

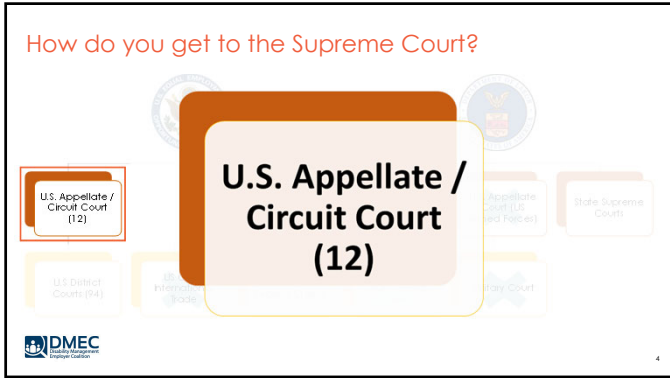
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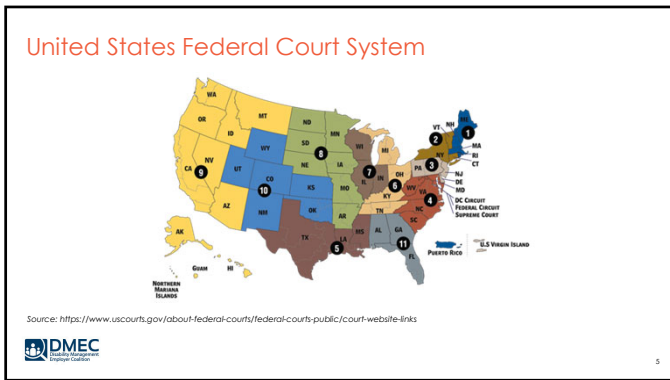
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Department of Labor

Authority

- Wage & Hour Division (WHD)
- Family & Medical Leave Act (FMLA)

Guidance

- Administrative Interpretation
- Opinion Letters
- Non-Administrator Letters from WHD
- Handbook

Compliance

- Investigation
- Administrative Settlements
- Lawsuits

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Young v United Parcel Service, Inc. 135 S.Ct. 1338 (2015)

- Part-time delivery driver for UPS expected to lift up to 70 lbs as essential function
- After becoming pregnant, the employee's doctor limited her to lifting no more than 10-20 lbs
- UPS provided employees with work-related injuries with light duty assignments as well as other employees under the ADA or drivers who lost DOT certification
- The Supreme Court held that a pregnant employee can establish a prima facie case of disparate treatment under the McDonnell Douglas framework

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Eight Years after Young v United Parcel Service, Inc: Pregnancy Workers Fairness Act (PWFA)

- Became effective June 27, 2023
- Entitles workers to reasonable accommodation for known limitations of pregnancy, childbirth or related conditions unless there's an undue hardship
- Fills gaps left by the ADA and the Pregnancy Discrimination Act of 1978 (PDA) which amends Title VII of the Civil Rights Act of 1964
- Doesn't replace other federal, state or local laws that are more protective

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CKO Gift Card #1

Christina Korona, 2023-07-26T17:11:13.137

Beasley v. O'Reilly
69 F.4th 744 (11th Cir. 2023)

- Deaf employee who understands approximately 30% of verbal communication and worked as an inbound materials handler for O'Reilly
- He claimed ADA violations for failing to provide him with requested reasonable accommodations
- Employee resigned. No failure to accommodate regarding hiring or his termination






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Beasley v. O'Reilly
69 F.4th 744 (11th Cir. 2023)

- Does the ADA require a showing of an adverse employment action separate from the failure to accommodate
- Which appellate court disagreed with the 11th Circuit in its 2020 case

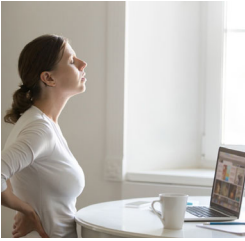

11th Cir. reversed and remanded finding two of the requested accommodations involved essential functions

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EEOC v Methodist Hospital of Dallas
62 F.4th 938 (5th Cir. 2023)

- Patient care technician injured their back at work; then worked in a temporary light duty position
- Unsuccessful attempts to return to work. Approved several times for FMLA. While on leave asked their supervisor for accommodations/assistance with the more strenuous required job tasks
- Employee applied for a vacant scheduling coordinator position. Hiring manager selected another candidate
- Employee provided a permanent lifting and bending restriction. Methodist offered leave but employee did not respond. Methodist terminated employment

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Slide 11

CKO Gift Card #2

Christina Korona, 2023-07-26T17:11:40.981

Polling Question: Who do you think prevailed in EEOC v. Methodist Hospital of Dallas?

- A** The Court refused to issue an opinion
- B** The EEOC
- C** The Methodist Hospital of Dallas
- D** The Court affirmed in part and remanded in part



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EEOC v Methodist Hospital of Dallas
62 F.4th 938 (5th Cir. 2023)

- Does the employer's policy of hiring the most qualified candidate violate the ADA when a disabled employee requests reassignment to a vacant role
- What Supreme Court case did the 5th Circuit rely on
- Which courts agree
- Which courts disagree

Remanded to the District Court to apply the second step of US Airways, Inc. v. Barnett




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Severson and Its Aftermath
872 F.3d 476 (7th Cir. 2017)

- Severson decision rejects EEOC's position on extended leave of absence
- Clarification/court decisions since Severson
- EEOC's position



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CKO Gift Card #3

Christina Korona, 2023-07-28T16:52:20.742

Polling Question: How do you handle "long-term" leave as an accommodation request?

- A** We generally cannot accommodate leave requests (beyond FMLA/STD/state leave) that exceed a few weeks.
- B** We approve extended leave requests up to a certain time period (one month, 3 months, 6 months, etc.)
- C** We examine each request independently and make a determination based on the specific circumstances.
- D** We approve everything for fear of running afoul of the EEOC.





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ADA Accommodation Considerations

- Clearly articulate employment and hiring policies
- Make case-specific decisions against a consistent set of criteria
- Maintain and publish current and accurate job descriptions
- Stay engaged in the interactive process (don't be the party to cause the breakdown)





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FMLA Cases




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CKO Gift Card #4

Christina Korona, 2023-07-26T17:12:31.483



Slide 17

CKO Chocolate/ 2-Water Bottles

Christina Korona, 2023-07-26T17:12:43.917

Escriba v Foster Poultry Farms Inc.
743 F.3d 1236, 1244 (9th Cir. 2014)


- Employee declined to use FMLA for leave to care for her father
- EE terminated for failing to return to work
- EE sued for FMLA interference

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Polling Question: Since the Escriba Decision, Has Your Organization Allowed Employees to Decline FMLA Leave?



- A** Yes, per the 9th Circuit, an employee should be able to choose when to use FMLA.
- B** Haha, NO. If an employee needs time off for a qualifying reason, is eligible for FMLA, and has entitlement remaining, it's FMLA leave.
- C** It depends on the situation and whether the employee has other types of leave/PTO available.
- D** Yes, but only if the employee/employer is subject to a collective bargaining agreement that specifies FMLA designation can be declined by the employee.



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Scalia v. Alaska
985 F.3d 742 (9th Cir. 2021)

- Alaska has two types of employees
 - Traditional employees working 40 hours/week (five days on followed by two days off)
 - Rotational employees working seven days on followed by seven days off (80 hours one week and zero the next)
- For rotational employees taking continuous leave, Alaska counted the "off" week against the employee's 12 workweek FMLA entitlement

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CKO Water Bottle filled with Chocolate
Christina Korona, 2023-07-26T17:13:21.450

Scalia v. Alaska
985 F.3d 742 (9th Cir. 2021)

- DOL alleged, and District Court agreed, the State of Alaska miscalculated continuous leave FMLA entitlement for rotational employees
- DOL's position is FMLA's definition of "workweek" is specific to the employee's actual scheduled hours
- Ninth Circuit reversed, citing the Fair Labor Standards Act (FLSA) definition of workweek
- The application of the Court's decision beyond the ninth circuit remains uncertain





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Zicarelli v. Dart
35 F.4th 1079 (7th Cir. 2022)

- Employee periodically used FMLA for numerous serious health conditions
- Employer warned employee that taking additional FMLA "could result" in disciplinary action
- Employee did not take leave and was not disciplined but retired soon after and then sued



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Polling Question: Did the employer violate the employee's FMLA rights?

- A** Yes, retaliation and interference
- B** No, because no adverse action occurred
- C** Yes, retaliation only
- D** Yes, interference only
- E** No idea. What is FMLA?





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FMLA Policy Considerations

Culture	Population	CBA
Location	Risk Comfort	Case Law
Statute	Regulations	Agency Guidance



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USERRA/Military Leave






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To Pay or Not to Pay

- Clarkson v. Alaskan Airlines
- White v. United Airlines
- Travers v. FedEx
- Scanlan v. American Airlines
- Won v. Amazon.com, Inc. et. al.
- Baker v. UPS

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CKO Choc/ 2-Water Bottles

Christina Korona, 2023-07-26T17:13:47.157



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Resources

- [EEOC Enforcement Guidance on ADA Reasonable Accommodation and Undue Hardship](#)
- [Family and Medical Leave Act](#)
- [Job Accommodation Network](#)
- [USERRA Overview](#)

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CKO Remaining Chocolate

Christina Korona, 2023-07-26T17:14:05.047

Slide 29

COO Confirm w/ DMEC staff that these links will be live / active links in the PDF version participants will receive.

Carla OSullivan, 2023-07-26T13:36:10.603