

WE'RE FROM THE GOVERNMENT & WE'RE HERE TO HELP:

NEW EEOC GUIDANCE ON EMPLOYER-PROVIDED LEAVE AND THE ADA

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MARY FUNK is a shareholder in Nyemaster's Litigation Department, handling almost exclusively employment and labor matters. She litigates on behalf of management in state and federal courts, administrative agencies and before arbitrators concerning employment contract disputes; sexual harassment; race, sex, age, national origin and disability discrimination; wrongful termination; Family and Medical Leave Act; Fair Labor Standards Act; non-compete agreements; and unemployment. In addition to litigating cases, Mary proactively counsels clients on issues such as hiring and firing, drug testing and policies, harassment and discrimination investigations, employment policies, wage and hour issues, employee leave issues, and company handbooks. She also negotiates collectively bargained contracts and drafts corporate documents related to employment such as contracts, non-compete agreements, policies and procedures, company handbooks, and settlement agreements and releases. Mary is a native of Mt. Pleasant, Iowa, and a 1995 graduate with distinction of the University of Iowa College of Law.

THE BASICS

- If an employee is “disabled” the employer is required to provide a reasonable accommodation to enable the employee to perform the essential functions of his position -- provided such accommodation does not result in “undue hardship” to the employer.
- **Scope of Accommodations:**
 - Any modification or adjustment to a job, employment practice, or work environment
 - Duty is ongoing (if disability or job changes)
 - Generally, it is the duty of employee to request a reasonable accommodation
 - No accommodation required if employee is not otherwise qualified

EEOC GUIDELINES

- Released May 9, 2016
- Focuses on when and how leave must be granted to ensure ADA compliance with accommodation requirements
 - Not so much of a change but to clarify responsibilities
- ADA-leave may run concurrently with PTO, WC, and/or FMLA



LEAVES



Equal Access to Existing Policies

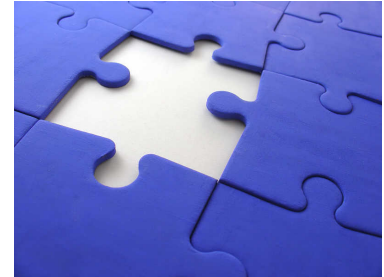
- Same access as other similarly-situated employees
- If you require doctor's note, must do so for everyone

Additional Unpaid Leave

- Once PTO and FMLA expire, must consider additional unpaid time away as a reasonable accommodation
- Maximum leave policies are not advisable

THE INTERACTIVE PROCESS

- From the employee:
 - Specific reason for leave
 - Block, intermittent, reduced schedule
 - Length of leave
 - Signed authorization to discuss with doctor
- From the doctor:
 - Verification and/or elaboration
 - Specific questions to understand the need for leave, the amount and type of leave required
 - Other or additional reasonable accommodations
 - Direct threat?



THE WHEN IS LEAVE AN UNDUE HARDSHIP?

CONSIDER....

- Amount and/or length of leave required
- Frequency of leave
- Flexibility regarding days leave is taken
- Unpredictable or predictable intermittent leave
- Impact of absence on co-workers and specific duties
- Impact of absence on employer's operations and service to customers



Indefinite Leave is Not Reasonable

RETURNING TO WORK

- **Can you require 100% release without restrictions?**
Not unless returning to work with restrictions would pose an undue hardship or the employee's restrictions pose a direct threat (significant risk of substantial harm to self or others)
- **Engage in interactive process regarding restrictions**



EEOC GUIDELINES

- Released July 14, 2014
- Discusses when employer actions may constitute unlawful discrimination on the basis of pregnancy, childbirth, or related medical conditions in violation of Title VII, as amended by the Pregnancy Discrimination Act of 1978 (PDA)
- Identifies the obligation of employers under those statutes to provide pregnant workers equal access to **benefits of employment such as leave, light duty, and health benefits**

DISABILITY?



- Pregnancy is not a disability
- Pregnancy-related conditions may be considered disabilities under the ADA
- Pregnant employees can have impairments related to the pregnancy that substantially limit a major life activity
 - The fact that the impairment was caused by the pregnancy is irrelevant, as is the fact that it may be temporary.

LEAVE IS A REASONABLE ACCOMMODATION

- Cannot **FORCE** pregnant employee to take leave
- Must allow leave on same terms as others based on inability or ability to work
- Difference between **MEDICAL** leave related to pregnancy and bonding or parental leave
 - Parental leave must be available to fathers too

LEAVE IS A REASONABLE ACCOMMODATION

(CONT'D)

- **In Iowa, employers must grant leaves due to disabilities resulting from the employee's pregnancy, miscarriage, legal abortion, childbirth, or recovery therefrom for the period of disability or eight weeks, whichever is less**

A FEW CASES



QUESTIONS?

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