



ABSENCE ERAS TOUR



Debut – Intro



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This information is intended for educational purposes only.

This information is not intended to provide legal advice and does not substitute for advice of counsel.

The information within this presentation is current as of June 26, 2025



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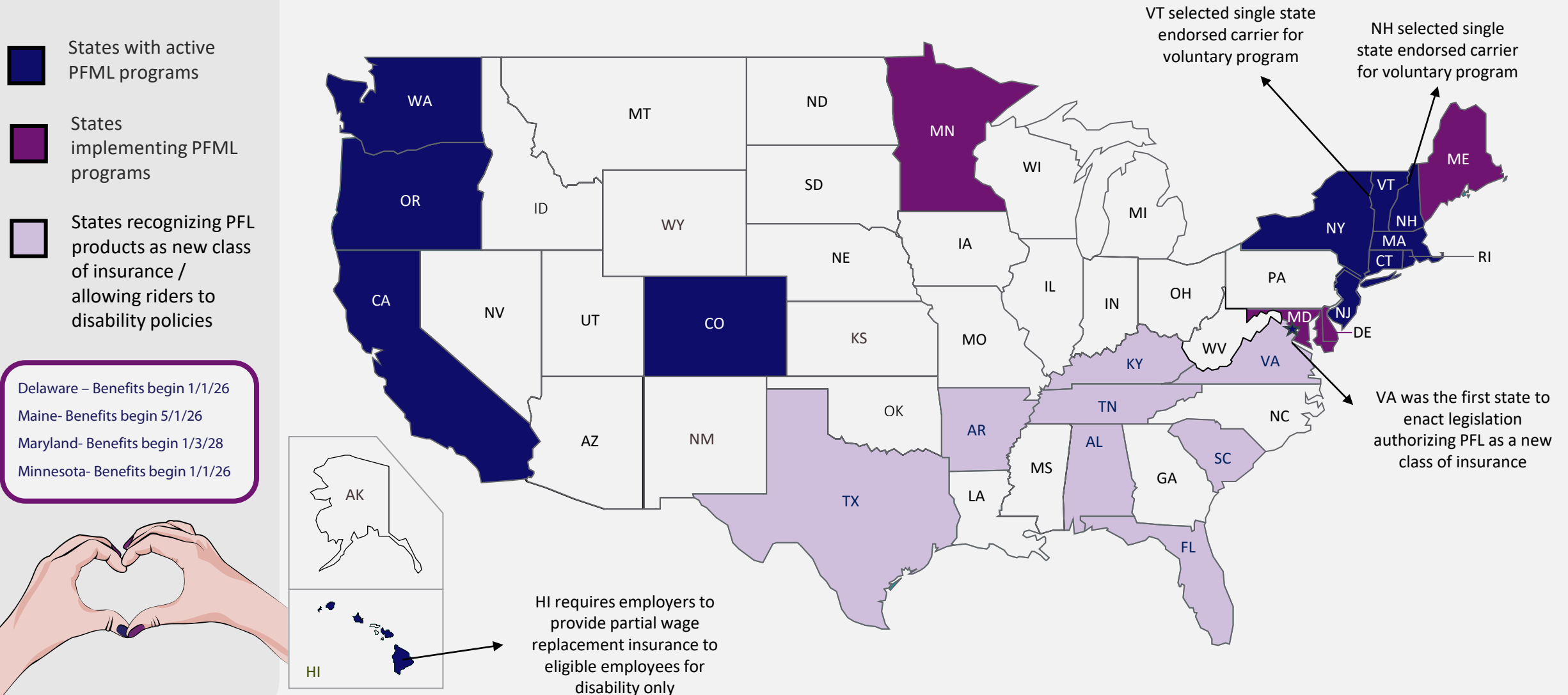
FMLA Era Established February 5th, 1993

- What's Changed?

- 2008/2009 Military families were **Out of the Woods** with new protections with Qualifying Exigency Leave & Military Caregiver Leave
- 2010 **I Wish You Would** give us more clarity around in loco parentis, and the DOL did which outlined an employee could be considered "in loco parentis" if they provide day-to-day care or financial support to a child, with the intention of assuming responsibilities of a parent
- 2009/2013 Delivered Airline Crew Eligibility Fix with special calculations to ensure pilots and flight attendants **Never Go Out of Style** with FMLA
- 2013 Definition + Notice Clarity with new forms, clearer definitions, no more **Blank Space** on eligibility rules and medical certifications
- 2015 FMLA clarified legally married spouses regardless of gender are entitled to same protections with a goal of consistent policy and to **Shake Off** any uncertainties



Paid Family and Medical Leave (PFML) – Across the States





Paid Family and Medical Leave (PFML)

Cover

- **Multiple Layers to Leave** (unpaid federal and state laws, statutory PFML laws, voluntary benefits)
- **Each Program is Unique:** employer/employee coverage criteria, contribution rates and wages, maximum annual contributions, criteria for job protection
- **Common Threads and Trends:** Despite much variance, there are areas where programs tend to align state-to-state; states expanding definition of family members, removal of waiting periods, PFML as an optional insurance product, voluntary programs
- **Administration Options:** State, State Program, Insured Private Plan, Self-Funded Private Plan
- **Align Organization's data with your PFML strategy:** Using Demographics



Paid Family and Medical Leave (PFML) - Employer Obligations + Considerations

As new PFML programs come online, employers must consider:

- State vs. private
- Funding requirements
- Notice requirements
- Coordinating with other employer benefits & statutory/federal laws (i.e., STD, FMLA)
- Whether to allow supplementation (i.e., with sick/PTO) -- *if* state permits employer to choose
- Opportunities to redesign STD, company paid leave and/or PTO
- Opportunities to align other existing corporate leave policies

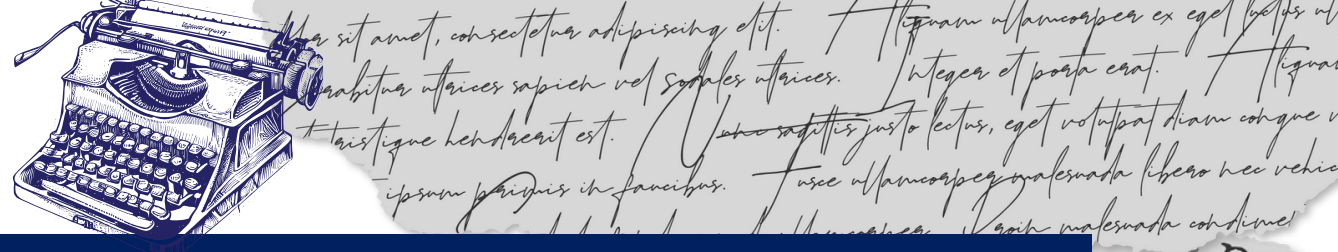
For current PFML programs, monitor programs for ongoing compliance.



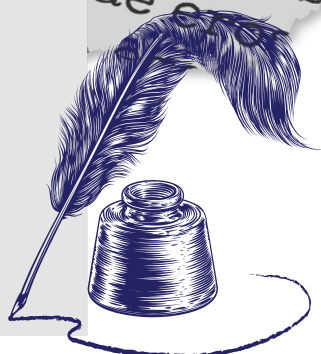
DMEC 2025 ANNUAL CONFERENCE

Tortured Poets Department

State vs. Private Plan



Plan Type	Pros	Cons
Private/ Equivalent Plan	<ul style="list-style-type: none">• Better customer care and employee experience• Claims may be processed and paid faster• Access to population utilization reporting• Potential cost savings vs. State plan• Plans can often be enhanced/customized based on employer's needs• Ability to integrate with absence and disability services	<ul style="list-style-type: none">• Requires application process• Subject to additional reporting rules• Potential for rate corrections• Requires employer reach-out at time of claim for eligibility and benefit calculation data
State Plan	<ul style="list-style-type: none">• Simplest setup since state plan is default• Potential cost savings vs. Private plan• Limited/legislated premium fluctuation year-over-year• No employer reach-out for eligibility and benefit calculation data	<ul style="list-style-type: none">• One size fits all approach• Delays in claims payment especially in first months of program• Challenges in customer care and employee experience• No integration with employer absence and disability programs• Lack of visibility to employee leave data• No population utilization reporting



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Company Paid Leave & STD Integration



Options	Pros	Cons
Supplementation	<ul style="list-style-type: none">Enhances employee experience by allowing full wage replacementDraws down paid time off bucketsAllows for collection of benefit premiums while on leave and employees to continue to pay premiums on a pre-tax basis. Also eliminates administrative burden for employer.	<ul style="list-style-type: none">Requires collection of employee preference and custom calculations to ensure supplement does not cause EE to exceed 100% of payRequires manual intervention from HR (cannot require EEs or managers to calculate amounts)Overpayment risk; employer responsible for recoupmentLess incentive for employees to return to work sooner
No Supplementation	<ul style="list-style-type: none">Avoids the need for calculation of complex benefit coordination, reducing administrative burden as pay would come primarily from the State and/or STDLess risk for overpaymentsEmployees are incentivized to return to work sooner to receive full paySome jurisdictions may allow supplementation while others do not	<ul style="list-style-type: none">Hinders employee experience, possibly creating a negative culture where employees have paid time off benefits restrictedFinancial burden for employees who need to use their paid time off for income replacementPaid time off may accrueEmployees may be incentivized to take vacation or sick time after returningInability to automatically collect benefit premiums

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Company Paid Leave & STD Integration



Option	Pros	Cons
Estimate state benefit & supplement (recommended)	<ul style="list-style-type: none"> Ensures employees will continue to receive pay 	<ul style="list-style-type: none"> Potential need to adjust payments if actual benefit is more or less than estimation Requires custom calculation of correct supplementation
Require provide proof of payment or retrieve from PFML portal (if available) to confirm benefit	<ul style="list-style-type: none"> Accurate supplemental calculation Prevents pay corrections 	<ul style="list-style-type: none"> Employee supplement may be delayed resulting in a poor experience
Pay 100% upfront; recoup overpayment	<ul style="list-style-type: none"> Ensures income replacement upfront Positive employee experience 	<ul style="list-style-type: none"> Administrative burden to collect overpayment Requires knowledge of State Wage Payment and Collection Act legislation
Allow employee to select supplementation amount	<ul style="list-style-type: none"> Gives employee the flexibility to choose an amount of their preference (not to exceed 100% of pay), creating a positive experience 	<ul style="list-style-type: none"> Manual process with custom calculation Lack of clear communication and inconsistent application of policy may lead to confusion

Company Paid Leave & STD Integration Best Practices

Paid Parental Leave:

[COMPANY] provides supplemental pay for up to [X weeks] during an approved parental leave. Paid Leave taken under this policy will coordinate with any income replacement benefits employees may be eligible to receive under any State/Municipal mandated Paid Leave Program and/or any other income replacement programs. [COMPANY] will deduct State mandated paid leave benefits or other income programs, from the [NAME OF COMPANY PAID LEAVE PROGRAM], to bring employees' total income to up to 100% of their regular weekly earnings. [EMPLOYER] will estimate the amount to be received through these programs and determine supplementation based upon that estimate. Employees may provide proof of actual benefits received through these programs to [INSERT CONTACT INFO] and any resulting adjustments will be reflected in subsequent regularly scheduled pay cycles. Additionally, [NAME OF COMPANY PAID LEAVE PROGRAM] will run concurrently with any applicable FMLA or applicable state-sponsored leave entitlements.

General Supplementation:

Paid Leave taken under this policy will coordinate with any income employees receive or are eligible to receive under any State/Municipal mandated Paid Leave Program so that employees will not receive more than 100% of their regular, straight-time weekly pay. The organization will deduct from [NAME OF COMPANY PAID LEAVE PROGRAM] the income employees are eligible to receive from any Federal and or State mandated paid leave law or program. [EMPLOYER] will estimate the amount to be received through these programs and determine supplementation based upon that estimate. Employees may provide proof of actual benefits received through these programs to [INSERT CONTACT INFO] and any resulting adjustments will be reflected in subsequent regularly-scheduled pay cycles. Additionally, [NAME OF COMPANY PAID LEAVE PROGRAM] will run concurrently with any applicable FMLA or applicable state-sponsored leave entitlement.

Sample Policy Language

PTO/Sick Pay/ESST Supplementation:

Employees may choose to use any available PTO, Sick Pay, [Enter other type of pay], to supplement income employees receive or are eligible to receive under any State/Municipal mandated Paid Leave Program and/or any other income replacement programs. [COMPANY] will coordinate Federal and or State mandated paid leave benefits with the employee's PTO, Sick Pay, [Enter Time off type], to bring employees total income to up to 100% of their regular weekly earnings. [EMPLOYER] will estimate the amount to be received through these programs and determine supplementation based upon that estimate. Employees may provide proof of actual benefits received through these programs to [INSERT CONTACT INFO] and any resulting adjustments will be reflected in subsequent regularly scheduled pay cycles. Additionally, [NAME OF COMPANY PAID LEAVE PROGRAM] will run concurrently with any applicable FMLA or applicable state-sponsored leave entitlements.

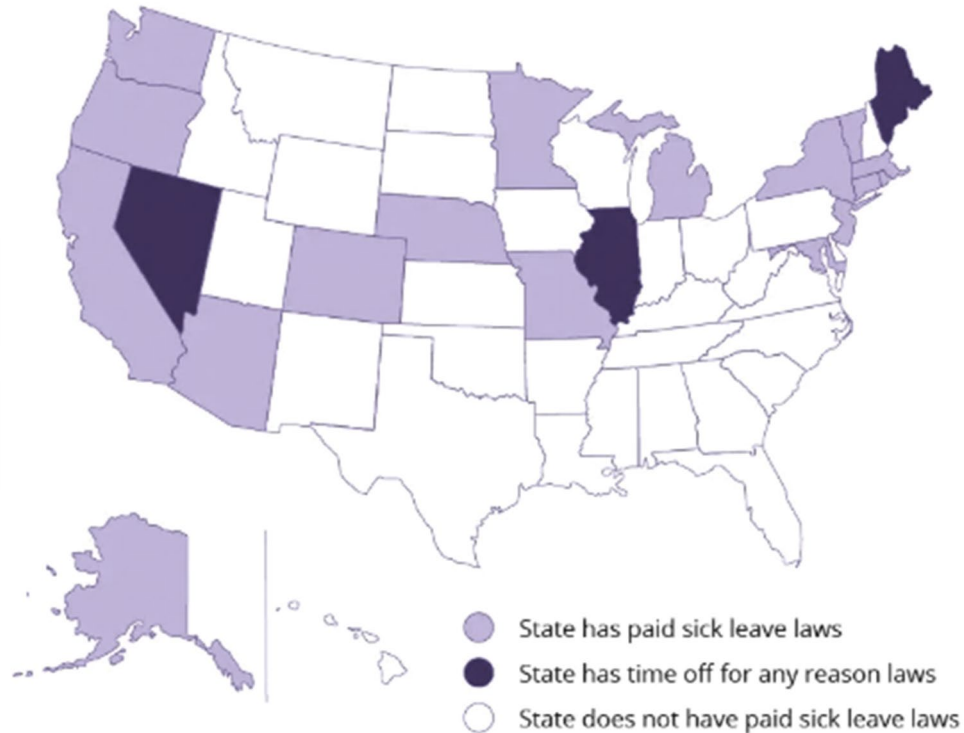


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Red - 2025 Paid Sick Leave Law Trends:

“Red” States
Catching On

PAID SICK LEAVE LAWS BY STATE



- 18 States have States Sick Leave Laws
- 2025 has brought the addition of three new states that have passed Paid Sick and Safe Leave Laws (Alaska, Nebraska)



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Red - 2025 Paid Sick Leave Law Trends:

"Red" States Catching On

- What are paid sick leave laws?
 - Require employers to provide employees with job-protected time off – with pay for qualifying reasons
- Paid sick leave laws vary by jurisdiction but often include:
 - Accrual rates, usage limits, covered reasons, notice requirements, carryover
- Why it matters and why other states are catching on



Speak Now

ADA & PWFA Key Differences

	ADA	PWFA
Enchanted to Meet You and outline Covered Reasons	Covers physical or mental impairment that substantially limits one or more major life activities. Pregnancy and minor or temporary conditions are not covered	A known limitation related to, affected by, arising out of pregnancy, childbirth, or related medical conditions. No minimum severity- includes minor and temporary conditions
What do you Mean Essential Functions	Employee must be able to perform the essential functions of the job, with or without a reasonable accommodation	The employee does not have to be able to perform the essential functions of the job if the inability to perform the essential function is “temporary” could be performed in the “near future” and can be reasonably accommodated.
I’m going to Speak Now around Requiring Leave as Accommodation	Employers may choose to require an employee to take leave, even if there is another reasonable accommodation	Employers may not require an employee to take leave if there is another reasonable accommodation – doing so may violate PWFA.

Speak Now

ADA & PWFA Key Differences

	ADA	PWFA
An Innocent discussion around Focus for Employers	Focus is on understanding functional limitations for the purpose of determining reasonable, effective accommodations.	Focus is on making an expedient decision given the temporary nature of pregnancy and employers are strongly encouraged to make interim accommodations, even if they believe they need additional information.
Long Live Allowable Requests for Documentation	Supporting documentation may describe the nature, severity, and duration of the impairment, the activity or activities that the impairment limits, the extent to which the impairment limits the employee's ability to perform the activity or activities and should also substantiate why the requested reasonable accommodation is needed.	Supporting documentation cannot be required for any of the four "predictable assessments" and is limited only to the minimum needed to: <ul style="list-style-type: none"> • Confirm the physical or mental condition • Confirm the physical or mental condition is related to, affected by or arising out of pregnancy, childbirth, or related medical conditions • Describe the adjustment or change at work that is needed due to the limitation.



Reputation – Case Law

EEOC v. Carlstar (2025)

- Denied opportunities to manufacturing employees when the company learned those employees were lawfully taking certain prescription medications, including narcotics and opioids, for the treatment of disabilities, even after the employees were medically cleared to perform their job duties
- “The Americans with Disabilities Act protects workers from discrimination based on disability, including discrimination based on their lawful use of prescription medications to treat their disability,”

Shipton v. Baltimore Gas & Electric (4th. Cir. 2024)

- Employee had Type 2 diabetes and was granted intermittent FMLA based on certification EE experienced hypoglycemia. EE later requested time off for pain due to diabetes-related neuropathy. The employer informed EE his certification was for hypoglycemia not neuropathy. EE submitted a physician letter stating he had not had hypoglycemia since the year prior and a new certification including neuropathy. The employer terminated due to alleged conflicting medical documentation.
- The U.S. District Court below found that the employer “honestly believed” that Plaintiff misused his FMLA leave and submitted conflicting medical documentation and found no FMLA interference or retaliation.
- The 4th Circuit affirmed summary judgment for the employer based on record of conflicting paperwork. The U.S. Supreme Court denied review on December 9, 2024



Reputation – Case Law

Chapman v. Brentlinger Enterprises (6th Cir. 2024)

- Employee's adult sister was terminally ill with cancer. EE began caring for sister and used PTO. After PTO ran out, Plaintiff requested FMLA. Employer told EE FMLA did not cover siblings and denied. Plaintiff continued to have attendance issues related to sister's care and was terminated.
- Plaintiff filed FMLA interference and retaliation.
- The U.S. District Court granted the employer summary judgment finding that an in loco parentis relationship did not exist because neither the sister's disability nor the parent-child relationship occurred before the sister was 18 years old.
- The Sixth Circuit held that *in loco parentis relationships can form between adults*, including adults who are siblings, and the relationship need not be formed when the individual was a minor.

EEOC v. Ned NoMad (2025)

- Pay \$100,000 to one former employee
- The Ned NoMad refused to accommodate an employee who provided a medical note stating that her knee condition limited her standing or walking to 30 minutes
- The employee needed to use a stool only while at the host stand performing clerical work and checking guests in; she was able to perform all the essential functions of her host job
- The hotel refused to allow her to use a stool and terminated her employment



Reputation – Case Law

Cooper v. Dolgencorp, LLC (6th Cir. 2024)

- Employee worked as a delivery driver, which was a customer-facing role. EE had Tourette Syndrome, which caused involuntarily uttering racist and profane words. The employer received customer complaints about use of offensive language.
- The employer determined EE could not perform the essential functions of customer facing job with or without reasonable accommodation and offered two options for continued employment: leave or a transfer to an overnight warehouse position that paid less but had no customer interaction.
- EE took the warehouse position and a few months later, resigned. EE sued, alleging he was constructively discharged in violation of the ADA and the employer failed to accommodate.
- The Sixth Circuit found providing excellent customer service was an essential function. The Court also found that transferring the employee to a position with no customer contact, which involved a pay cut, was a reasonable accommodation.
- EE could not be reasonably accommodated in his role as a delivery driver and failed to propose an objectively reasonable accommodation



Fearless – Future Trends

Employers are balancing the battle to attract talent and stay in compliance with rapidly changing leave laws.

**Increased Focus
on Paid Leave**

**Navigating a Complex
Legislative Landscape with
Evolving Compliance
Regulations**

**Technological Advancement,
Automation and Innovating
Leave and Disability
Management**

**Greater Emphasis on
Mental Health and
Focus on Employee
Well-Being**

**Focus on Return-to-Work
and
Stay-at-Work Programs**



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Questions

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