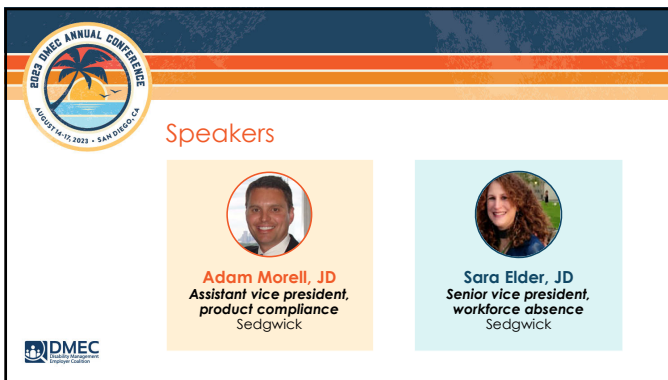





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QUIZ


How old did the ADA turn in 2023?

- 51
- 33
- 30
- 15



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Americans with Disabilities Act

- Americans with Disabilities Act (ADA) is a law that prohibits discrimination based on disability; it was enacted in 1990 and amended in 2008 (ADAAA)
- Under the ADA, employers are required to provide reasonable accommodations to qualified individuals with disabilities, unless doing so would pose an undue hardship (42 USC § 12101)
- It prohibits discrimination, retaliation and harassment of disabled persons

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Definition of a Disability

Disability is defined by the ADA as:

- Physical or mental impairment that substantially limits one or more major life activities, or
- A record of such an impairment, or
- Regarded as having such an impairment

• See USC 12102 (2)

NOTE: Many states have laws that define "disability" more broadly than the Federal ADA law



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Definition of reasonable accommodation

Reasonable accommodation is defined by the ADA as:

- Any change in the work environment, or in the way things are customarily done, that enables an individual with a disability to enjoy equal employment opportunities
- The determination of whether an accommodation is reasonable is also made on a case-by-case basis




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Types of reasonable accommodation:

<p>Accommodate <i>restrictions within the position</i></p>	<p>Accommodate <i>with a leave of absence</i></p>	<p>Accommodate <i>with a job reassignment</i></p>
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Leave as an accommodation

According to the EEOC, an employer must consider unpaid leave if the employee requires it, so long as it does not create an undue hardship for the employer, even when:

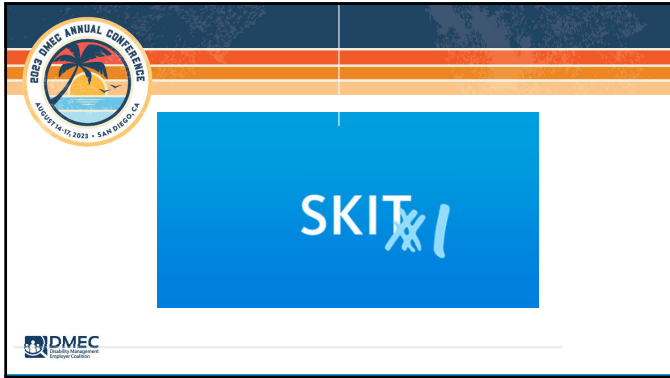
- The employer does not offer leave as an employee benefit.
- The employee is not eligible for leave under the employer's policy.
- The employee has exhausted the leave the employer provides (e.g., a workers' compensation program, FMLA or similar state or local laws).

<https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disability-act>

REMEMBER THOSE EXAMPLES!



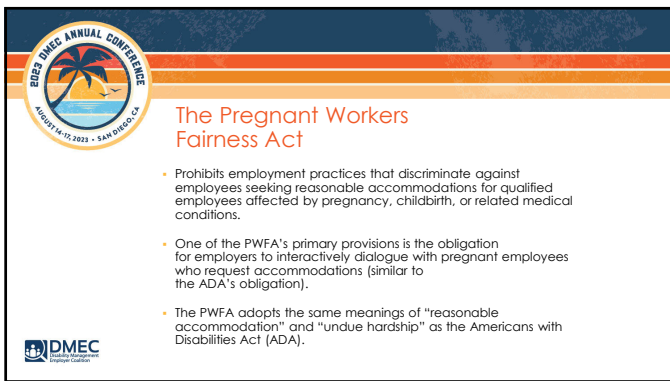
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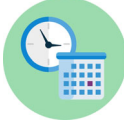



What is intermittent leave?


Intermittent leave: unscheduled leave taken in multiple blocks of time because of a single qualifying reason.

Examples:

- Employee requests up to 2-3 breaks a day as needed lasting 30 minutes each due to Irritable Bowel Syndrome flare-ups.
- Employee requests to leave up to 3 days a week for counseling lasting up to 2 hours for each panic disorder episode.
- Employee requests off the 2nd and 4th week of the following month for a health treatment protocol.
- EE requests unscheduled time off for migraine headaches

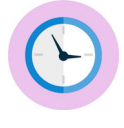



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Does the ADA require intermittent leave? Yes.

EEOC guidelines note that, under the ADA, a qualified individual with a disability may work part-time in his current position, or occasionally take time off as a reasonable accommodation if it would not impose an undue hardship on the employer.




https://www.eeoc.gov/laws/guidance/family-and-medical-leave-act-ada-and-title-vii-civil-rights-act-1964_question_13



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Comparison of intermittent leave requirements

FMLA	ADA
Employee is eligible once they've been employed with their current employer for at least 1 year and 1250+ hours in the year leading up to the requested leave	Eligible on day one; no requirement for time worked
50 employees or more	15 employees or more
12 weeks of unpaid leave for a serious health condition, but employee must have it in the bank at the time of request	No maximum leave amount or bank of time; employer will undertake a hardship analysis to determine if the requested leave is reasonable
Employee or family member must have a serious health condition (or a newly-expanded family member to bond with)	Employee has a disability and is the only eligible person for a reasonable accommodation
Employee has the absolute right to intermittent FMLA for a serious health condition for themselves or a family member	Intermittent ADA leave may be a reasonable accommodation. However, it is reasonable for an employer expect reliable, predictable attendance and undue hardship considerations apply.



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Intermittent leave basics

- Medical documentation should specify what the employee needs, including frequency (e.g., time off, breaks) and length of leave time.
- Employers should clearly communicate with employees regarding expectations on following departmental and human resource policies (e.g., call-in policies).
- Focus on the needs of the employee while balancing the business needs of the organization.




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Tips for responding to intermittent leave requests


- Read the health care provider's information to get a better understanding of what the employee's limitations are.
- Discuss with the employee what will help them perform the essential functions of the job.
- Explain what you can accommodate and what you can't.
- Don't be afraid to try accommodation on a trial basis.
- Document the interactive discussion and agreement.




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What did this employer do differently?

- Offered several options to the employee
 - The manager made the form work for him
- Held the employee to the attendance policies/standards that other employees were expected to follow
- Documented the performance issues
- From the court's opinion: the court said that the employee's conduct did not demonstrate *"the stuff of flexible, interactive discussions...neither the ADA nor the 2008 amendments to the ADA permits an employee to leave work early and then sue her employer for being unreasonable."*




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How to curtail abuse

- Enforce all attendance policies, especially call-in policies.
- Hold the employee accountable for absences unrelated to their condition.
- Make sure the employee has established a pattern of noncompliance with frequency and duration limits before you discipline.
 - If the frequency and duration of an absence changes, engage with health care provider to determine if the change is medically necessary.
 - If so, determine if it is still reasonable to accommodate the intermittent ADA leave.





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The stories you have heard were inspired by real cases. The names have been changed to protect the innocent, and a fact or two may have been tweaked here or there for clarity and/or lesson purposes.

Maybe.

- Skit #1 - Borrego, et al v. Raley's Family of Fine Stores, No. 2015-00177687 (Superior Court for the State of California, County of Sacramento, Jan. 17, 2020)
- Skit #2 - Traulman v. Time Warner Cable Texas, 2018 U.S. App. LEXIS 34933 (11th Cir. 2018)

<https://www.wkrg.com/news/Dragnet-928franchise296/media/936-Dragnet-936-screen.jpg>

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