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Agenda

1. Accommodation Trends: mental health conditions, evaluating reasonableness, and remote work
2. Supreme Court ADA Watch
3. Diversity, Equity, Inclusion and Accessibility (DEIA) and the ADA
4. The FMLA and State Paid Family Medical Leave (PFML) Laws
5. FMLA Case Law Update

Accommodation Trends

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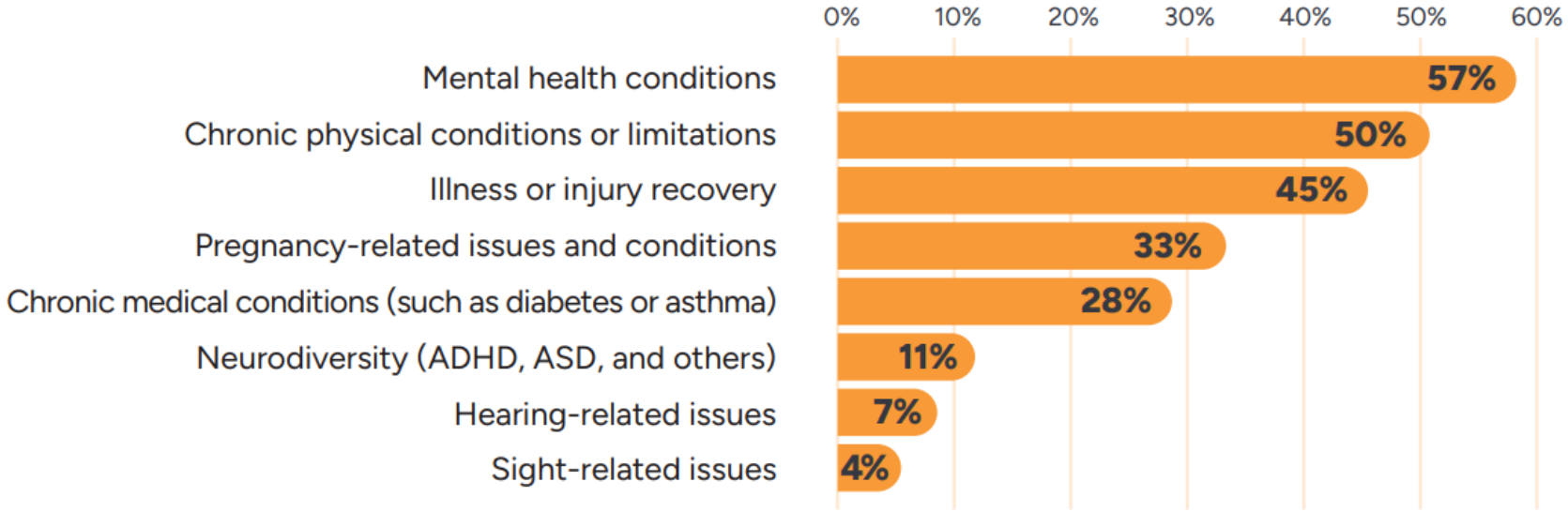
Top Reasons for Accommodations



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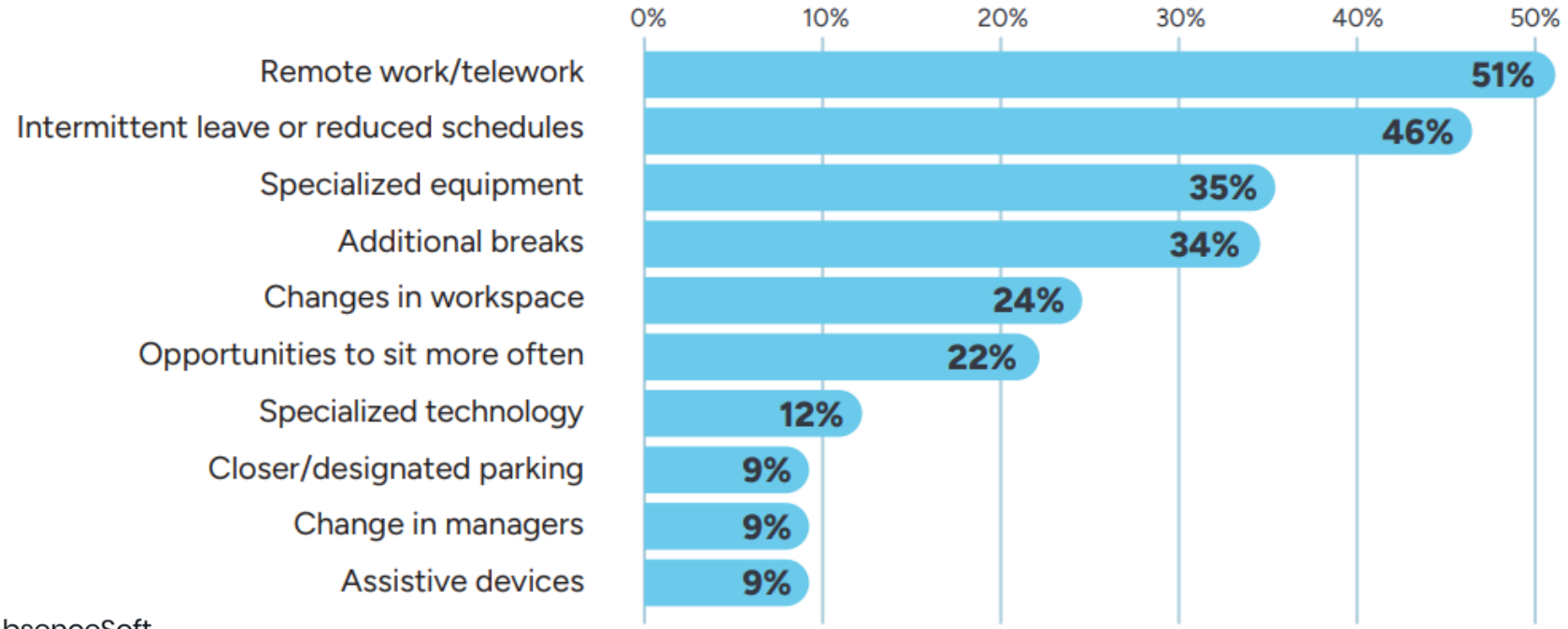
Top Requested Accommodations



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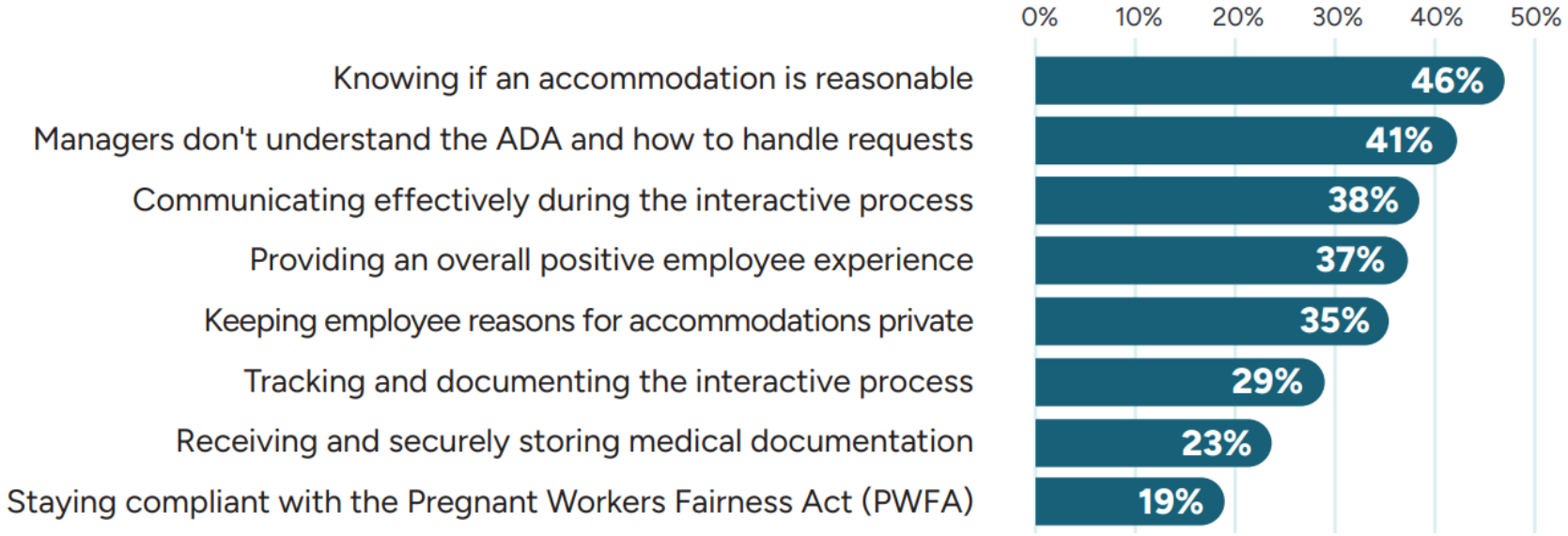
Top Challenges Managing Accommodations



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Let’s Focus on the Big 3…

Accommodation Reason	Accommodation Process	Accommodation Type
• Mental health conditions	• Evaluating reasonableness	• Remote work

Mental Health Conditions

DSM-5:

A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.

Mental Health Conditions

National Alliance on Mental Illness:

A medical condition that disrupt a person's thinking, feeling, mood, ability to relate to others, and daily functioning. Just as diabetes is a disorder of the pancreas, mental illnesses are medical conditions that often result in a diminished capacity for coping with the ordinary demands of life.

Examples of Mental Health Conditions

- Bipolar disorder
- Obsessive compulsive disorder
- Panic disorder
- Post-traumatic stress disorder
- Seasonal affective disorder
- Schizophrenia
- Borderline personality disorder
- Major depressive disorder
- Anxiety

Examples of Limitations

- Difficulty concentrating or staying attentive
- Difficulty controlling emotions
- Executive function deficits
- Decreased stamina or fatigue
- Stress intolerance
- Medical treatment or taking medication

When Is a Mental Health Condition a Disability?

When it ***substantially limits*** one or more major life activities.

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What Is Your Obligation?

Provide a ***reasonable accommodation***.

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Examples of Potential Accommodations

- Flexible or modified work schedules
- Remote work
- Support animal
- A quiet or private work environment
- Identify and reduce triggers
- Rest area
- Change in supervisor or supervisory method
- Breaks

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What Is a *Reasonable* Accommodation?

A modification or adjustment to the workplace or the way job duties are customarily performed that allow an employee with a disability

1. to perform essential job functions and
2. to enjoy equal benefits and privileges of employment

and ***does not***

3. cause an undue hardship to the employer or
4. pose a direct threat to the employe or others.

What Is an Essential Job Function?

Fundamental duties and responsibilities that an employee must complete to perform the job.

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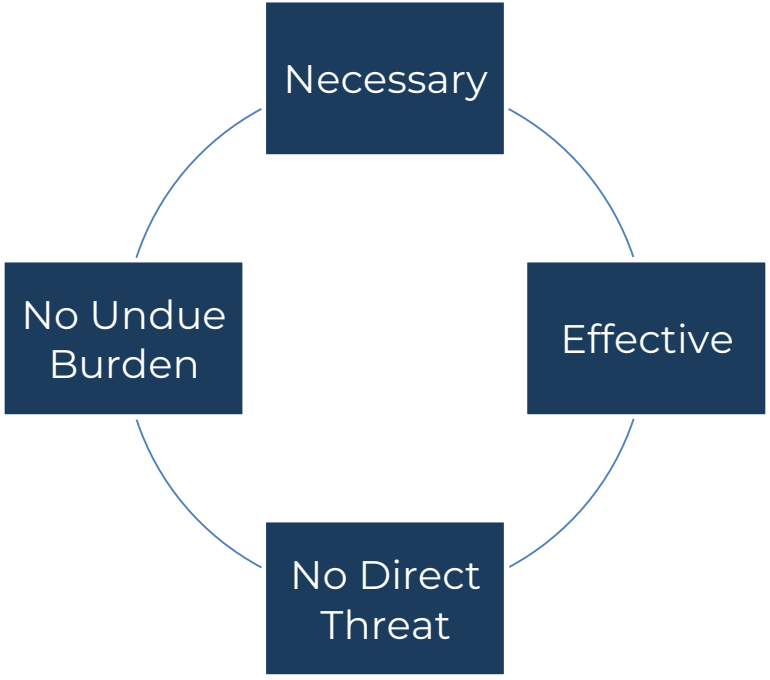
What Is an Essential Job Function?

Considerations include:

- The employer's judgment;
- The written job description;
- The amount of time employee spent performing the function;
- The consequences of not requiring someone to perform that function;
- The current and past work experience of the job or similar jobs;
- The number of other employees qualified to perform this duty or to whom it could be reassigned;
- Whether the position exists to perform this function; and
- Whether the employee's job would be fundamentally altered if they were no longer required to perform this function.

Key Elements of a Reasonable Accommodation



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The Accommodation Must Be Effective, Not Perfect.

Effective	=	allows the employee to perform the essential functions of their job
Effective	≠	employers are required to change or reassign essential job functions.
Effective	≠	employer must choose the employee's preferred accommodation.
Effective	≠	employer must choose the best accommodation.

The Accommodation Must Not Result in an Undue Burden.

Undue hardship means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business. Considerations include:

- Cost of the accommodation
- Size of employer
- Financial resources of employer
- Structure of its operation
- Impact on operation, other employees and/or customers

Employers Are Generally Not Required to

- Change or reassign essential job functions
- Create a new position
- Move another employee from their position
- Reduce conduct or performance expectations
- Provide items for personal use
- Provide an indefinite leave of absence

Engage in the Interactive Process

Have a dialogue with the employee to determine whether there is a reasonable accommodation which may be made to enable the employee to perform the essential functions of their job.

Engage in the Interactive Process

The goal of the interactive process is to understand the specific limitations caused by the disability and consider possible accommodations to overcome those limitations. And because both the employer and employee naturally have access to information that the other does not, both must engage in the process in good faith. When a party fails to participate in good faith and the interactive process breaks down, courts should determine the cause of the breakdown and assign responsibility. If an employee voluntarily abandons the process—for example, by failing to communicate or provide adequate information—the employer is not liable for failure to accommodate.

Green v. Rocket Mortg. LLC, No. 2:23-cv-11005, 2025 U.S. Dist. LEXIS 41986 (E.D. Mich. Mar. 7, 2025).

Request Supporting Documentation

As part of the interactive process, an employer may request documentation supporting the accommodation. That documentation should explain how the employee's disability impairs their ability to perform essential job functions, or at least show that the suggested accommodation relates to their disability.

Green v. Rocket Mortg. LLC, No. 2:23-cv-11005, 2025 U.S. Dist. LEXIS 41986 (E.D. Mich. Mar. 7, 2025).

Sufficient Documentation

Documentation in support of a reasonable accommodation is sufficient if it:

"(1) describes the nature, severity, and duration of the employee's impairment, the activity or activities that the impairment limits, and the extent to which the impairment limits the employee's ability to perform the activity or activities; and, (2) substantiates why the requested reasonable accommodation is needed."

Green v. Rocket Mortg. LLC, No. 2:23-cv-11005, 2025 U.S. Dist. LEXIS 41986 (E.D. Mich. Mar. 7, 2025).

Potential Questions for Employees

- What limitations are you experiencing?
- How do these impact your ability to perform your job?
- What specific job tasks are problematic as a result of these limitations?
- Are your limitations triggered by certain experiences?
- How long do you anticipate those limitations will last?
- Are there any changes or modifications we could make that would enable you to perform your job duties?
- You've asked for X accommodation. If we are unable to do X, what other accommodations or changes do you believe might be effective? For how long?

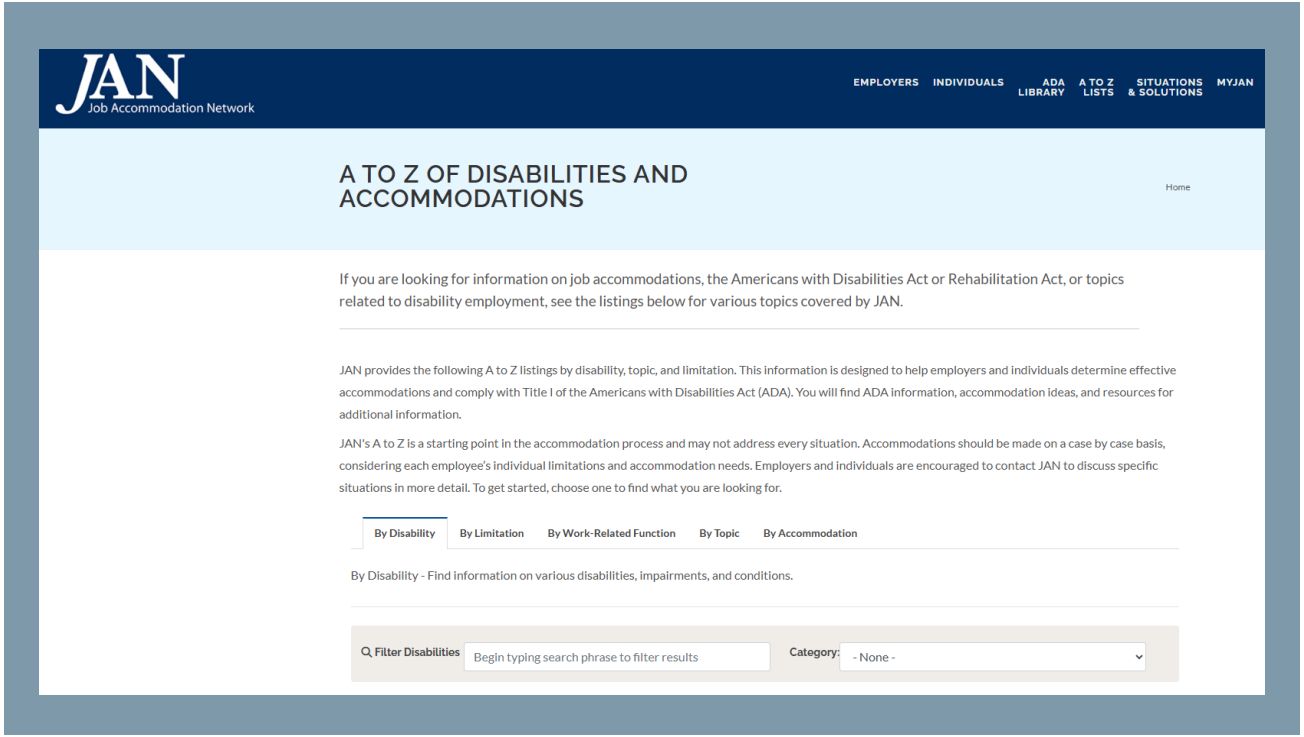
Potential Questions for Physicians

- What activities are limited by the impairment?
- To what extent are those activities limited by the impairment?
- How does the impairment affect employee's ability to perform their essential job function(s)?
- What accommodation(s) would help the employee perform the essential job function(s)?
- What is the expected duration of the limitation?

Potential Questions for Managers

- With the requested accommodation, can the employee perform all essential job functions?
- What is the impact, if any, if we make the requested accommodation?
- Have we ever implemented this accommodation for others?
- Are there any other accommodations that might make sense?
- If you had to cover the work without the employee or without certain tasks being completed, how would you do it?

Job Accommodation Network (JAN)



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Green v. Rocket Mortg. LLC

- Plaintiff Green began working for Rocket Mortgage in 2012 as a document analyst and then executive document specialist.
- Each position Green held required her to work full-time from Rocket's office, Monday through Friday.
- Starting in March 2020, Rocket required employees to work remotely because of the COVID-19 pandemic.
- In the Fall of 2021, Rocket began calling its employees back into the office, requiring at least two in-person days per week.
- Around that time, Green began seeking accommodations for physical and mental impairments, which included anxiety, depression, chronic back pain, and sciatica pain.

Green v. Rocket Mortg. LLC

- Green initially requested to reduce the number of hours she worked per day and submitted a note from her doctor that Green's work hours should be limited to 5 hours per day, which Rocket approved temporarily.
- Green then requested to work from home for her reduced work day and provided a variety of documents in support.

Green v. Rocket Mortg. LLC

Documentation provided by Green:

1. A letter from a doctor recommending that Green work 5 hours per day;
2. ADA and FMLA accommodations packets completed by a different doctor in September 2021 recommending a limit on Green's hours to five hours per day (until March 2022) because of her anxiety, depression, chronic pain, and sciatica, with substantive explanations for *that* recommendation;
3. A letter from her original doctor recommending that Green work 5 hours per day from home;
4. A letter from her therapist recommending that Green work remotely due to her anxiety and depression;
5. A letter from her therapist recommending that Green work remotely due to her anxiety and depression.

Green v. Rocket Mortg. LLC

- Rocket denied the request.
- Rocket fired Green “due to [her] failure and refusal to provide requested documentation with respect to [her] request to work remotely and [her] attendance occurrences.”

Green v. Rocket Mortg. LLC

"Within the interactive process, an employee seeking a remote work accommodation "must explain what limitations from the disability make it difficult to do the job in the workplace, and how the job could still be performed from the employee's home."

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Green v. Rocket Mortg. LLC

"Of the above documents, only *three* recommended remote work and only the last two tied the recommendation to a diagnosis (anxiety and depression). But even in those two notes, Green's therapist never provided an explanation of *why* Green's anxiety and depression hindered her ability to work in person and, relatedly, how working from home would enable her to perform the essential functions of her position. In fact, only one health provider . . . provided *any* explanation of Green's impairments and how they affected her work. And [her doctor] notably did *not* suggest Green be allowed to work remotely, despite Green requesting such an accommodation on her own portion of her ADA packet."

Green v. Rocket Mortg. LLC

"Green's cursory and conflicting documentation—five notes from three providers referencing different, if any, diagnoses and recommending two different accommodations—left Rocket with more questions than answers. . . . .

And despite Green's arguments to the contrary, the undisputed evidence shows that Rocket clearly and repeatedly requested an explanation of *why* Green's disabilities required remote work. . . .

By refusing to submit the requested updated accommodation packet, and by never providing an explanation for why her disability required her to work from home, Green abandoned the interactive process. Because of Green's abandonment, Rocket Mortgage may not be held liable for failing to accommodate her disability."

Key Takeaways for Remote Work

- Employer must engage in the interactive process.
- Employer may request documentation that supports *why* the employee's disability requires remote work.
- Employees "must explain what limitations from the disability make it difficult to do the job in the workplace, and how the job could still be performed from the employee's home."

Supreme Court ADA Watch

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Can retirees sue their former employers for disability discrimination involving benefit plans?

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Stanley v. City of Sanford, Florida

- On January 13, 2025, the Supreme Court heard oral arguments on this issue where a retired firefighter alleged disability discrimination based on the city's decision to shorten the duration of health benefits for disabled retirees.

Stanley v. City of Sanford, Florida

- The firefighter served for 15 years until she was diagnosed with Parkinson's disease and became unable to perform essential job functions and retired in 2018 at the age of 47.
- When she joined the fire department, employees who retired for disability reasons were eligible to receive employer-paid health insurance until age 65.
- But the city changed the plan in 2003, so that employees who retired for disability reasons (with less than 25 years of service) were eligible for employer-paid health insurance for only 24 months after their retirement date.

Stanley v. City of Sanford, Florida

- The district court and 11th Circuit Court of Appeals held in favor of the City, relying on binding 11th Circuit precedent that a Title I (of the ADA) plaintiff must hold or desire an employment position with the defendant at the time of the defendant's allegedly wrongful conduct.

Do the ADA and Section 504 require children with disabilities to satisfy a uniquely stringent “bad faith or gross misjudgment” standard when seeking relief for discrimination related to their education?

A.J.T. v. Osseo Area Schools

- On January 17, 2025, the Supreme Court agreed to hear this issue (on April 28, 2025) where a student challenged the 8th Circuit's longstanding and uniquely strict liability standard when seeking relief for discrimination related to their education.

A.J.T. v. Osseo Area Schools

- A.J.T., a student with epilepsy, experienced seizures so severe in the morning that she could not attend school until noon. Her parents repeatedly requested evening instruction from the school to give her a school day length more comparable to her peers.
- Despite the District providing some accommodations, including one-on-one instruction, a slightly extended school day, and summer home instruction sessions, they denied the requests for evening instruction.
- The District's Director of Student Services, responsible for Section 504 compliance, was unaware of the parents' complaints and did not know that District policies allowed at-home schooling as an accommodation.

A.J.T. v. Osseo Area Schools

- The district court granted summary judgment in favor of the District, and the U.S. Court of Appeals for the Eighth Circuit affirmed:

> when the alleged ADA and Section 504 violations are "based on educational services for disabled children," a school district's simple failure to provide a reasonable accommodation is not enough to trigger liability. . . . Rather, a plaintiff must prove that school officials acted with "either bad faith or gross misjudgment," . . . which requires "'something more' than mere non-compliance with the applicable federal statutes," . . . . The district's "statutory non-compliance must deviate so substantially from accepted professional judgment, practice, or standards as to demonstrate that [it] acted with wrongful intent."

Diversity Equity Inclusion and Accessibility (DEIA) and the ADA

DEIA Executive Orders

- Executive Order 14151 (Ending Radical and Wasteful Government DEI Programs and Preferencing)
- Executive Order 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity)
- Executive Order 14148 (Initial Rescissions of Harmful Executive Orders and Actions)

Executive Order 14151

(Ending Radical and Wasteful Government DEI Programs and Preferencing)

- Directs termination of DEIA-related mandates, offices, policies, programs, preferences and activities across federal government.
- Directs OMB to review all existing federal employment practices, union contracts, and training policies/programs and amend them to comply with the order.
- Directs federal agencies and departments to assess the impact and cost of previous DEI actions.
- Directs federal agencies and departments to report contractors and grantees involved in DEI initiatives and report any contract, grant or personnel description changes that could have obscured DEI connections.

Executive Order 14173

(Ending Illegal Discrimination and Restoring Merit-Based Opportunity)

- Mandates that all federal grants and contracts certify compliance with anti-discrimination laws and that they do not operate any programs promoting DEI.
- Directs OMB to eliminate all references to DEI and DEIA principles, including related programs and mandates.
- Tasks agencies and AG with anti-DEI actions in the private sector and providing enforcement recommendations.
- Calls for reports identifying potential investigations of large corporations, nonprofits, and higher education institutions.
- Rescinded EO 11246, which required affirmative action provisions in government contracts.

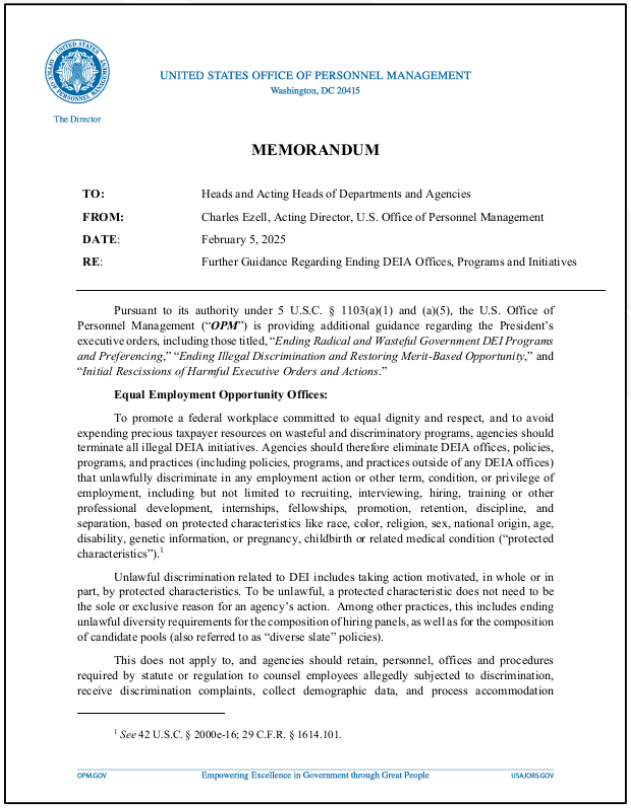
Executive Order 14148

(Initial Rescissions of Harmful Executive Orders and Actions)

- Revokes 78 actions and orders under previous administration (includes 11 EOs related to DEI, including Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce).

U.S. Office of Personnel Management

Further Guidance Regarding Ending DEIA Offices, Programs and Initiatives



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

MEMORANDUM

TO: Heads and Acting Heads of Departments and Agencies

FROM: Charles Ezell, Acting Director, U.S. Office of Personnel Management

DATE: February 5, 2025

RE: Further Guidance Regarding Ending DEIA Offices, Programs and Initiatives

Pursuant to its authority under 5 U.S.C. § 1103(a)(1) and (a)(5), the U.S. Office of Personnel Management ("***OPM***") is providing additional guidance regarding the President's executive orders, including those titled, "*Ending Radical and Wasteful Government DEI Programs and Preferencing*," "*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*," and "*Initial Rescissions of Harmful Executive Orders and Actions*."

Equal Employment Opportunity Offices:

To promote a federal workplace committed to equal dignity and respect, and to avoid expending precious taxpayer resources on wasteful and discriminatory programs, agencies should terminate all illegal DEIA initiatives. Agencies should therefore eliminate DEIA offices, policies, programs, and practices (including policies, programs, and practices outside of any DEIA offices) that unlawfully discriminate in any employment action or other term, condition, or privilege of employment, including but not limited to recruiting, interviewing, hiring, training or other professional development, internships, fellowships, promotion, retention, discipline, and separation, based on protected characteristics like race, color, religion, sex, national origin, age, disability, genetic information, or pregnancy, childbirth or related medical condition ("protected characteristics").[1]

Unlawful discrimination related to DEI includes taking action motivated, in whole or in part, by protected characteristics. To be unlawful, a protected characteristic does not need to be the sole or exclusive reason for an agency's action. Among other practices, this includes ending unlawful diversity requirements for the composition of hiring panels, as well as for the composition of candidate pools (also referred to as "diverse slate" policies).

This does not apply to, and agencies should retain, personnel, offices and procedures required by statute or regulation to counsel employees allegedly subjected to discrimination, receive discrimination complaints, collect demographic data, and process accommodation

[1] *See* 42 U.S.C. § 2000e-16; 29 C.F.R. § 1614.101.

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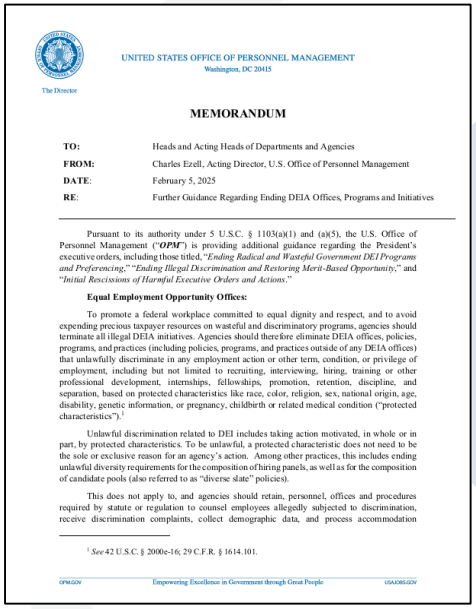

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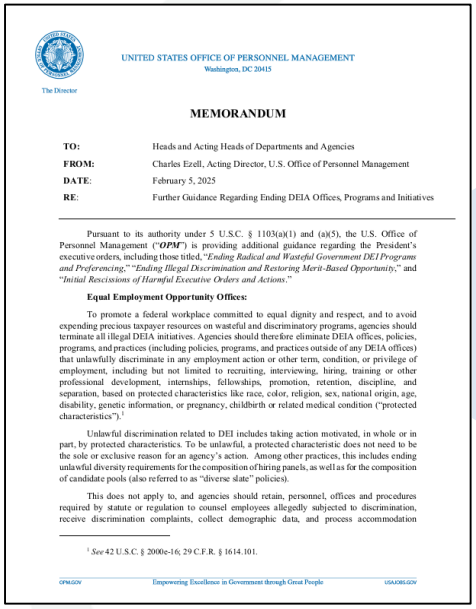

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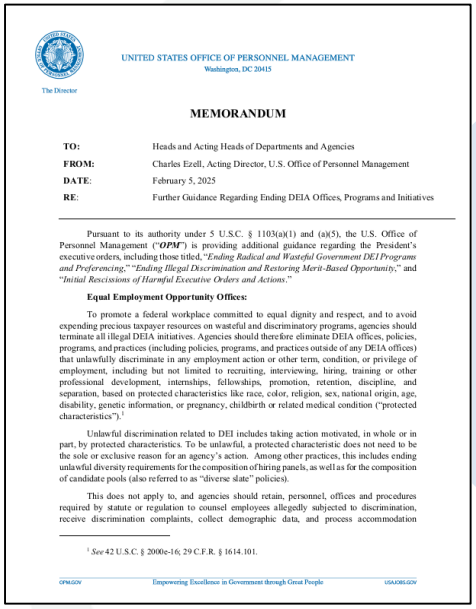

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The Biden-Harris Administration conflated longstanding, legally-required obligations related to disability accessibility and accommodation with DEI initiatives. [The] executive orders require the elimination of discriminatory practices. Agencies should thus rescind policies and practices that are contrary to the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. **But agencies should not terminate or prohibit accessibility or disability-related accommodations, assistance**, or other programs that are required by those or related laws. **In executing reduction-in-force actions regarding employees in DEIA offices, agencies should therefore retain the minimum number of employees necessary to ensure agency compliance with applicable disability and accessibility laws, including those requiring the collection, maintenance, and reporting of disability information**.

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Key Takeaways

- Accessibility was not the “target” of the EOs.
- Disability and accessibility programs and offices should not be eliminated.
- No change to accessibility laws, such as ADA (including the DOJ’s recent Title II rule on web and mobile accessibility) and the Rehabilitation Act.

The FMLA and State Paid Family Medical Leave (PFML) Laws

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PFML Laws

California
Colorado
Connecticut
Delaware
Maine
Massachusetts
Maryland
Minnesota
New Jersey
New York
Oregon
Rhode Island
Washington
D.C.

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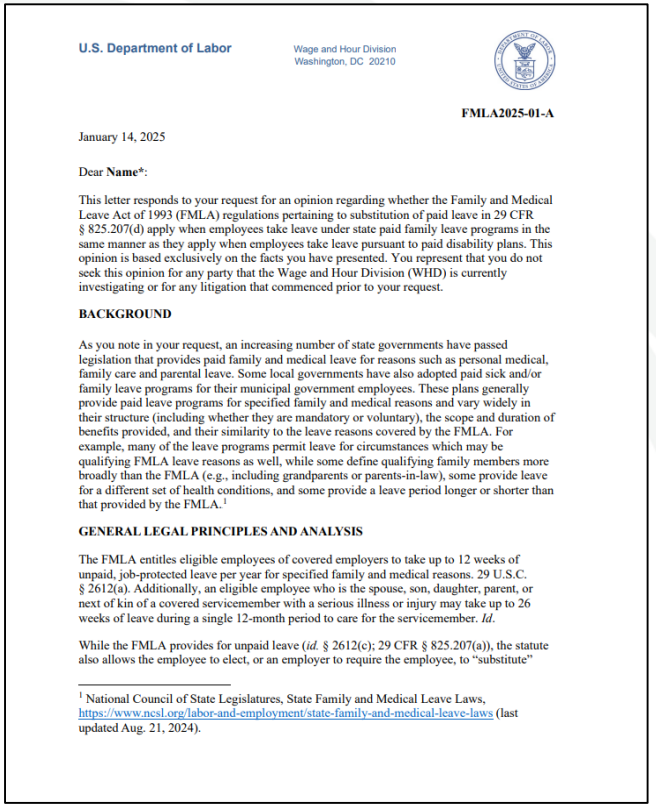
U.S. DEPARTMENT OF LABOR

Guidance on FMLA and state PFML laws



U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

FMLA2025-01-A

January 14, 2025

Dear **Name***:

This letter responds to your request for an opinion regarding whether the Family and Medical Leave Act of 1993 (FMLA) regulations pertaining to substitution of paid leave in 29 CFR § 825.207(d) apply when employees take leave under state paid family leave programs in the same manner as they apply when employees take leave pursuant to paid disability plans. This opinion is based exclusively on the facts you have presented. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request.

BACKGROUND

As you note in your request, an increasing number of state governments have passed legislation that provides paid family and medical leave for reasons such as personal medical, family care and parental leave. Some local governments have also adopted paid sick and/or family leave programs for their municipal government employees. These plans generally provide paid leave programs for specified family and medical reasons and vary widely in their structure (including whether they are mandatory or voluntary), the scope and duration of benefits provided, and their similarity to the leave reasons covered by the FMLA. For example, many of the leave programs permit leave for circumstances which may be qualifying FMLA leave reasons as well, while some define qualifying family members more broadly than the FMLA (e.g., including grandparents or parents-in-law), some provide leave for a different set of health conditions, and some provide a leave period longer or shorter than that provided by the FMLA.[1]

GENERAL LEGAL PRINCIPLES AND ANALYSIS

The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave per year for specified family and medical reasons. 29 U.S.C. § 2612(a). Additionally, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious illness or injury may take up to 26 weeks of leave during a single 12-month period to care for the servicemember. *Id*.

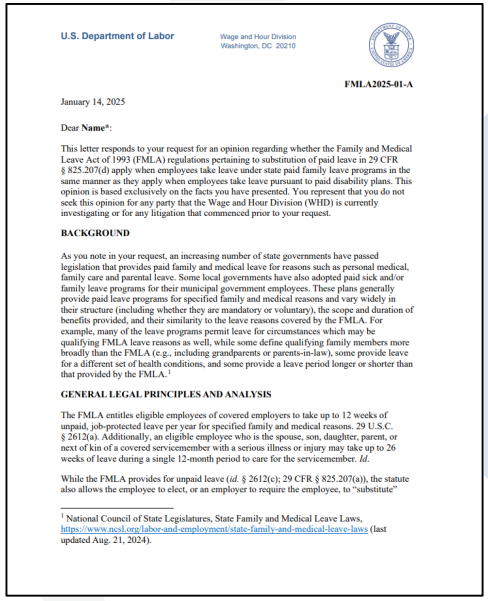
While the FMLA provides for unpaid leave (*id.* § 2612(c); 29 CFR § 825.207(a)), the statute also allows the employee to elect, or an employer to require the employee, to "substitute"

[1] National Council of State Legislatures, State Family and Medical Leave Laws, https://www.ncsl.org/labor-and-employment/state-family-and-medical-leave-laws (last updated Aug. 21, 2024).

VORYS

Substitution of Paid Leave, Generally

- When an employee takes protected leave under the FMLA, the employee may elect, or an employer may require an employee, to substitute accrued employer-provided paid leave (*i.e.*, paid vacation, paid sick leave) for any part of the unpaid FMLA entitlement period.
- If an employee taking FMLA receives payments under a disability plan or worker's compensation program, the employer cannot unilaterally require the employee to use accrued employer-provided paid time off.



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1. If an employee takes leave under state or local PFML, and if the leave if covered by FMLA, employers must designate it as FMLA leave and notify the employee of the designation and amount of leave to be counted against their leave entitlement.

2. If an employee receives compensation from a state or local PFML during leave covered by FMLA, the FMLA substitution provision does not apply to the portion of the leave that is compensated.

3. If an employee receives compensation from a state or local PFML that does not fully compensate the employee for their FMLA covered leave, the employer and employee may agree to use the employee's accrued employer-provided paid leave to supplement the payments under the PFML (if state law permits).

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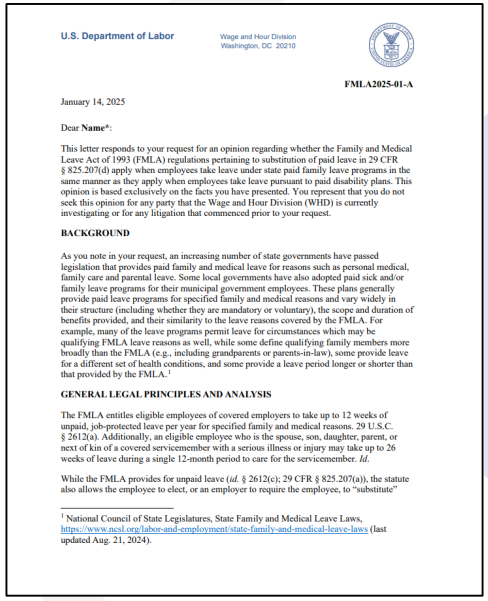

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4. If an employee is eligible for a state or local PFML under circumstances that do not qualify as FMLA leave, the employer cannot apply the leave against the employee's FMLA entitlement.

5. If an employee's leave under a state or local PFML ends before the employee has exhausted the full FMLA entitlement, the employee is still entitled to the protections of the FMLA and can elect, or the employer may require the employee, to substitute the employer-provided paid leave consistent with the FMLA regulations.

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FMLA Case Law Update

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Crispell v. FCA US LLC (6th Cir. June 18, 2024)

- Plaintiff, a floater filling in for multiple positions at defendant's truck assembly plant, sued defendant for FMLA interference and failure to accommodate under the ADA following her termination for repeated tardiness.
- Although Plaintiff had been granted intermittent FMLA leave for an ongoing mental health condition, defendant did not permit her to use FMLA leave to excuse her failure to follow the company's policies requiring a call-in 30 minutes prior to her shift start time.
- The district court granted summary judgment in favor of the defendant.
- The Sixth Circuit reversed.

Crispell v. FCA US LLC (6th Cir. June 18, 2024)

- The Sixth Circuit held that because her intermittent leave was unforeseeable the FMLA regulations governing her notice requirements only requires that an employee comply with the employer's usual procedures for requesting leave absent "***unusual circumstances***."

> "Unusual circumstances include 'emergenc[ies] requiring leave because of a FMLA-qualifying reason.'"

- The court concluded that plaintiff had raised evidence that could lead a jury to find that an "unusual circumstance" existed.

Crispell v. FCA US LLC (6th Cir. June 18, 2024)

- Specifically, after each instance of tardiness, plaintiff submitted letters to defendant citing her “covered illness” or “the nature of her covered illness” as the reasons she should not be penalized.
- In addition, at defendant’s suggestion, plaintiff submitted a letter from her doctor explaining her symptoms and explaining why she had been unable to call in on time.
- Finally, defendant had dealt with plaintiff on this issue previously and knew the details of her medical condition.
- From this, the jury could have concluded that her medical condition qualified as an “unusual circumstance” for purpose of establishing her prima facie case.

Crispell v. FCA US LLC (6th Cir. June 18, 2024)

- The Sixth Circuit also analyzed whether plaintiff was a "qualified individual" under the ADA and what level of attendance represented an "essential function" of her job.

"The term 'qualified individual' means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." "[R]egular and predictable on-site attendance" is an essential function of "most jobs, especially the interactive ones." And "[a]n employee who cannot meet the attendance requirements of the job at issue cannot be considered a 'qualified' individual protected by the ADA." But these rules do not mean that an employee whose medical situation requires her to take intermittent leave is automatically unqualified under the ADA. To the contrary, "approved medical leave may be a reasonable accommodation and an inability to work while on such leave does not mean that an individual is automatically unqualified."

Crispell v. FCA US LLC (6th Cir. June 18, 2024)

- The Sixth Circuit held defendant did not provide any evidence that a certain attendance rate was essential for the floater role or that the amount of leave Plaintiff used rendered her unqualified as a matter of law.
- Plaintiff supplied evidence of a comparator with a similar number of absences who remained as a floater.

> [I]f a purportedly essential function is not "job-related, uniformly enforced, and consistent with business necessity," summary judgment is inappropriate.

- The court concluded that a reasonable juror could conclude from this evidence, and the lack of evidence, that neither perfect nor near-perfect attendance as a floater was truly “consistent with business necessity.”

Hunt v. Thorp (6th Cir. Mar. 18, 2024)

- Plaintiff, who had bipolar disorder, worked as a dispatcher for defendant Sheriff's Office.
- She transferred to a position within the department that only required her to enter data, but was required to dispatch again during COVID.
- Plaintiff took FMLA leave because she experienced a bipolar episode triggered by conditions in the workplace related to the pandemic.
- Plaintiff told defendant that she was ready to return to work but could only perform data entry duties. The only available positions required dispatching duties.
- Plaintiff eventually filed for unemployment compensation and defendant, believing she abandoned her position, terminated her employment.

Hunt v. Thorp (6th Cir. Mar. 18, 2024)

- The Sixth Circuit affirmed the district court's holding that dispatch duties were an essential function of plaintiff's position as a Dispatcher-Data Entry Specialist and therefore, she was not a qualified individual under the ADA and not entitled to ADA or related FMLA protections.
- The court held that the district court correctly determined that plaintiff was not a qualified individual under the ADA because she could not perform all the essential functions of her position with or without reasonable accommodation.
- Plaintiff's FMLA interference claim also failed because the court held she was unable to perform the essential functions of her job.

Hunt v. Thorp (6th Cir. Mar. 18, 2024)

- Among other reasons, the court found that the dispatch duties were an essential function of her position because of the consequences of not requiring plaintiff to dispatch because defendant could not predict when emergencies will arise, necessitating all on-duty dispatchers to perform their dispatch duties in the interest of the public and fellow officers.

> [W]here a function is "seldom[ly]" required but would be "crucial in an emergency situation," that function is essential to that position.

Smyer v. Kroger (6th Cir. Mar. 8, 2024)

- Plaintiff was a manager at several of defendant's stores, who struggled to meet managerial expectations.
- Defendant transferred plaintiff to smaller stores twice in the hopes that plaintiff would cure his poor performance.
- Plaintiff was unable to improve his performance, and defendant terminated him.
- Plaintiff filed suit alleging that defendant engaged in interference and retaliation under the FMLA, among other claims. The district court granted summary judgment in favor of defendant
- The Sixth Circuit affirmed.

Smyer v. Kroger (6th Cir. Mar. 8, 2024)

- With regard to plaintiff's FMLA claim, the parties only disputed whether plaintiff's supervisor knew, or was on notice, that plaintiff had asserted his FMLA rights.
- The evidence suggested only that plaintiff mentioned "family obligations," and that he "had to pick [his] daughter up" to his supervisor.
- The court concluded that no reasonable jury could conclude that plaintiff told his supervisor he was taking FMLA leave.

> [A plaintiff] need not expressly mention the FMLA when requesting leave. However, "[t]he FMLA does not require an employer to be clairvoyant." [A plaintiff] must provide [the employer] "enough information . . . to know that an FMLA qualifying event has occurred."

Trout v. U.C. Med. Ctr. (S.D. Ohio Aug. 1, 2024)

- Plaintiff, a nurse clinician, sued her employer, UC medical center FMLA interference.
- The employer enforced an arbitration agreement and attempted to shorten the statute of limitations period for the FMLA claim.
- The arbitrator declined to shorten the FMLA period, and then plaintiff refiled her FMLA claim in court.
- The district court agreed with the arbitrator that an FMLA claims statutory period could not be shortened by a contractual provision as the statutory time limits prevail in that situation.

