



Beyond Compliance: Voc Rehab's Role in ADA Accommodation Success

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Beth De Lima

HRM Consulting and Leave Management Solutions, founded by Beth Brascugli De Lima, helps companies understand and comply with the many regulations and issues within the complicated realm of Medical Leave and Accommodation Management.

Beth is a certified senior professional member of the Society for Human Resource Management (SHRM) with a California specific certification SPHR-CA & a SHRM-SCP. She has been providing consulting and vocational rehabilitation services to the business community, state, federal and county government as well as non-profits and school districts regarding ADA (Americans with Disabilities Act) and FMLA (Family Medical Leave Act) since 1992.

With a specialization in compliance with ADA, FMLA, Pregnancy and Workers' Compensation compliance requirements, as well as the Criminal Justice system, Ms. De Lima focuses on reducing potential liability and focusing on pro-active management for Controlling Medical Absences and Abuse.

Ms. De Lima is regularly called upon to provide testimony for both employment law litigation on Human Resource Standards of Care as it relates to ADA, FMLA, Pregnancy, Wrongful Termination, Retaliation, Harassment, and Discrimination cases for both federal and state plaintiff and defense cases as well as a Vocational Rehabilitation Consulting involving employability of displaced workers.



Vocational Consultants Role in the ADA Compliance Accommodation Blueprint™

- Vocational Consultants are experts in both disability job accommodations AND the amendment and development of an Essential Function Job Description
- They provide expertise and support during the ADA Interactive Process with the Accommodation Analysis

ADA Accommodation Compliance Blueprint™

S: HR specialists, compliance officers
SAFETY??, and disability/absence
management practitioners: ANY Voc
Rehab??

Disability Absence Management / Compliance Management

- In-House Leave-Accommodation Specialist
- Third Party Administrator
- In-House Coordinated w/ TPA
- Full In-House (PEO's)



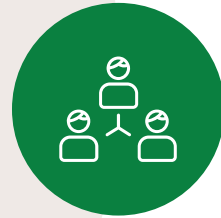
TEMPORARILY DESIGNATE THE ADA ACCOMMODATION

if HR believes the medical condition qualifies the employee as a Qualified Individual with a Disability. Be mindful of the ADA, ALWAYS error on the side of the employee.



HR PROFESSIONALS EVALUATE FUNCTIONAL IMPACT

Require the employee to get clarification from their medical provider if more information is needed. Be specific about exactly what additional information you need. Clarify inconsistencies and request additional medical clarification as appropriate (curing)



FMLA IS LEAVE, NOT ACCOMMODATION

Employer is not required to accommodate work restrictions under the FMLA. If there is a medical work accommodation required, this is an ADA issue NOT a FMLA or Work Comp issue.



ENGAGE IN GOOD FAITH INTERACTIVE MEETING

To determine the ability to accommodate IF can perform all EJP (not PWFA). Then document results and send notification



DESIGNATE THE ADA ACCOMMODATION

...upon receipt of the medical certification if not Undue Hardship – continue accommodation interactive process as needed until QID determined

ADA Accommodation Compliance Blueprint™

Disability Absence Management / Compliance Management

- In-House Leave-Accommodation Specialist
- Third Party Administrator
- In-House Coordinated w/ TPA
- Full In-House



HR TEMPORARILY DESIGNATE THE ADA ACCOMMODATION:

During or Post FMLA w/wo Workers' Compensation **NEED EFJD**

If HR believes the medical condition qualifies the employee as a Qualified Individual with a Disability. Be mindful of the ADA, ALWAYS error on the side of the employee.

HR PROFESSIONALS EVALUATE FUNCTIONAL IMPACT

Require the employee to get clarification from their medical provider if more information is needed. Be specific about exactly what additional information you need. CURING - Clarify inconsistencies and request EE obtain – NO MD CALLING only to confirm data on doc

FMLA IS LEAVE, ADA is a WORK Regulation

FMLA is leave, ADA is work regulation. Leave is not reasonable, unless known RTW date. Under ADA if Leave and Undue Hardship. Light Duty, Modified Duty Reduced Work Schedule – ONLY if temporary unless NOT an Undue Hardship

ADA Accommodation Compliance Blueprint™

Disability Absence Management / Compliance Management

- In-House Leave-Accommodation Specialist
- Third Party Administrator
- In-House Coordinated w/ TPA
- Full In-House



ENGAGE IN GOOD FAITH INTERACTIVE MEETING: **Voc** **Rehab Participates**

Determine the ability to accommodate IF EE can perform all EJP (not PWFA) at meets expectation level. AND document



DESIGNATE ADA ACCOMMODATION / VERIFY EFFECTIVE

...upon receipt of the medical certification if not Undue Hardship – continue accommodation interactive process as needed until QID determined

ADA Accommodation Compliance Blueprint™ VOC REHAB

Disability Absence Management / Compliance Management

- State Workers' Compensation
- Third Party Administrator
- Consultant
- In-House Coordinated w/ TPA
- Expert Witness



UPDATE ESSENTIAL FUNCTION JOB DESCRIPTIONS

Make sure the organization has an updated job descriptions and they know the difference between essential versus marginal functions. Verify EFJD reflects required SKA's related to physical and mental requirements to perform ALL the functions of the job so the medical review can identify potential EE restrictions / accommodations.

RESEARCH ACCOMMODATIONS – PRIOR and DURING GFM

Evaluate how the EE's disabilities impacts the EE's ability to perform the Essential Job Functions (PWFA some). ADA is not Workers' Compensation- light duty, modified duty, and reduced work schedules requests (short term only, days/weeks not months) if NOT an Undue Hardship and Leave has clear RTW date.

ADA Accommodation Compliance Blueprint™ VOC REHAB

Disability Absence Management / Compliance Management

- State Workers' Compensation
- Third Party Administrator
- Consultant
- In-House Coordinated w/ TPA
- Expert Witness



ENGAGE IN GOOD FAITH INTERACTIVE MEETING

To determine the ability to accommodate - if EE can perform all EJP (not PWFA) at a meets' expectation level. Then document results review with HR.



SUPPORT, UNDUE HARDSHIP Analysis – RE-ENGAGE

Understand what is and is not considered a potential accommodation under the ADA, for the ER, and how to determine if the accommodation identified is reasonable or an Undue Hardship – **RE-ENGAGE if ACC unsuccessful or UNDUE HARDSHIP. And AGAIN 😊**

 **The purpose of an ADA Good Faith Interactive Meeting is to evaluate how the employee's disability...**

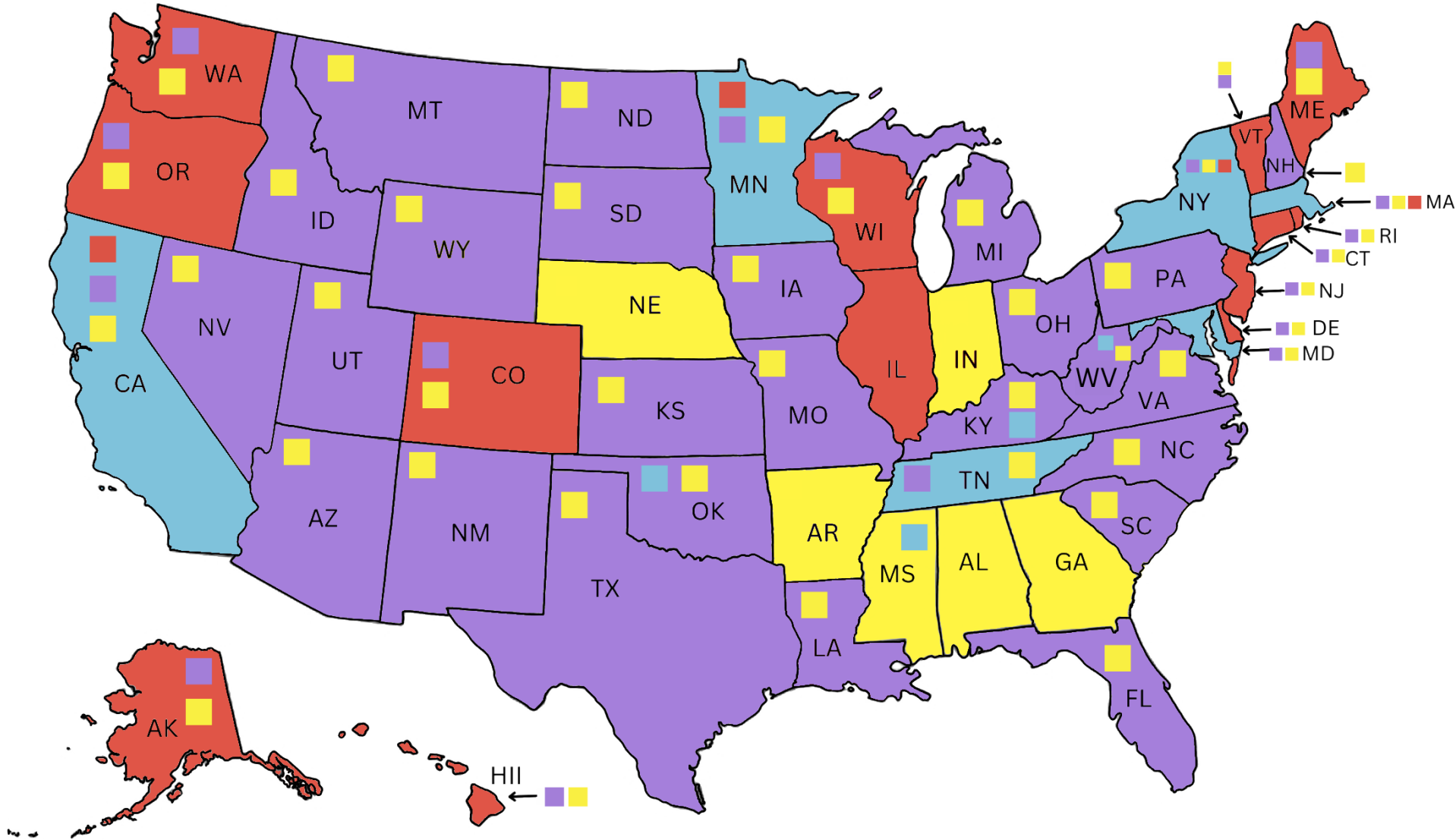
“...impacts their ability to perform the Essential Functions of their job...
at a meets expectation level...”

...TO VERIFY AND DOCUMENT IF THEY ARE A QUALIFIED INDIVIDUAL WITH A DISABILITY (QID), and...

...not to CONTINUE leave post FMLA or to DEFAULT to Workers' Compensation RTW light duty, modified duty, or reduced schedules.

State Specific Medical Leave and Accommodation Map

State specific ADA, FMLA, or W/C is a solid color, additional colors represent other state specific regulations

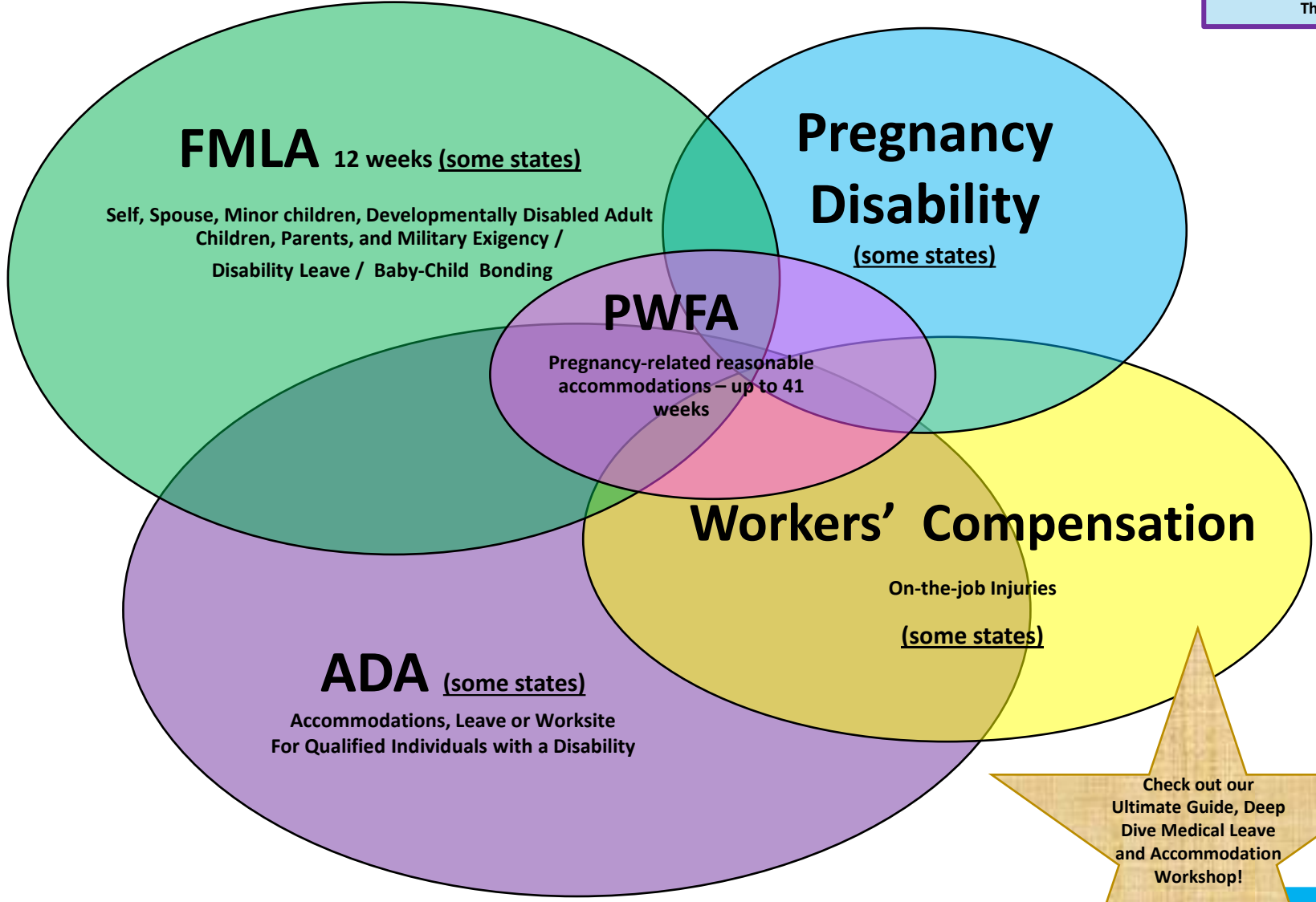


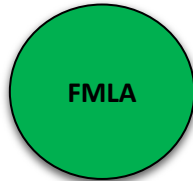
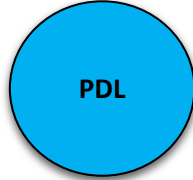
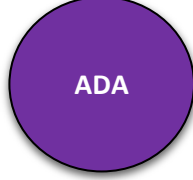
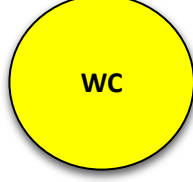
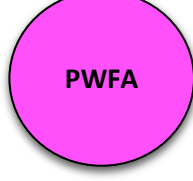
Scan the QR code request your state specific Medical Leave and Accommodation Venn Diagram!



Integrating Medical Leaves & Accommodations USA

All leaves run concurrently unless protected by state or federal regulation, company policy or EE contract. The Venn Diagram represents mutually exclusive leaves when they do not cross over

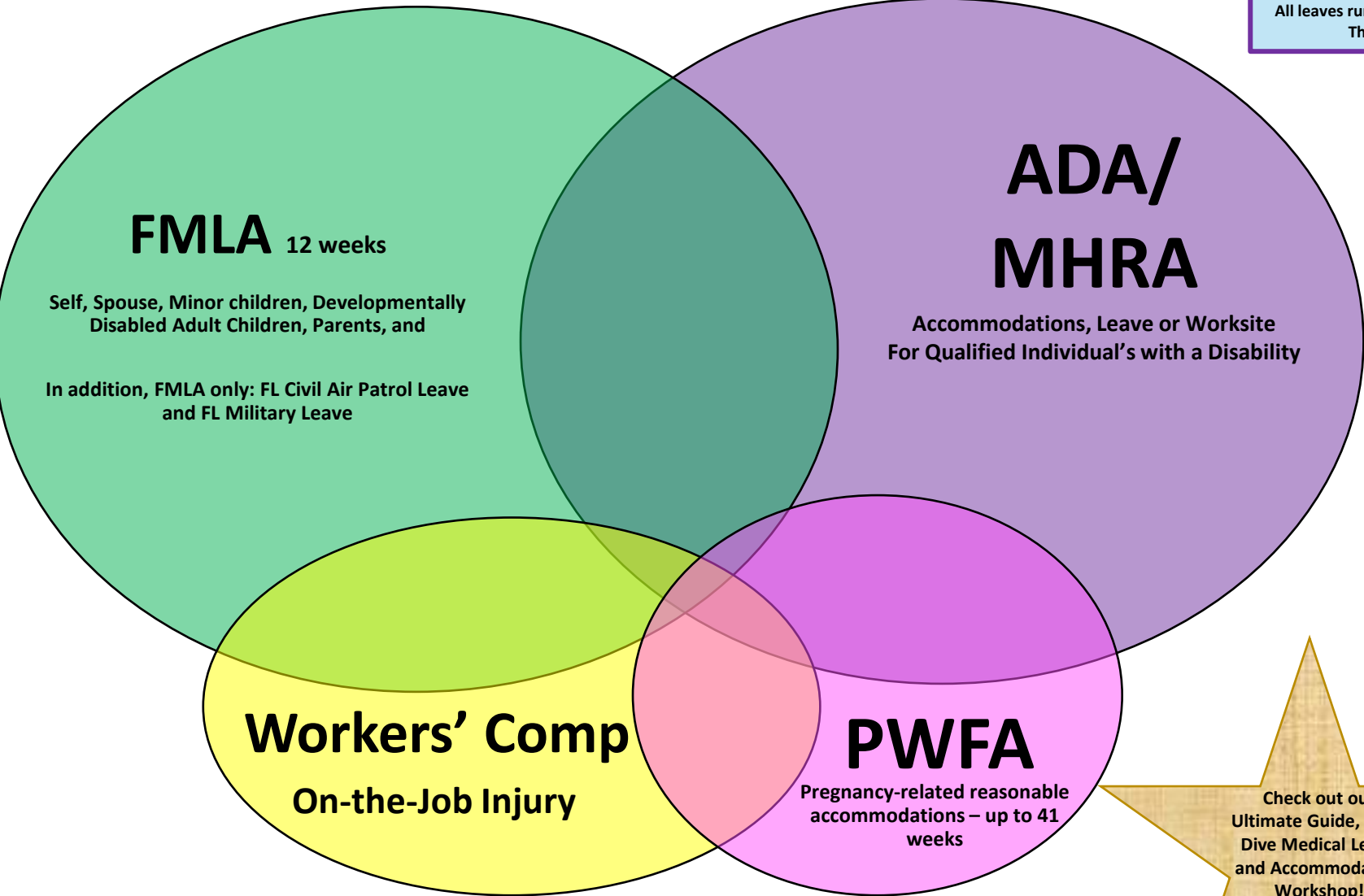


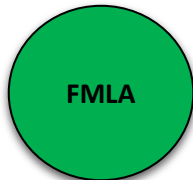
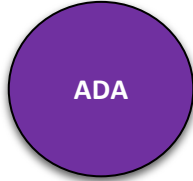
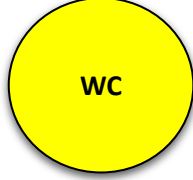
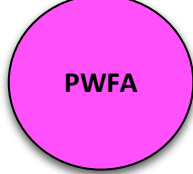
-  **FMLA** Family Medical Leave Act
-  **PDL** Pregnancy Leave
-  **ADA** Americans with Disabilities Act
-  **WC** Workers' Compensation
-  **PWFA** Pregnant Workers Fairness Act



Integrating Medical Leaves & Accommodations Missouri

All leaves run concurrently unless protected by state or federal regulation, company policy or EE contract. The Venn Diagram represents mutually exclusive leaves when they do not cross over

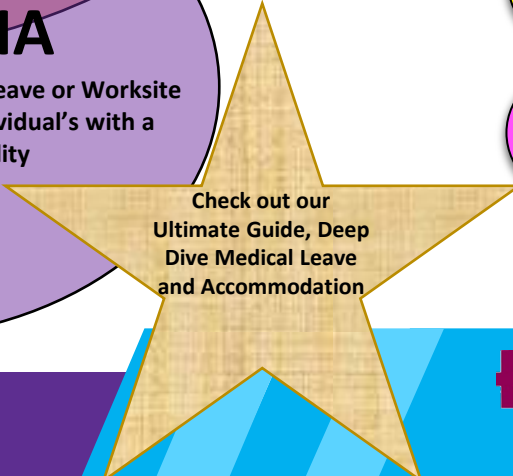
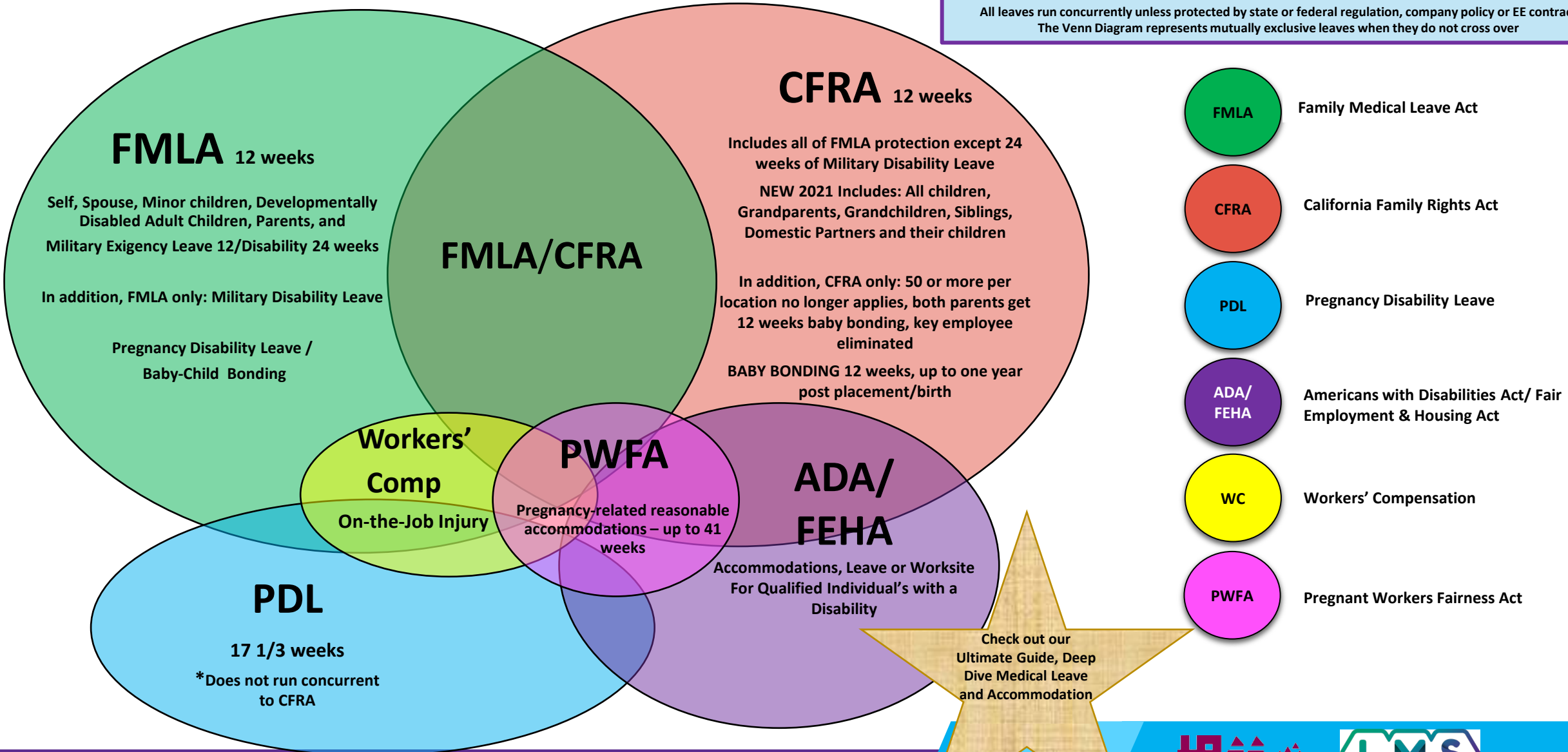


-  **FMLA** Family Medical Leave Act
-  **ADA** Americans with Disabilities Act / Missouri Human Rights Act
-  **WC** Workers' Compensation
-  **PWFA** Pregnant Workers Fairness Act



Integrating Medical Leaves & Accommodations CA

All leaves run concurrently unless protected by state or federal regulation, company policy or EE contract. The Venn Diagram represents mutually exclusive leaves when they do not cross over



Interactive Process

Step One



1. Scheduling, Preparing for, and Conducting the Good Faith Interactive Meeting (GFIM)
2. GFIM ADA Analysis Process: identify, approve, request info
3. Undue Hardship Analysis vs Reasonable Accommodation
4. Confirm accommodation, verify effectiveness, or denial

Conducting the GFIM

A truly effective good faith meeting will **not** consist of a quick conversation between you and the employee, but **will include** a face-to-face meeting (or more than one) with the employee via video call or in person

A decision regarding an accommodation should not be made during a solo or management review of the medical certificate or prior to conducting the Good Faith Meeting with the employee.

Goal of GFIM

The goal is to conduct the GFIM in a timely manner...

AND

**ALWAYS, ALWAYS, always
include the valid, up to date, RELEVANT, accurate**

Essential Function Job Description

Scheduling the GFIM

The first Good Faith Meeting Notification should always include the essential function job description.

If there is no Essential Function Job Description (EFJD) or it does not include data to assist the medical provider in understanding how the employee's medical condition is impacting them in performing the functions of the job.

This is where Vocational Rehabilitation consultants SHINE -- they can create, amend, update, or conduct an EFJ Analysis for HR – efficiently, effectively...

and they have the credibility to testify if needed.

Preparation Priorities

(prior to the first good faith meeting)

You & Voc Consultant

- ✓ Research possible accommodations to propose and discuss during GFIM – ASK JAN – O*Net, Voc Consultants
- ✓ Prepare proper materials documenting accommodation research during GFIM
- ✓ Confirm with employee's supervisor that company has a zero-retaliation policy

Your Employee

- ✓ Research possible accommodations to propose and discuss during GFIM, show them how...
- ✓ Have Medical Certificate completed and signed by health care provider
- ✓ Make proper preparations to be able to be effective in the good faith interactive process

What happens if....

The employee doesn't attend the Good Faith Meeting or fails to bring the Medical Certification

Employers should document repeated, good faith attempts to engage the employee in the Interactive Process. If the employee fails to participate, employers may evaluate next steps consistent with policy and legal guidance.

Interactive Process

Step Two

-
1. Scheduling, Preparing for, and Conducting the GFIM
 2. GFIM ADA Analysis Process: Identify, Approve, Request Info
 3. Undue Hardship Analysis vs Reasonable Accommodation
 4. Confirm accommodation, Verify Effectiveness, or Denial

4 Key Elements for Conducting an Effective Interactive Process:

Conduct an Intentional Discussion between you and the employee that gives due consideration to the employee's accommodation request

Clarify any Inconsistencies between the EE's understanding of their work restrictions and the medical providers – CURE..

Evaluate Accommodations suggestions to assess the possible effectiveness of reasonable accommodation options and make recommendations to HR, provide options. ASK JAN. O*Net --INVOLVE VOCATIONAL CONSULTANTS trained in ADA!! Work Comp Trained Voc Consultants (and your WC Dept., confuse Light, Modified, Reduced Work schedule as a reasonable ADA request...)

Document Notes throughout the process including relevant meeting details, get EE signature!!



KEY POINT – FMLA is LEAVE ADA is WORK

FMLA to ADA all the time, every time, no matter what...



For the employee's own medical condition **When FMLA ends, ADA begins**
even with Workers' Compensation injury

Clarifying Boundaries: HR vs. Vocational Rehabilitation Responsibilities



During the first good faith meeting, you or VC (with Witness) should accomplish the following:

1. Determine how the employee's disability impacts their ability to perform their essential job functions (**the Pregnant Workers Fairness Act (PWFA) under the ADA varies**)
2. Determine whether the employee's medical restrictions **can be reasonably accommodated without an Undue Hardship, through leave, equipment, tools, etc. HR's JOB NOT Voc Rehab, Voc Rehab Consultants Recommend.**
 - light duty, modified duty, reduced work schedule are Work Comp terms NOT ADA Accommodations
 - Work Comp and FMLA run Concurrently
 - When FMLA ends ADA Begins
 - Undue hardship documentation must be supported by objective data
3. Determine whether they are **Qualified Individual with a Disability for the ADA, CAN THEY PERFORM ALL THE ESSENTIAL FUNCTIONS OF THE JOB AT A MEETS EXPECTATION LEVEL**
 - UNLESS you are addressing the **PWFA: THEN** light duty, modified duty, reduced work schedule , And EVEN LEAVE - IF NOT UNDUE AN HARDSHIP
 - **HR JOB NOT Voc Consultants, they can identify additional accommodations, We clarify, re-engage in GFIM to identify any Accommodations**



Predictable Assessments

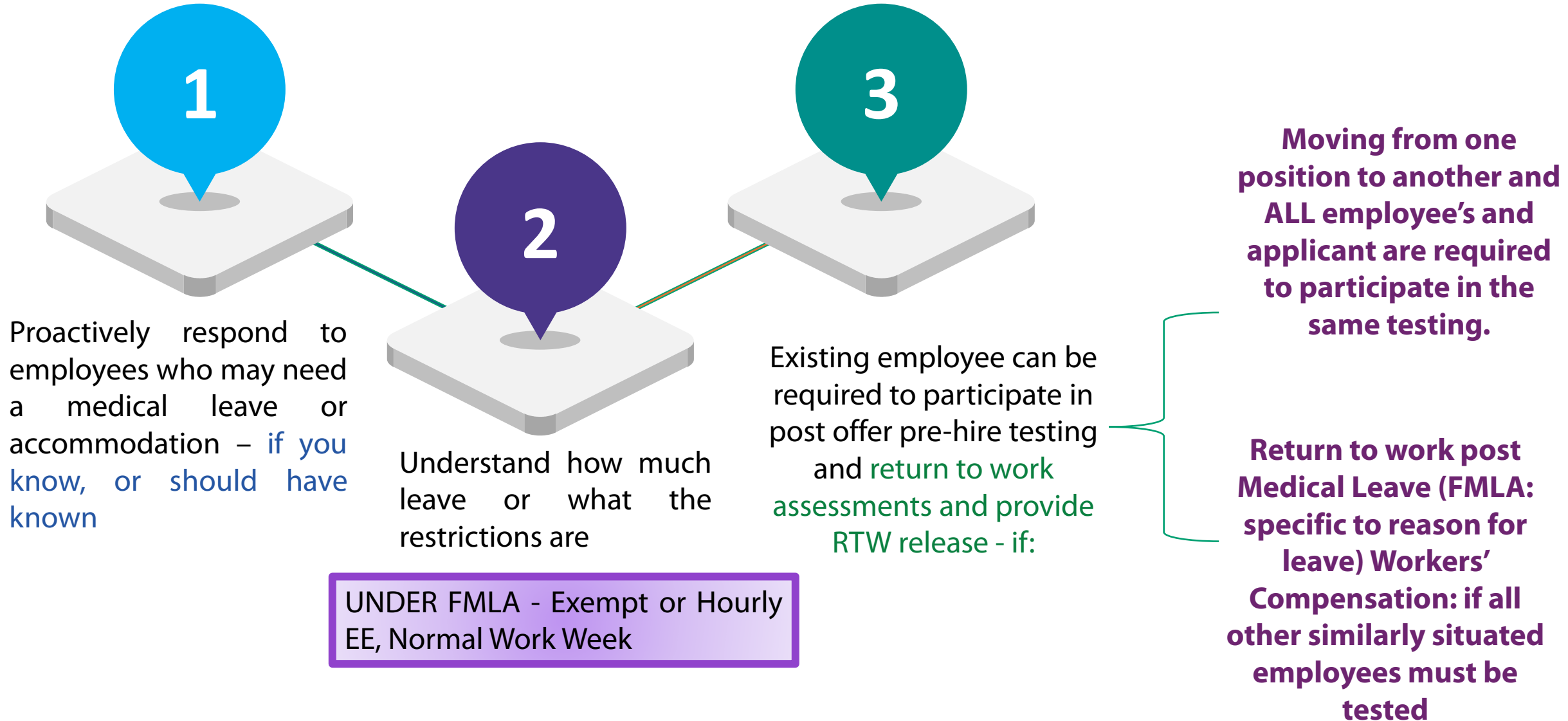
PWFA

- ✓ Ability to sit, carry, or drink water whenever needed
- ✓ Receive closer parking
- ✓ Have flexible work hours
- ✓ Receive appropriately sized uniforms and safety apparel (the same number of uniforms they would receive as a new hire)
- ✓ Receive additional break time to use the bathroom, eat, and rest
- ✓ Take leave or time off to recover from childbirth
- ✓ Be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy

“Employers are required to provide reasonable accommodations **unless they would cause an Undue Hardship** on the organization. An Undue Hardship is a significant difficulty or expense for the employer.”

“What You Should Know about the Pregnant Workers Fairness Act.” *U.S. Equal Employment Opportunity Commission, US EEOC, 11 Aug. 2023, www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act.*

FMLA/ADA/PWFA/Workers' Comp – When do you know? MANAGEMENT TRAINING – NO INFORMAL ACCOMMODATION



Interactive
Process

Step Three

1. Scheduling, Preparing for, and Conducting the GFIM
2. GFIM ADA Analysis Process: identify, approve, request info
3. **HR in CHARGE of: Undue Hardship Analysis (UHA) vs Reasonable Accommodation (RA)**
4. Confirm accommodation, verify effectiveness, or Denial

Reasonable vs Undue Hardship HR Determines



Reasonable Accommodation is any accommodation that can be made to a role or the workplace that enables an employee to continue performing the essential functions of his or her job. NOTE: Pregnant Workers Fairness Act (Predictable Assessments)



Undue Hardship is any action that would cause or require significant investment, expense, or otherwise difficulty on the part of the business (nature of condition, time to put accommodation in place, cost of accommodation)

Factors to Consider during the UHA, BE MINDFUL OF THESE ISSUES WHEN SUGGESTING A REASONABLE ACCOMMODATION:

- What resources are necessary to achieve the accommodation?
- Are those resources readily available and/or obtainable?
- What additional investments are required (e.g., time, \$)?
- Are the investments only necessary to get started, or will they occur for the length of the accommodation?
- What will the accommodation cost in productivity, impact on operations, restructuring, on co-workers. --- to meet productivity expectations?
- Is there potential eminent harm to self or others?
- Whether the accommodation fundamentally alters the nature of the business operation



Work **TOGETHER with the HR & the
Employee to discuss when an
accommodation creates an undue
hardship: THEN...
try – try- try to find solutions
**THIS IS WHERE VOC REHAB
SHINES****

Confirm accommodation,
verify effectiveness, or
Denial:
**Confirming
Accommodation**

WHAT TO DO

- Review accommodation that was identified
- Verify with EE that the accommodation will allow them to do their job at a meet expectations level & Supervisor (HR!)
- Know how long it takes for the EE to be able to learn to work w/ accommodation

WHEN TO DO IT:

- After the meeting with the employee has concluded – for 3 months, weekly, monthly

WHO'S INVOLVED:

- Dept. Manager, Supervisor, Safety, HR, and the GFIM evaluator may be involved

Interactive Process

Step Four

1. Scheduling, Preparing for, and Conducting the GFIM
2. GFIM ADA Analysis Process: identify, approve, request info
3. Undue Hardship Analysis vs Reasonable Accommodation
- 4. HR Confirms accommodation, verifies effectiveness, or Denial

Measuring Accommodation Effectiveness

- Productivity stability
- Reduced leave extensions
- Reduced re-injury
- Reduced claim litigation
- Employee retention rates
- Time-to-accommodation decision
- **Re-Eval w/Voc Assistance Ask JAN / O*Net**

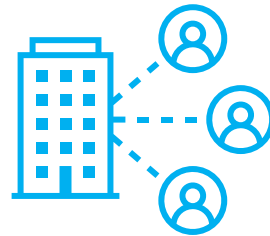


KEY POINTS

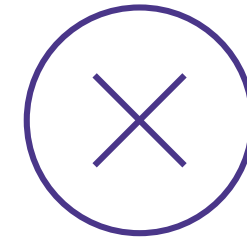
TYPES OF REQUEST CATEGORIES – this is the HR/PMQ's JOB



No Undue Hardship



Undue Hardship with Workers' Compensation



Undue Hardship

ADA accommodation responses, fit somewhere within these three categories!



You can conduct as many Good Faith Meetings as necessary or reasonable to determine appropriate accommodations that do not cause an Undue Hardship

Where Disability Managers Sometimes Get it Wrong

1. Informal accommodations without documentation, NO CASE MANAGEMENT
2. Extending FMLA to ADA without Undue Hardship eval.
3. Confusing light duty with ADA accommodation
4. Failing to confirm Qualified Individual Disability status
5. Skipping follow-up after implementation
6. Over-relying on medical provider conclusions
7. Not Listening to the Employee or Ignoring Complaints



GFIM CHECKLIST

- ✓ Conditionally designate employee's leave as ADA/PWFA
- ✓ Properly schedule, prepare for, and conduct the GFIM
- ✓ Conduct & Document all steps in the GFIM decision process
- ✓ **GET VOC REHAB INVOLVED**
- ✓ Conduct as many GFIMs as necessary to make a decision
- ✓ Document, document, document!
- ✓ Determine appropriate accommodation or undue hardship
- ✓ Document, document, document!

ADA Accommodation Compliance Blueprint™ - Voc Rehab Services



LMS has TONS of products for Vocational Rehabilitation Consultants like you!

- **ADA Accommodation Compliance Blueprint™ - Voc Rehab Services Training program**
- **ADA Accommodation Compliance Blueprint™ Membership**
- **In-the-Trenches Workshop Day 2 Join us via Zoom or in person – Federal Wksp. Dates**
- **NEW: LMS Vocational Rehabilitation Certification Training and Referral Program**

ADA Accommodation Compliance Blueprint – Voc Rehab Services



In the Trenches Workshop:



ADA Compliance Blueprint Membership:



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Scan to automatically get our contact information right to your phone!



Questions?

