preparation to run a compliant and well-executed leave management program as well as manage issues that arise when things do not go as planned. DMEC’s mission is to advance strategies and resources that improve workforce productivity by minimizing the impact of absence and disability. We encourage you to take the time necessary to build your own leave management toolkit that addresses your specific organization.

The following key components are necessary for success.

TRAINING & EDUCATION

The CLMS designation program provides the baseline necessary to learn, understand, and put into practice the processes needed to stay compliant, aware, and compassionate. In addition to the CLMS program, it is important to continue to gather up-to-date information through training and education opportunities such as microcredential courses, webinars, conferences, seminars, white papers, case studies, and more.

TIP SHEETS

As with any process, there is likely going to be multiple requirements and guidelines which must be followed for your leave management programs. Establishing tip sheets for managers and HR team members can help ensure that compliance is maintained. The tip sheets do not have to be elaborate; they should simply provide a checklist of required actions and instructions for handling complex or sensitive leave issues. These sheets can provide the support a good manager needs to do their part and substantially reduce risk for the organization.

FAQS

Maintaining a frequently asked questions (FAQs) document for employees and managers, by program, can ensure all members of the organization feel informed and able to make the best decision. The Department of Labor and EEOC have provided many fact sheets, which are linked on page 14 of this guide; however, developing your own company FAQs will be a useful tool for your organization.

SAMPLE POLICIES

One of the most important management tools you should have on hand are up-to-date absence policies. These policies will ensure consistent treatment of all employees and provide guiding principles for how to handle any situation.

Under many laws, it is also required that the parameters of the law are in writing and accessible to all employees. The CLMS Resource Guide provides several sample policies that you can use as a starting point; however, it is important to know the specific laws in your state and your organization’s requirements and culture to create customized policies that meet your specific needs. Please note that the sample policies provided in this guide are intended to serve as examples and should not be implemented without legal review and guidance.

LEAVE FORMS

The forms that employees and employers must complete for leaves of absence are critical components of compliance. They should be user-friendly and maintained regularly to reflect any changes in federal or state laws. Federal and state government agencies have provided sample forms, which may be used as is. The majority of these forms can be modified to work for your company as long as you capture the required information, and do not request more information than you are allowed by law to ask from your employees. In the FMLA and the ADA sections of this guide, you will find many of the necessary forms.

DATA

Understanding where your organization started and where it is today will help you see trends which may need attention. Absence patterns can highlight areas of concern, but more importantly, areas of opportunity. For example, there may be minimal changes you could make to your employee assistance program that could reduce absences, provide a feeling of support for your employees, and result in increased productivity. You will only know to make these types of changes by keeping an eye on your company's landscape through the assessment of the data.



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