



306 - Managing Employee Leave & Reasonable Accommodation Requests

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Vice President & Associate General Counsel
Sallie Mae, Inc.

Hillary Weingast

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Linda Whittaker

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Faculty Biographies

Eric Reicin

Eric D. Reicin is vice president and associate general counsel for Sallie Mae in Reston, Virginia. In this position, he serves as the company's chief litigation, labor and employment, and intellectual property attorney and also is responsible for managing legal support to the company's Asset Performance Group, IT division, and Sallie Mae PAC. Mr. Reicin is based at the company's headquarters in Reston. In addition to Reston, Mr. Reicin's team is located in Niles, Illinois, White Plains, NY, Fishers, Indiana, and Cincinnati, Ohio

Prior to joining Sallie Mae, Mr. Reicin was a litigator at law firms in Washington, D.C. and Chicago, Illinois. He also served as co-editor for the chapter on sexual and other forms of harassment in Lindeman and Grossman, *Employment Discrimination Law, 2000* supplement and co-editor for the chapter on retaliation in forthcoming Lindeman and Grossman, *Employment Discrimination Law, 4th Ed.*

Mr. Reicin also is the Immediate Past President of WMACCA and serves as a member of the WMACCA Board of Directors.

Mr. Reicin frequently appears as a speaker on employment law topics before both local and national organizations. He is the national corporate counsel chair for the ABA EEO Committee and is one of the founders of the ABA/EEOC joint training partnership. Mr. Reicin currently serves on the Georgetown University Law Center Corporate Counsel Institute Advisory Board and as co-chair of the ABA Section of Labor and Employment Law In-House Counsel Task Force.

Mr. Reicin is a cum laude graduate of the University of Illinois College of Law and a Mortar Board graduate of the University of Michigan.

Hillary Weingast

Director, Legal Department
Symantec Corporation

Linda Whittaker

Linda A. Whittaker is the associate general counsel of the employment practices division of Wal-Mart Stores, Inc. in Bentonville, Arkansas. Her group advises the company on policies, procedures, non-insured benefits, information systems, training, and all manner of employment compliance issues - ranging from work authorization to required postings. Ms. Whittaker joined Wal-Mart in as employment litigation counsel. Ms. Whittaker became Wal-Mart's ADA Coordinator. In that position she developed Wal-Mart's ADA policy and implemented procedures. More recently, Ms. Whittaker heads a group of attorneys who advise the company.

Ms. Whittaker began her legal career in private practice at Stanley, Lande and Hunter in Muscatine, Iowa. Her practice emphasized employment and litigation. Ms. Whittaker still describes herself as a "recovering family law attorney."

Ms. Whittaker received a B.S. and a B.A from the University of Arizona. She graduated with Highest Distinction from the University of Iowa College of Law. While at Iowa, Ms. Whittaker was an Associate editor of the Law Review and a member of the National Moot Court Team.

Protected Time Off – Time Off Allowed

Jurisdiction	Blood, Organ, and/or Bone Marrow Donor	Family Obligations/ School Activities	Military Family Member	Miscellaneous	Violence Victim Recovery	Crime Victim Proceedings	Legal Proceedings	Election Officer	Public Official	Jury Duty	Community Emergency Volunteer	Voting
FEDERAL	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Alabama	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Election day only; must provide proper documentation regarding appointment at least 7 days before time off	n/a	Entire 24-hour day on the day(s) of service pursuant to summons Must present summons to immediate superior on the next working day after receiving the summons; employee must report to work on the next day after s/he is dismissed from jury duty	n/a	n/a
Alaska	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Arizona	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
										Amount of time necessary to obtain legal protection and participate in the criminal proceeding related to the crime; employer		

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						may limit amount if undue hardship created Must provide copy of victim's rights form received from responsible law enforcement agency and copy of notice of each scheduled proceeding, if applicable						
Arkansas	Up to 90 days unpaid in addition to any medical, personal, or other paid leave (Organ & Bone Marrow Donor)	n/a	n/a	n/a	n/a	Amount of time necessary to participate in preparation for or to attend criminal proceeding No notice requirements	n/a	n/a	n/a	n/a	n/a	n/a
California	n/a	Up to 40 hours unpaid each	n/a	Amount of time necessary	Amount of time necessary for	n/a	n/a	n/a	n/a	n/a	n/a	Up to 2 hours paid time off

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		year, not to exceed 8 hours in any calendar month (School Activities) Reasonable advance notice; employer may require documentation from the day care facility or school		(Literacy Education) Employee must notify employer of a problem and request assistance	related judicial proceedings; Up to 12 workweeks per 12-month period for any other qualifying circumstances Reasonable advance notice, when feasible; documentation confirming need for time off when an unscheduled absence occurs							(including off-duty time)
Colorado	n/a	n/a	n/a	n/a	Up to 3 working days in any 12-month period Appropriate advance notice and documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Connecticut	n/a	n/a	n/a	n/a	n/a	Amount of time necessary to participate in qualifying proceedings No notice requirements	n/a	n/a	Part-Time: Amount of time necessary to perform legislative duties	n/a	n/a	n/a

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Delaware	n/a	n/a	n/a	n/a	n/a	Amount of time necessary to participate in qualifying proceedings No notice requirements	n/a	Amount of time necessary to serve on election day No notice requirements	n/a	Written notice within 30 days of nomination Full-Time: Time off for no more than two consecutive terms Written notice within 30 days of nomination	n/a	n/a
D.C.	n/a	24 hours unpaid during any 12-month period, but not during business (School)	n/a	1 day, but only if it doesn't disrupt business (Emancipation Day) Must request	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

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		Activities) Notification of at least 10 calendar days in advance, except where the need for leave cannot be reasonably foreseen		time off at least 10 calendar days in advance								
Florida	n/a	n/a	n/a	n/a	3 days per 12-month period; with or without pay, at employer's discretion	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Georgia	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Hawaii	n/a	n/a	n/a	n/a	Up to 30 calendar days per year Advance notice when practicable, as well as certification confirming employee's request; employer may require periodic status reports	n/a	n/a	n/a	n/a	n/a	n/a	Up to 2 hours paid time off (not including meal periods or rest breaks)

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Illinois	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Illinois	1 hour every 56 days (Blood Donor) Employee must request time off and obtain approval from employer	Total of 8 hours unpaid during any school year, but no more than 4 hours during any given day (School Activities) Written request at least 7 days prior to the date of requested time off, except in emergency situations, and must consult with the employer to avoid unduly disrupting the employer operations. In emergency situations, must provide 24 hours advance notice	Amount of time deployment orders in effect if all other leaves (except sick and disability) exhausted; Up to 30 days if 50+ employees At least 14 days notice if leave is 5 or more consecutive work days; must give advance notice as soon as practicable if leave is less than 5 consecutive days when possible, must consult with employer to schedule time off to avoid unduly disrupting employer's operations	n/a	Up to 12 workweeks during any 12-month period; in addition, take the amount of time off necessary for criminal proceedings 48 hours advance notice when feasible, as well as documentation and periodic reports for need for time off; employer must allow employee to provide documentation supporting unscheduled absence	n/a	n/a	n/a	n/a	n/a	Time required to fulfill his/her obligations pursuant to the summons; employer may not require an employee to work the nightshift, even if the employee is assigned to do so Employee must notify employer of summons within 10 days of receiving summons	n/a

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Indiana	n/a	n/a	Up to 10 work days per year Must provide at least 30 days written notice, unless active duty orders were issued less than 30 days before leave begins	n/a	n/a	n/a	n/a	n/a	Amount of time needed to perform legislative duties No notice requirements listed	n/a	n/a	n/a
Iowa	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	To serve in elective office: up to six years Written notice of need for time off To serve on state board: as needed to attend board meetings Written notice of need for time off to attend board meetings on	n/a	n/a	n/a

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									appointment to board			
Kansas	n/a	n/a	n/a	n/a	Time of necessary	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Kentucky	n/a	n/a		n/a	n/a	n/a	n/a	Up to one day for training; one day for election Employer may specify hours that employee may take	n/a	n/a	Time off to respond to an actual emergency or to participate in training in connection with your emergency services; unpaid if hourly Prompt notice is required	"Reasonable time" of at least 4 hours
Louisiana	Up to 40 hours paid (Bone Marrow Donor) Employer may require verification by a physician regarding the purpose and length of time off requested	Up to 16 hours unpaid during any 12-month period (School Activities) Reasonable notice; must make a reasonable effort to schedule such	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

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	by employee	time off to avoid unduly disrupting the employer's operations										
Maine	n/a	n/a	Up to 15 days per deployment; time off must occur in the 15 days immediately prior to and/or following the deployment period	n/a	Reasonable and necessary if no undue hardship to employer Reasonable notice of need for leave and documentation of family relationship	n/a	n/a	n/a	Two-year legislator terms; employer may file written notice of hardship if necessary Notice within 10 days of filing candidacy (failure to provide notice waives right to time off)	n/a	n/a	n/a
Maryland	n/a	n/a	n/a	n/a	n/a	Amount of time necessary to participate in qualifying proceedings No notice	n/a	n/a	n/a	n/a	n/a	n/a

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						requirements						
Massachusetts	n/a	Up to 24 hours during any 12-month period (Family Obligations AND School Activities -- each) 7 days' advanced notice; where not foreseeable, must provide notice as soon as possible. Employer may require certification of the need for time off within 2 business days of notice of the need for time off	n/a	Amount of time necessary (Veterans) No notice requirement listed.	n/a	n/a	n/a	n/a	n/a	Time required to fulfill obligations pursuant to the summons Up to 3 days of paid time if regularly employed. Up to 3 days of paid time for Part-time, temporary, and casual employees	n/a	Unpaid: Employer must schedule time off for first 2 hours that polls are open
Michigan	n/a	n/a	n/a	n/a	n/a	Amount of time necessary to participate in qualifying criminal	n/a	n/a	n/a	n/a	n/a	n/a

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						proceedings No notice requirements						
Minnesota	Up to 40 hours paid (Bone Marrow Donor) Employer may require verification by physician regarding the purpose and length of time off requested by employee	Up to 16 hours during any 12-month period (School Activities) Reasonable prior notice; make reasonable effort to schedule leave to avoid unduly disrupting operations of employer	Up to ten days if injured or disabled while engaged in active service; up to one day to attend a send-off or homecoming ceremony unless the leave would disrupt the facility business operations	n/a	n/a	Reasonable time to attend qualifying criminal proceedings; generally means amount of time necessary to participate in qualifying proceedings 48 hours' advance notice unless it is impracticable or an emergency prevents employee from doing so; employer may request employee to provide verification that support reason for time off	n/a	Time necessary; time is paid On days' written notice; certification of hours to be worked and compensation to be paid	n/a	n/a	n/a	Paid; Morning of the day of election
Mississippi	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Missouri	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

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Montana	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Nebraska	n/a	n/a	Up to 30 days unpaid leave during federal or state deployment orders are in effect. Must provide 14 days' notice if leave consists of five or more consecutive work days; if leave is less than 5 days, practicable advance notice required. Employer may require certification.	n/a	n/a	n/a	n/a	Time necessary; if serving 8 or more hours, may also take time for 8 hours prior to and 8 hour following such service; time is paid Reasonable notice unless employee is notified the day of the election to fill a vacancy as an election official	n/a	n/a	Time required to fulfill his/her obligations pursuant to the summons If actually seated as a juror, may take off the entire day she serves as a juror. If excused from serving, she may be required to report to work for the remainder of the scheduled shift. Employer may require reasonable notice that the employee has received a summons.	n/a	n/a

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Nevada	n/a	Amount of time necessary (School Activities) No notice requirements	n/a	n/a	n/a	n/a	n/a	n/a	Time necessary No notice requirements listed	n/a	n/a	1 hour paid if distance between worksite and polling place is 2 miles or less; 2 hours paid time if distance is more than 2 miles, but not more than 10 miles; 3 hours paid if distance is more than 10 miles
New Hampshire	n/a	n/a	n/a	n/a	Reasonable, but may be limited if undue hardship to employer Must provide copy of notice of each scheduled hearing, conference, or meeting provided to employee by the court or responsible agency	n/a	Amount of time necessary; unpaid for Hourly Prompt notice	n/a	n/a	n/a	All Associates may take time off to respond to an actual emergency or to participate in training in connection with your emergency services; unpaid if hourly Prompt notice is required	n/a

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New Jersey	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
New Mexico	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Up to 2 hours paid
New York	Up to 24 hours unpaid (Bone Marrow Donor) Employer may require verification by physician regarding the purpose and length of time off requested by employee	n/a	Up to ten days when spouse is on leave from deployment to a combat theater or operations	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Up to 4 hours (including off-duty time), but only up to 2 hours paid
North Carolina	n/a	Up to 4 hours each year (School Activities) Employer may require written request at least 48 hours before school activity; may also require written verification	n/a	n/a	Reasonable Advance notice if it is required by employer's usual Policy, unless an emergency prevents employee from doing so; employer may require documentation of any emergency	n/a	n/a	n/a	n/a	n/a	n/a	n/a

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					that prevents employee from giving advance notice, or any other documentation available to employee that supports employee's request for time off							
North Dakota	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Ohio	n/a	n/a	n/a	n/a	n/a	Amount of time necessary to prepare for or participate in qualifying criminal or juvenile delinquency proceedings No notice requirements	n/a	Time necessary No notice requirements listed	n/a	n/a	n/a	n/a
Oklahoma	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Oregon	Accrued paid leave available or 40 work hours, whichever is	n/a	n/a	n/a	Amount of time necessary to engage in qualifying activities, up to a	Amount of time necessary to attend criminal or juvenile delinquency	n/a	n/a	Time necessary Reasonable notice; 30	n/a	n/a	n/a

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	less (Bone Marrow Donor) Employer may require verification by physician regarding the purpose and length of time off requested by employee. If there is a medical determination that the employee does not qualify as a bone marrow donor, it has no effect on the accrued leave used by the employee before the determination				maximum of 30 days per calendar year. Amount of time necessary to engage in qualifying activities, up to a maximum of 30 days per calendar year Prompt notice	proceedings; employer may limit if undue hardship created Reasonable notice; must provide copies of schedule of criminal proceedings received from law enforcement agencies				days when time off is for regular session; apply for reinstatement within 5 days when less than full session; apply for reinstatement within 15 days of end of full session		
Pennsylvania	n/a	n/a	n/a	n/a	n/a	Amount of time necessary to participate in criminal proceedings	n/a	n/a	n/a	n/a	n/a	n/a

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						No notice requirements listed						
Puerto Rico	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Time necessary; time is paid (no published Policy) Employee must provide a copy of the summons to attend a qualifying meeting prior to meeting	n/a	Time off pursuant to a summons	n/a	n/a
Rhode Island	n/a	Total of 10 hours during any 12-month period (School Activities) 24 hours prior notice; must make reasonable effort to avoid unduly disrupting employer's	n/a	n/a	n/a	Amount of time necessary to attend court proceedings; employer may limit amount of time if undue hardship created Must provide employer copy of court proceedings	n/a	n/a	n/a	n/a	n/a	n/a

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		operations										
South Carolina	n/a	n/a	n/a	n/a	n/a	Amount of time necessary to participate in qualifying proceedings No notice requirements	n/a	n/a	n/a	n/a	n/a	n/a
South Dakota	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Time necessary to perform official duty No notice requirements listed	n/a	n/a	n/a
Tennessee	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Time required to fulfill his/her obligations pursuant to the summons; if more than 3 hours, employee may take the entire day off; must be excused from work for the shift immediately	n/a	n/a

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										preceding the first day of jury service if working the night shift. Eligible employees paid, unless temporary for less than 6 months.		
Texas	n/a	n/a	n/a	Amount of time necessary (Public Education)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Utah	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Vermont	n/a	Total of 4 hours in any 30-day period, up to a maximum of 24 hours in a 12-month period (Family Obligations/School Activities – combined) Earliest possible	n/a	n/a	n/a	n/a	n/a	n/a	Time necessary to perform legislative duties; employer may appeal for relief if hardship Notice within 10 days of filing candidacy	n/a	n/a	n/a

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		notice, but in no case later than 7 days before scheduled time except in case of emergency; must make reasonable attempt to schedule time off outside of regular work hours								(failure to provide notice waives right to time off)		
Virginia	n/a	n/a	n/a	n/a	n/a	Time necessary, unless it creates an undue business hardship	n/a	Time necessary; cannot be required to use sick or vacation leave Reasonable notice	n/a	Time off pursuant to a summons Employer may not require employee to start any work shift that begins on or after 5:00 p.m. on the day of jury duty or before 3:00 a.m. on the day following jury duty.	n/a	n/a

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Washington	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
West Virginia	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	Time necessary No notice requirements	n/a	n/a	Up to 3 hours paid time off.
Wisconsin	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Wyoming	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

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MILITARY LEAVE – STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Alabama	Length of leave. Statute does not limit duration of leave for employee in U.S. Armed Forces Reserves, Alabama National Guard, Alabama Naval Militia, or the Alabama State Guard who takes leave for field or coast defense, training, or other service ordered under federal law.	See Ala. Code § 31-2-13 (statute silent re: length of leave).
Alaska	Length of Leave. Statute does not limit duration of leave for employee in Alaska National Guard, Alaska Naval Militia, or State Defense Force who is engaged in active state service or is hospitalized due to such military service.	See Alaska Stat. § 26.05.075 (statute silent re: length of leave).
	Timing of return from leave. Employee permanently disabled due to military service must apply for reemployment within 30 days after receiving certification from the treating physician that s/he has reached maximum recovery and can return to work. Alaska law does not limit the recovery period.	See Alaska Stat. § 26.05.075 (c).
Arizona	n/a	n/a
Arkansas	n/a	n/a
California (Cont'd on next page)	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces Reserves, National Guard, or State Military Reserves who takes leave for full-time active service. ¹	See Cal. Mil. & Vet. Code § 395.06 (a) (statute silent re: length of leave for National Guard active duty and "service members"); Cal. Mil. & Vet. Code § 400 (a) ("service member" means National Guard or Reservists of the U.S. Armed Forces called to active duty); Cal. Mil. & Vet. Code § 566 (Section 395.06 applies to members of State Military Reserves).

¹ Although the statute does not limit duration, we note that a publication prepared for state employees by the California State Personnel Board (SPB) and Department of Personnel Administration (DPA) states that leave is limited to five years except in certain limited circumstances. See <http://www.spb.ca.gov/documents/handbook.pdf>, at p. 5 ("Long-term military leave cannot exceed five years"); and p. 11 ("To be eligible for [reinstatement from long term military leave], your military service cannot extend beyond five years except under special circumstances for which an extension may be available.")

MILITARY LEAVE –STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
California <i>(cont'd)</i>	<p>Timing of return from leave. Employer may require <i>full-time</i> employee returning from military leave to apply for reemployment within 40 days after release from service.</p> <p>Employer may require <i>part-time</i> employee returning from military leave to apply for reemployment within five days after release from service.</p>	<p>See Cal. Mil. & Vet. Code § 395.06 (reemployment for National Guard active duty and "service members" called to active service under Chapter 7.5 (commencing with Section 400)); excluding temporary employees); Cal. Mil. & Vet. Code § 400 (a) ("service member" means National Guard or Reservists of the U.S. Armed Forces called to active duty); Cal. Mil. & Vet. Code § 566 (Section 395.06 applies to members of State Military Reserves); Cal. Mil. & Vet. Code § 564 ("all the rights, privileges, and benefits provided in Sections 394 and 395 of the code are hereby extended to members of said forces while in the active service of State").</p>
	<p>Other. California law also provides that an employer may not restrict or terminate any collateral benefit due to an employee's temporary incapacitation of 52 weeks or less resulting from duty performed in the National Guard, State Naval Militia, or State Military Reserve.</p> <p>Collateral benefit includes, but is not limited to, health care (which may be continued at the employee's expense), life insurance, disability insurance, and seniority status.</p> <p>Therefore, if an employee elects to continue such benefits during leave, a Company may not cut off the benefits due the employee's temporary incapacitation.</p>	<p>See Cal. Mil. & Vet. Code § 394 (c).</p>
Colorado	<i>n/a</i>	<i>n/a</i>
Connecticut	Length of leave. Statute does not limit duration of leave for employee in National Guard or military reserves to attend meetings or drills.	See Conn. Gen. Stat. Ann. § 27-33a (statute silent re: length of leave).
Delaware	<i>n/a</i>	<i>n/a</i>
D.C.	<i>n/a</i>	<i>n/a</i>
Florida	Length of Leave. Statute does not limit duration of leave for employee in Florida National Guard who has been employed for at least one year and who takes leave for state active duty (including any period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause).	See Fla. Stat. Ann. § 250.482 (statute silent re: length of leave); Fla. Stat. Ann. § 250.01 (21) (definition of "state active duty").

MILITARY LEAVE –STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Georgia	<p>Length of Leave. Statute is silent – Arguably, an employee in U. S. Armed Forces (including the Reserves), the Air or Army National Guard, the Georgia National Guard, or the Georgia State Defense Force or Naval Militia may take leave for the duration of his/her military service.</p> <p>The Georgia Office of the Adjutant General interprets Georgia law consistent with USERRA (i.e., such that the USERRA limits would apply). However, the Georgia Attorney General is responsible for enforcing this law.</p>	<p>See Ga. Code Ann. § 38-2-280 (a) (statute silent re: length of leave for military service in U.S. Armed Forces or organized militia); Ga. Code Ann. § 38-2-2 (10) ("organized militia" includes "the Army National Guard, the Air National Guard, the Georgia Naval Militia, when organized, and the State Defense Force"); Ga. Code Ann. § 38-2-280 (c) (military leave for reserve components of U.S. Armed Forces); Ga. Code Ann. § 38-2-280 (d) (military leave for Georgia National Guard).</p>
	<p>Timing of return from leave. Employee returning from military leave must apply for reemployment within 90 days after release from military service, and within 10 days after completing training, assemblies, or service school.²</p>	<p>See Ga. Code Ann. § 38-2-280.</p>
Hawaii	Length of Leave. Statute does not limit duration of leave for employee during National Guard service, including travel time to and from such service.	See Haw. Rev. Stat. Ann. § 121-43 (a) (statute silent re: length of leave).
Idaho ³	<i>n/a</i>	<i>n/a</i>

² The Georgia military leave law provides that "the benefits, rights, and privileges granted to persons in the military service by this Code shall be extended and applicable to any person who is or becomes" a member of "a reserve component of the armed forces of the United States" or "the Georgia National Guard . . . and because of such membership is discharged by his or her employer or whose employment is suspended by his or her employer because of such membership and who, being qualified to perform the duties of the position, makes application for reemployment or termination of the period of his/her suspension within ten days after such discharge or suspension. In the event that the member of . . . the reserve component [or Georgia National Guard] is serving on military duty at the time of receipt of notice of the discharge or suspension the . . . the then day period within which application must be made shall not commence to run until the day next following the date of termination of such military service." See Ga. Code Ann. § 38-2-280 (c), (d).

³ Idaho recently amended its military leave law, effective July 1, 2007. In light of such amendments, a state policy for Idaho is no longer needed.

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Illinois	Length of Leave. Statute does not limit duration of leave for military service in U.S. Armed Forces, Illinois Militia, or National Guard.	See 330 Ill. Comp. Stat. 60/4 (statute silent re: length of leave for members of U.S. Armed Forces and Illinois State militia); 20 Ill. Comp. Stat. 30/15 (statute silent re: length of leave for National Guard members).
	Timing of return from leave. ⁴ Employee returning from military leave must apply for reemployment within 90 days after completion of military service or rejection of application to serve.	See 330 Ill. Comp. Stat. 60/4.
	Prospective employees. Upon request by a prospective employee, employer must provide him/her with a signed, written offer of employment (including job title, job duties, wages/salary) if s/he has been offered employment and thereafter has been called to certain federal or state active duty. Upon honorable/satisfactory completion of military service, employer must give prospective employee preference for employment if (1) s/he is qualified to perform the duties of the offered position, and (2) s/he applies within 90 days after release from military service. Employer not required to hold open a job or create a new job. If circumstances have changed making it impossible or unreasonable to employ the prospective employee, s/he must remain eligible for employment for a period of one year after the date s/he first notified the employer of the military service.	See 330 Ill. Comp. Stat. 60/4.5
Indiana	Length of Leave. Employee may take leave for the duration of National Guard active state duty.	See Ind. Code Ann. § 10-16-7-6 (military leave for total number of days on state active duty in Indiana National Guard).

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Iowa	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces Reserves, National Guard, or Civil Air Patrol who takes leave for federal duty, state active duty, state military service, or civil air patrol duty.	See Iowa Code Ann. § 29A.43 (statute silent re: length of leave).
Kansas	Length of Leave. Statute does not limit duration of leave for employee called (1) to state active duty in the Kansas National Guard, Kansas Air National Guard, Kansas State Guard, or other Kansas military force, or (2) to participate in the Kansas National Guard annual muster and camp of instruction.	See Kan. Stat. Ann. § 48-517 (a) (statute silent re: length of leave for state active duty); Kan. Stat. Ann. § 48-222 (statute silent re: length of leave for National Guard annual muster and camp of instruction).
	Timing of return from leave. Employee returning from state active duty must report to work within 72 hours after release from duty, or after release from duty or after recovery from disease or injury resulting from active duty. Kansas law does not limit the recovery period.	See Kan. Stat. Ann. § 48-517 (a).
Kentucky	Length of Leave. Statute does not limit duration of leave for employee who takes leave for National Guard active duty or training.	See K.R.S. § 38.238 (employee may take leave for the period required to perform active duty or training in National Guard).
Louisiana <i>(Cont'd on next page)</i>	Length of Leave. Statute does not limit duration of leave for employee in the National Guard, Louisiana State Militia, or other Louisiana military force who takes leave for active state service. ⁵	See La. Rev. Stat. Ann. § 29:38 (statute silent re: length of military leave for state active service with National Guard or state militia).
	Timing of return from leave. Employee returning from military leave with the National Guard, Louisiana State Militia, or other Louisiana military force must report to work within 72 hours after release from duty, or after release from duty and recovery from disease or injury resulting from his/her military service. Louisiana law does not limit the recovery period.	See La. Rev. Stat. Ann. § 29:38.

⁴ Illinois has enacted two separate laws that protect National Guard members called to federal or state duty. See 330 Ill. Comp. Stat. § 60/1 et seq. (Service Member's Employment Tenure Act); 20 Ill. Comp. Stat. § 1805/30.1 (Illinois National Guard Employment Rights law). The Service Member's Employment Tenure Act, among other things, provides certain reemployment rights to employees who are members of the U.S. Armed Forces and the Illinois State Militia – the National Guard may act as a branch of the U.S. Armed Forces and/or the Illinois State Militia. See 330 Ill. Comp. Stat. §§ 60/3 and 60/4. Under the Service Member's Employment Tenure Act, an employee has 90 days after completion of military service to apply for reemployment regardless of length of service. However, similar to USERRA, the Illinois National Guard Employment Rights law provides for a graduated reapplication period for reemployment depending on the length of service. See 20 Ill. Comp. Stat. § 1805/30.15 (e).

⁵ Louisiana has enacted two laws that protect members of the National Guard called to state active duty. See La. Rev. Stat. Ann. § 29:403 (11) (Military Service Relief Act; defining "service in the uniformed service" as "state active duty by members of the national guard who are activated pursuant to a call to the governor of [Louisiana] or of any other state . . ."); La. Rev. Stat. Ann. § 29:38 (A) (reemployment for employees "ordered to active duty in the service of the national guard of this state or any other state . . ."). This law set forth above reflects the requirements of the respective law that provides greater benefits to an employee engaged in state active service for the National Guard. See La. Rev. Stat. Ann. § 29:402 (C) (the Military Service Relief Act is "intended to be supplemental to any rights that persons called to military service have under . . . under any other applicable laws of this state").

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Louisiana <i>(cont'd)</i>	Accrual of paid leave. During leave with the U.S. Armed Forces (including the Reserves), National Guard, or Public Health Service Corps, employee must continue to accrue sick leave, annual leave, vacation leave, military leave, holiday pay, and any other paid leave offered by the employer.	See La. Rev. Stat. Ann. § 29:406 (C) ("employee shall continue to accrue sick leave, annual leave, vacation leave, military leave, holiday pay, and any paid leave, offered by the employer, pursuant to the employer's stated leave of absence policy, which would have accrued if continuously employed"); Digest of SB118 Engrossed (2005) (the bill "permits employees to accrue sick leave, annual leave, vacation leave, or military leave on the same basis as he would have had he not been in the uniformed services").
	Other. Employer must reemploy an employee returning from military leave for U.S. Armed Forces (including the Reserves), the National Guard, or Public Health Service Corps within 10 days if the employee meets the established notice and documentations requirements. Upon reemployment, employer must allow employee to complete any training program applicable to employee's former job provided during employee's leave.	See La. Rev. Stat. Ann. § 410 (A) (reemployment); La. Rev. Stat. Ann. § 410 (I) (training).
Maine <i>(Con't on next page)</i>	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces Reserves or National Guard who takes leave for federal or state military service.	See Me. Rev. Stat. Ann. tit. 26 § 811 (statute silent re: length of leave).

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Maine <i>(cont'd)</i>	Timing of return from leave. Employee must report to work for reemployment as follows: <ul style="list-style-type: none"> • Leave for three days or less: Report to work upon the completion of military service, plus 24 hours after a period allowing for the employee's safe transportation from the place of service to residence. • Leave for more than three days, but not more than 15 days: Report to work upon completion of military service, plus 48 hours after a period allowing for the employee's safe transportation from the place of service to residence. • Leave for more than 15 days, but not more than 30 days: Report to work upon completion of military service, plus 72 hours after a period allowing for the employee's safe transportation from the place of service to residence. • Leave for more than 30 days, but not more than 180 days: Report to work upon completion military service, plus 14 days after a period allowing for the employee's safe transportation from the place of service to residence. • Leave for more than 180 days: Report to work upon completion of the employee's military service, plus 90 days after a period allowing for the employee's safe transportation from place of service to residence. 	See Me. Rev. Stat. Ann. tit. 26 § 811.
	Continuation of Health Insurance Benefits. Employer must continue an employee's existing health, dental, and life insurance benefits for the first 30 days of military leave at no <i>additional</i> cost to the employee. After the first 30 days of leave, employer must provide the employee the opportunity, at the employee's cost, to continue the health, dental, and life insurance benefits in effect at the same rates as paid by the employer.	See Me. Rev. Stat. Ann. tit. 26 § 812.
Maryland	<i>n/a</i>	<i>n/a</i>
Massachusetts	<i>n/a</i>	<i>n/a</i>
Michigan	Timing of return from leave. Employee in U.S. Armed Forces (including the Reserves), Michigan National Guard, or Michigan Militia returning from active duty, training, or fitness examination must apply for reemployment within 15 days of being released from such military service.	See Mich. Comp. Laws Ann. § 32.273.

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Minnesota	<p>Timing of return from leave. Employee in Minnesota National Guard, State Guard, or any other federal or state organized militia returning from active service during a state emergency must apply for reemployment in writing within 90 days after termination of military service.</p> <p>If the employee is hospitalized or received medical treatment for an illness or injury resulting from military service, employer may require employee to apply for reemployment within 90 days after discharge from such hospitalization or medical treatment, if the application is made within one year and 90 days after discharge from military service.</p>	See Minn. Stat. Ann. § 192.261 (general rule); Minn. Stat. Ann. § 192.261 (return from hospitalization).
Mississippi	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces Reserves (or former member of U.S. Armed Forces), National Guard, or Mississippi State Guard who takes leave for federal or state training or duty.	See Miss. Code Ann. § 33-1-19 (statute silent re: length of leave).
Missouri	<i>n/a</i>	<i>n/a</i>
Montana	<i>n/a</i>	<i>n/a</i>
Nebraska	<i>n/a</i>	<i>n/a</i>
Nevada	Length of Leave. Statute does not limit duration of leave for employee in Nevada National Guard, Nevada National Guard Reserve, or other volunteer organization licensed by the Governor who takes leave for active duty.	See Nev. Rev. Stat. Ann. § 412.139 (statute silent re: length of leave).
New Hampshire	<i>n/a</i>	<i>n/a</i>
New Jersey	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces (including the Reserves), National Guard, or any New Jersey military force who takes leave for federal or state active service.	See N.J. Stat. Ann. § 38:23C-20 (a) (statute silent re: length of leave); N.J. Stat. Ann. § 38:23C-2 (definition of "military service").
	Timing of return from leave. Employee returning from military leave must apply for reemployment within 90 days after release from military service, and within 10 days after completing training, assemblies, or service school.	See N.J. Stat. Ann. § 38:23C-20 (a), (b).
New Mexico <i>(Cont'd on next page)</i>	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces, National Guard, or organized reserve who takes leave for training or military service.	See N.M. Stat. Ann. § 28-15-1 (statute silent re: length of leave).


MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
New Mexico <i>(Cont'd)</i>	Timing of return from leave. Employee returning from military leave must apply for reemployment within 90 days after release from military service.	See N.M. Stat. Ann. § 28-15-1.
New York	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces, New York National Guard, New York Guard, or New York Naval Militia who takes leave for training or military service.	See N.Y. Mil. Law § 317 (statute silent re: length of leave).
	<p>Timing of return from leave. Employee returning from military leave must apply for reemployment within:</p> <ul style="list-style-type: none"> • 90 days after completing active duty; • 60 days after completing initial full-time training or initial active duty for training; • within 10 days after completing assemblies for drill or other equivalent training, reserve duty training or duties, annual full-time training duty, active duty for training, other annual training, or attendance at U.S. Armed Forces service schools. 	See N.Y. Mil. Law § 317.
North Carolina	Length of Leave. Statute does not limit duration of leave for North Carolina National Guard state duty.	See N.C. Gen. Stat. § 127A-202 (statute silent re: length of leave).
	<p>Timing of return from leave. Employee returning from military leave must apply for reemployment in writing within five days of release from state duty.</p> <p>If hospitalized, employee must apply for reemployment in writing within five days of release from hospitalization (with no limit on hospitalization period).</p>	See N.C. Gen. Stat. § 127A-202 (general requirement); N.C. Gen. Stat. § 127A-202 (requirement in case of hospitalization).
North Dakota	<i>n/a</i>	<i>n/a</i>
Ohio	<i>n/a</i>	<i>n/a</i>
Oklahoma	<i>n/a</i>	<i>n/a</i>

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Oregon	Length of Leave. Statute does not limit duration of leave for employee in Oregon National Guard, Oregon State Defense Force, or an organized militia of any state who takes leave for state active service.	See Or. Rev. Stat. § 399.230.
	Timing of return from leave. Employee returning from military leave must resume duties of employment within seven days of being released from duty.	See Or. Rev. Stat. § 399.230.
Pennsylvania	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces Reserves or Pennsylvania National Guard who takes leave federal state duty.	See 51 Pa. C.S.A. § 7309 (statute silent re: length of leave).
	Continuation of Health Insurance Benefits for Members of the National Guard or Armed Forces Reserves called to active state or federal duty. Employer must continue the employee's health insurance and other benefits in effect at the time military leave begins, at no cost to the employee, for the first 30 days of active federal or state duty (other than active duty for training). After the first 30 days of leave, employer must provide employee with the option of continuing health insurance and other benefits at employee's own expense by paying for the insurance or benefits at the same rates paid by the employer. However, the insurance coverage need not cover injuries incurred in the line of military duty.	See 51 Pa.C.S.A. § 7309 (c) (employer must "at no cost to the member, continue health insurance and other benefits in effect for at least the first 30 days of the military duty").
Puerto Rico	Length of Leave. Statute does not limit duration of leave for employee in Puerto Rico National Guard or other Puerto Rico militia who takes leave for training or duty.	See 25 PR Laws Ann. § 2083 (statute silent re: length of leave).
Rhode Island	Length of Leave. Statute does not limit duration of leave for employee in U.S. Armed Forces (including the Reserves) or Rhode Island National Guard who takes leave for military service.	See R.I. Gen. Laws § 30-21-1 (statute silent re: length of leave to serve in U.S. Armed Forces); R.I. Gen. Laws § 30-11-7 (statute silent re: length of leave to serve in the Reserves); R.I. Gen. Laws § 30-11-3 (statute silent re: length of leave to serve in the Rhode Island National Guard).
	Timing of return from leave. Employee returning from military leave with the U.S. Armed Forces must request reemployment within 40 days after discharge from service.	See R.I. Gen. Laws § 30-21-1.

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
South Carolina	Length of Leave. Statute does not limit duration of leave for employee in the South Carolina National Guard or State Guard who takes leave for state duty.	See S.C. Code Ann. § 25-1-2310 <i>et. seq.</i> (statute silent re: length of leave).
	Timing of return from leave. Employee returning from military leave must submit a written application for reemployment within five days after release from state duty. If hospitalized, employee must submit a written application for reemployment within five days after release from hospitalization continuing after completion of state duty. South Carolina does not limit the hospitalization period.	See S.C. Code Ann. § 25-1-2320 (reemployment rights for National Guard); S.C. Code Ann. § 25-1-2340 (reemployment rights extended to State Guard);
South Dakota	<i>n/a</i>	<i>n/a</i>
Tennessee	Length of Leave. Statute does not limit duration of leave for employee who takes leave for Tennessee National Guard drill or annual field training.	See Tenn. Code Ann. § 58-1-604 (statute silent re: length of leave).
Texas	Length of Leave. Statute does not limit duration of leave for employee in Texas National Guard, Texas State Guard, other Texas military force, or any military force of another state who takes leave for military training or duty.	See Texas Gov't Code Ann. § 431.006 (a) (statute silent re: length of leave).
Utah	Timing of return from leave in case of illness/injury. Employee in U.S. Armed Forces Reserves may take military leave until released from hospitalization for an injury or illness incurred or aggravated during military service. Utah does not limit the recovery period.	See Utah Code Ann. § 39-1-36.
Vermont	<i>n/a</i>	<i>n/a</i>
Virginia	Timing of return from leave. Employee returning from federal or state active duty with the Virginia National Guard, Virginia State Defense Force, or Virginia Naval Militia must apply for reemployment in writing within 14 days of release from duty.	See Va. Code Ann. § 44-93.3, as amended by SB 1309.
Washington	<i>n/a</i>	<i>n/a</i>
West Virginia	<i>n/a</i>	<i>n/a</i>
Wisconsin (<i>Cont'd on next page</i>)	Timing of return from leave. ⁶ Employee returning from training or service with U.S. Armed Forces (including the Reserves), National Guard, or civilian defense work for the federal government during an	See Wis. Stat. Ann. § 21.79 (U.S. Armed Forces, Reserves, civilian defense force); Wis. Stat. Ann. § 21.80 (National Guard).

⁶ Wisconsin has enacted two separate laws that protect National Guard members called to training or service. See Wis. Stat. Ann. § 21.79 (reemployment rights for U.S. Armed Forces and Reserves); Wis. Stat. Ann. § 21.80 (reemployment rights for National Guard and Wisconsin State Militia). The Wisconsin military leave law that applies to members of the U.S. Armed Forces arguably applies to members of the National Guard – which is a branch of the U.S. Armed Forces. Under the Wisconsin law applying to the U.S. Armed Forces, an employee has 90 days after completion of military service to apply for reemployment regardless of length of service. However, similar to USERRA, the Wisconsin law applying to the National Guard and State Militia provides for a graduated reapplication period for reemployment depending on the length of service.

MILITARY LEAVE—STATE LAW SUMMARY		
Jurisdiction	State Law	Citations
Wisconsin <i>(Cont'd)</i>	officially declared emergency, must submit an application for reemployment and resume work within 90 days after completion of the training or service. If hospitalized due to service, employee must submit an application for reemployment and resume work within six months after release from hospitalization for service-related injury or disease. Wisconsin does not limit the hospitalization period.	
Wyoming	Accrual of paid leave. Employee must continue to accrue sick leave, annual leave, vacation leave, or military leave on the same basis as s/he would have accrued such leave during the period of military service if on leave due to service with U.S. Armed Forces (including the Reserves), the National Guard, the Commissioned Corps of the Public Health Service, or any other category designated by the President in time of war or national emergency.	See Wyo. Stat. Ann. § 19-11-107 (c) ("employee shall continue to accrue sick leave, annual leave, vacation leave or military leave on the same basis as he would have accrued such leave during the period of service in the uniformed services").
	Other. Employer must reemploy an employee returning from military leave within 10 days of the employee's application for reemployment. Upon reemployment, employer must allow employee to complete any training program applicable to employee's former job provided during employee's leave.	See Wyo. Stat. Ann. § 19-11-111 (a) (reemployment); Wyo. Stat. Ann. § 19-11-111 (m) (training).



306, Managing Employee Leave & Reasonable Accommodation Requests

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ACC's 2007 Annual Meeting: Enjoying the Ride on the Track to Success
October 29-31, Hyatt Regency Chicago



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Managing Leave

- Overview of Laws Protecting Employee Leaves and Reasonable Accommodations
- FMLA
- ADA
- State Laws
- EEOC Caregiver Guidance (May 2007)
- Worker's Compensation
- Military - USERRA

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FAMILY AND MEDICAL LEAVE ACT

- **The Family and Medical Leave Act of 1993**, 29 U.S.C. 2612(a), requires employers of 50 or more workers within 75 miles of the employer's work site to provide eligible employees up to 12 weeks of unpaid job protected leave in a twelve month period for certain family and medical purposes. FMLA leave generally is permitted under the following circumstances: (1) the birth of the son or daughter of an employee and in order to care for the son or daughter; (2) the placement of a son or daughter with an employee for adoption or foster care; (3) to care for the spouse, son or daughter, or a parent of the employee if such spouse, son or daughter, or parent has a serious health condition; or (4) if the employee has a serious health condition which makes the employee unable to perform their job. FMLA also provides that where medically necessary, a person may take leave intermittently or be placed on a reduced leave schedule. In general, FMLA requires that an employee be restored to the same or an equivalent position upon return from leave. FMLA further prohibits discrimination against individuals who exercise their rights under FMLA. Employees must be employed for at least 12 months and performed 1250 hours of service for the employer during the preceding 12-month period to be a covered employee.

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FMLA Issues

- **Serious Health Condition**
- **Medical Certification - delayed is not denied**
- **Second opinions; third opinions**
- **Interaction of state and federal FMLA statutes**
- **Intermittent leave**
 - Miss up to 20% on an annual basis!
 - Reassignment to different position during intermittent leave period
 - Re-certification
- **Misuse of FMLA**
- **No-fault attendance policies**
- **RIF decisions**
- **Administration**

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FMLA Issues

- **Hours worked (1250)**
 - *Mutchler v. Dunlap Memorial Hosp.*, 485 F.3d 854 (6th Cir. May 2, 2007).
- **12 Months**
 - *Rucker v. Lee Holding Co.*, 471 F.3d 6 (1st Cir. December 18, 2006) (12 months employment need not be continuous).
- **Prorated Bonuses**
 - *Sommer v. The Vanguard Group*, 461 F.3d 397 (3d Cir. August 24, 2006).
- **FMLA - are they really covered?**
 - *Minard v. ITC Deltacom Comm., Inc.*, 447 F.3d 352 (5th Cir. April 18, 2006).
- **Notice of Serious Health Condition or Need for Leave** (When to ask? What to ask?)
 - *Burnett v. LFW Inc.*, 472 F.3d 471 (7th Cir. December 26, 2006). (What is notice)
 - *Greenwell v. State Farm Mutual Auto Ins. Co.*, 486 F.3d 840 (5th Cir. May 10, 2007).
 - *Williams v. Illinois Dept. of Corrections*, 2007 U.S. Dist. LEXIS 17119 (S.D. ILL. March 9, 2007).

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FMLA Issues

- **Releases**
 - *Taylor v. Progress Energy, Inc.*, 2007 U.S. App. LEXIS 15846 (4th Cir. July 3, 2007).
 - **DOL position in that case.**
- **Paid leave issues when on workers comp/STD**
 - *Repa v. Roadway Express, Inc.*, 477 F.3d 938 (7th Cir. February 26, 2007).
- **Parent/Child**
"Caring for" issues –
 - *Tellis v. Alaska Airlines*, 414 F.3d 1045 (9th Cir. July 12, 2005).
 - *Ryman v. Sears, Roebuck and Co.*, 2006 U.S. Dist. LEXIS 44964 (D. Or. June 19, 2006).
 - *Overley v. Covenant Transport, Inc.*, 178 Fed. Appx. 488 (6th Cir. Apr. 27, 2006).
 - New cases
- **Regulatory Relief?**
 - June 27, 2007 DOL Report on FMLA – No Proposed Regulations
- **Pending legislation**

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LOA BENCHMARKING

- April 2006 – 29 Companies
 - 26 provide medical leave beyond FMLA
 - 10 provide family care leave beyond FMLA
 - 8 provide job protection beyond FMLA
 - No pattern or trend to length of leave
 - Eligibility varied with type of leave
 - Medical – Day 1 to 12 months
 - Personal – Day 1 to 2 years

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LOA BENCHMARKING

- Administration (19 companies)
 - 12 - separate policies
 - 3 - one policy with separate sections
 - 4 - one policy
- Administration (21 companies)
 - 3 - TPA
 - 13 - Self
 - 4 – Self and TPA

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Americans with Disabilities Act

- **Title I of the Americans with Disabilities Act of 1990 (ADA)**, 42 U.S.C. Section 12101, et seq. prohibits discrimination against qualified individuals with disabilities in all employment practices including job application procedures, hiring, firing, advancement, compensation, and training. The ADA also requires that the employer provide a “reasonable accommodation” of an employee’s disability unless undue hardship (including direct threat to health and safety) can be shown. The ADA applies to all private employers with 15 or more employees.

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ADA

- **Qualified individual**
- **Essential functions**
- **Disability**
 - [Note: State law definitions of “disability” may be broader than the ADA definition (California, New Jersey, New York and Washington, temporary short term conditions may be considered a disability).]
- **“Substantially” limits a major life activity**
 - [Note: In California no “substantial” requirement.]
- **Reasonable accommodation**
- **Job Accommodation Network (JAN)** – 1-800-526-7234;
www.jan.wvu.edu
- **Undue Hardship**

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State Law definitions vary...

Connecticut: Prohibits discrimination against any individual who:

- Has a chronic physical handicap, infirmity, or impairment.
- "Exhibits a severe discrepancy between educational performance and measured intellectual ability" and who "exhibits a disorder" in one or more basic psychological processes involved in understanding or using language.
- Has record of or is regarded as having one or more mental disorders, as defined in the American Psychiatric Association's most recent Diagnostics Statistics Manual.

Illinois: Prohibits discrimination against any individual with a determinable physical or mental characteristic, the history of such a characteristic, the perception of such characteristic and is unrelated to the person's ability to perform the duties of a particular job.

New Jersey: Prohibits discrimination against individuals "suffering" from:

- Any physical disability, infirmity or disfigurement; and
- Any mental, psychological, or developmental disability that prevents the normal exercise of any bodily or mental function, or is medically or psychologically demonstrable by accepted techniques; and
- AIDS or HIV infection.

New Mexico: Prohibits discrimination based on a "serious medical condition."

New York: Prohibits discrimination based on a "physical, mental or medical impairment" which "prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques." This definition may include temporary conditions.

Washington: Prohibits discrimination on the basis of any sensory, mental, or physical qualifying disability, and defines such condition as "an abnormality" that is a "medically cognizable or diagnosable" condition regardless of potential for mitigation and only if it limits single position; may include temporary impairments. **[Recent Change in the Law-2007]**

Wisconsin: Prohibits discrimination against any individual who has a mental or physical impairment that makes "achievement unusually difficult or limits the capacity to work."

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Interactive process

- Communication
- Contemporaneous documentation
- Consistency
- Care

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Reasonable Accommodations

ADA Reasonable Accommodations may include:

- Changing policies and procedures (e.g., one year maximum LOA policies)
- Leaves of absence
- Adjustments to the employment application process (e.g., sign language interpreter)
- Job restructuring (changing the arrangement of duties, work pace or method of performing the job tasks on an interim basis or longer)
- Flexible work schedules
- Use of accrued paid leave or providing additional unpaid leave for necessary treatment
- Reassignment to a vacant position
- Part-time schedule in current position
- Intermittent leave
- Provision/use of assisting devices/physical modifications to equipment, work-site/workspace

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Reasonable Accommodations

ADA Reasonable Accommodations usually do not include:

- Creating a new position
- Creating a permanent light duty position
- Eliminating or changing an essential job function of the current position
- Note: Wisconsin law does not distinguish essential from non-essential job functions
- Changing the employee's supervisor
- Providing personal use items required during non-working as well as working hours
- Providing an assistant or job coach to perform the essential functions of the job (with some potential exceptions for interpreters, readers, or other assistants for non-essential functions)
- Lowering productivity, performance or quality standards
- Rescinding or waiving disciplinary action

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Accommodation Request Form (sample language)

Basic initial questions:

- Name, Date, Job Number/Position/Location details
- Describe the limitations that form the basis for your accommodation request
- List the job task(s) that you are unable to perform without accommodation
- List any accommodation(s) that you believe would help you perform the job tasks listed above (including any special equipment or methods, changes in physical workspace, etc.) [Note: The company may have additional ideas/suggestions regarding reasonable accommodations as well.]
- Is the accommodation assignment requested for the short term or long term?
- Estimated full return to work date and/or duration of accommodation
- Date of expected re-evaluation of job modification (as applicable) [For HR only]
- Employee signature and date
- HR Leave Representative signature and date

To be filled out during/after the interactive process:

- Accommodations considered
- Accommodation accepted/selected (if any), and duration
- If accommodation is denied, explanation (*including acceptance of a job modification, but not an accommodation based on ADA-qualifying disability)

Requests for extensions of accommodations:

- For how long are you requesting an extension?
- Any previous extensions?
- Anticipated return to work date or duration of accommodation

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Common ADA Issues

- **Telecommuting**
- **Drugs**
- **Indefinite leave requests**
- **“Little” accommodations**
- **Psychiatric disabilities (<http://www.jan.wvu.edu/media/Psychiatric.html>)**
- **Restoration to job**
- **When does an FMLA medical condition become an ADA disability?**
 - continuous leave for 12 weeks (plus state law)?
 - intermittent leave?
- **Light duty return to work**

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ADA Issues

- **Essential Function**
 - *Holly v. Clairson Indus.LLC*, 2007 U.S. App. LEXIS 17151 (11th Cir. July 19, 2007) (genuine issues of material fact existed concerning whether strict punctuality was an essential function).
 - *Rehrs v. Iams Co.*, 2007 U.S. App. LEXIS 11332 (8th Cir. May 15, 2007) (rotating shifts constitutes essential function).
- **Regarded as Disabled - Accommodation Requirements?**
 - No accommodation required in 5th, 6th, 8th & 9th Circuits
 - Employees entitled to reasonable accommodation in 1st, 3rd, 10th & 11th Circuits
- **Preferential Reassignment Rights**
 - *Huber v. Wal-Mart Stores Inc.*, 486 F.3d 480 (8th Cir. May 30, 2007) (ADA does not require an employer to reassign a qualified disabled employee to a vacant position when such a reassignment would violate the employer's legitimate non-discriminatory policy of hiring the most qualified candidate) (6th and 7th Circuits agree versus 10th Circuit and EEOC).
- **Compensatory Damages**
 - *Arredondo v. S2 Yachts d/b/a Tiarc Yachts*, 2007 U.S. Dist. LEXIS 53813 (W.D. M.I. July 25, 2007) (employee suing former employer for retaliation under the ADA cannot recover compensatory or punitive damages, following *Kramer v. Banc of Am. Sec. LLC*, 355 F.3d 961 (7th Cir. 2004)).

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Rise of leave besides FMLA and ADA

State Leave Issues

- Paid FMLA leave/Paid State STD
- Bone Marrow and Organ Donations
- Nursing Home Finding Leave
- Legal Proceedings Leave
- Domestic Violence/Victim of a Crime Leave
- Family Military Leave
- Voting Leave
- Jury Duty
- Family Obligations Leave
- Election Official
- Community Emergency Volunteer

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EEOC Caregiver Guidance

- May 23, 2007 -- EEOC – Released Guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities
- Guidance focused on Title VII, but interaction with ADA/FMLA/state laws.

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Workers Compensation

- **General Definition – State mandated/regulated compensation system for employee who are injured on the job in the course of their employment.**

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Workers Compensation

- Exclusive remedy provisions
- Light duty issues
- Benefits
- Return to work priorities (varies by state)
- Workers Compensation retaliation

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USERRA

- **USERRA** –The Uniformed Services Employment and Reemployment Rights Act provides for up to 5 years (and perhaps longer) leave from employment with re-instatement rights for employees who are absent from employment because of “service in the uniformed services.” Upon reemployment, an employee is entitled to all benefits they would have obtained if they had been continuously employed – such as leave under the FMLA.

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USERRA

- Length = up to five years (maybe more)
- Disability = not defined
 - Reasonable accommodation
 - Reassignment
- Reinstatement- the job the person “would have held”
 - DOJ focus on reinstatement/seniority
- FMLA eligibility
- Family Military Leave (IL, IN, NY, MN, NE, and more to come (pending state and federal legislation))
- Case law
- Practical Advice

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Navigating the Triangle

- Numerous and overlapping statutory schemes and regulations
 - Covered employers
 - Contractors
 - Consultants
 - Joint Employers
 - Mergers and Acquisition Issues

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Navigating the Triangle

- Eligible employees
 - Disability
 - Serious health condition
 - **What about “common” conditions** (flu, common cold, stress, sleep apnea and migraine headaches)
 - Occupational injury
 - Active Uniformed (“Military”) Service
 - Length of employment/ how many hours worked as condition of eligibility
 - Medical Condition eligibility
 - Injured in the course of work

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Navigating the Triangle

- Medical inquiries [Best Practice - Get a Release]
 - Documentation for FMLA/ADA/WC
 - Delay in receipt of medical certification
 - 2nd or 3rd opinions under FMLA
 - IME
 - Investigators
- Continuation of Benefits
- Notice Issues
- Paid/Unpaid Leave
- Length of leave
 - Intermittent FMLA leave
 - Indefinite leave requests
 - Concurrent leaves/Consecutive leaves

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Navigating the Triangle

- Accommodations other than Leave
 - Transfers and light duty
 - Transfer to different position during intermittent leave period
 - Telecommuting
 - "Little" accommodations
 - Preferential reassignment rights? -
 - Seniority – *U.S. Airways v. Barnett*, 535 U.S. 391 (2002)
 - Best qualified *Huber v. Wal-Mart Stores Inc.*, 486 F.3d 480 (8th Cir. May 30, 2007)
 - Changing policies and procedures (e.g., one year maximum LOA policies)
 - Adjustments to the employment application process (e.g., sign language interpreter)
 - Job restructuring (changing the arrangement of duties, work pace or method of performing the job tasks on an interim basis or longer)
 - Flexible work schedules
 - Reassignment to a vacant position
 - Part-time schedule in current position
 - Use of assisting devices/physical modifications to work-site/workspace
 - Restoration to job

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Navigating the Triangle

- Return to work
 - Light Duty Positions
 - Documentation
 - Reinstatement v. reassignment
- Regarded as disabled-- Accommodation requirements
- FMLA slipping into WC, ADA, and state law issues.
- New State Law Based Leaves
- Undue hardship defense
- Affect on benefits – eligibility based on status (full time v. part time)

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Navigating the Triangle

- Terminations
 - RIF
 - No-fault attendance policies
- Employee Claims
- Best practices involving military leave in light of the war on terror
- Misuse of FMLA/ADA
- State law issues
- WC issues
- Outsourcing of leave issues
- Union/CBA issues
- Pending legislation

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State-Specific Protected Time Off by Category	
JURISDICTION	CATEGORY
Alabama	Election Officer
Alabama	Jury Duty
Arizona	Crime Victim Proceedings
Arkansas	Crime Victim Proceedings
Arkansas	Organ/Bone Marrow Donor
California	Literacy Education
California	School Activities
California	Violence Victim Recovery
California	Voting
Colorado	Violence Victim Recovery
Connecticut	Crime Victim Proceedings
Connecticut	Public Official
Delaware	Crime Victim Proceedings
Delaware	Election Officer
D.C.	Emancipation Day
D.C.	School Activities
Florida	Violence Victim Recovery
Hawaii	Violence Victim Recovery
Hawaii	Voting
Illinois	Blood Donor
Illinois	Jury Duty
Illinois	Military Family Member
Illinois	School Activities
Illinois	Violence Victim Recovery
Indiana	Military Family Member
Indiana	Public Official
Iowa	Public Official
Kansas	Violence Victim Recovery
Kentucky	Community Emergency Volunteer
Kentucky	Election Officer
Kentucky	Voting
Louisiana	Bone Marrow Donor
Louisiana	School Activities
Maine	Military Family Member
Maine	Public Official
Maine	Violence Victim Recovery
Maryland	Crime Victim Proceedings
Massachusetts	Family Obligations
Massachusetts	Jury Duty
Massachusetts	School Activities
Massachusetts	Veterans
Massachusetts	Voting
Michigan	Crime Victim Proceedings
Minnesota	Bone Marrow Donor
Minnesota	Crime Victim Proceedings
Minnesota	Election Officer
Minnesota	Military Family Member
Minnesota	School Activities
Minnesota	Voting
Nebraska	Election Officer
Nebraska	Jury Duty
Nebraska	Military Family Member

JURISDICTION	CATEGORY
Nevada	Public Official
Nevada	School Activities
Nevada	Voting
New Hampshire	Community Emergency Volunteer
New Hampshire	Legal Proceedings
New Hampshire	Violence Victim Recovery
New Mexico	Voting
New York	Bone Marrow Donor
New York	Military Family Member
New York	Voting
North Carolina	School Activities
North Carolina	Violence Victim Recovery
Ohio	Crime Victim Proceedings
Ohio	Election Officer
Oregon	Bone Marrow Donor
Oregon	Crime Victim Proceedings
Oregon	Public Official
Oregon	Violence Victim Recovery
Pennsylvania	Crime Victim Proceedings
Rhode Island	Crime Victim Proceedings
Rhode Island	School Activities
South Carolina	Crime Victim Proceedings
South Dakota	Public Official
Tennessee	Jury Duty
Texas	Public Evacuation
Vermont	Family Obligations
Vermont	Public Official
Vermont	School Activities
Virginia	Crime Victim Proceedings
Virginia	Election Officer
Virginia	Jury Duty
West Virginia	Public Official
West Virginia	Voting