

Employee Where Art Thou? The Latest News in Managing Disability & Leave Issues

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Agenda – The Year in Review – 2010 News

- In the News
- ADA Updates
- FMLA Updates
- USERRA Updates
- General Issues
- Regulatory & Legislative Trends
- Related Resources

U.S. BLS 3/10 Report - Paid Sick

Leave in the U.S.

- Paid Sick Leave was available to 61% of private-industry workers and 89% of state/local gov't workers in March 2009.
 - Private sector = 84% of management/professional workers; 42% of service workers
 - 73% of full-time workers; 26% for part time
- Private sector average was 8 days of paid leave after one year of service in establishments with < 100 workers; 11 days with 500 or more workers
- Average cost per employee hour in private sector was 23 cents in private sector; 81 cents in state/local public sector

ADA - Case Study #1

1. A company learns that one of its loan clerk's spouse has Hepatitis C. To ensure the employee is not contagious, it requires her to take a medical exam to detect whether or not she has Hepatitis C.
2. If the employee refuses, may the employer take adverse employment action?
3. Why or why not?

ADA - Case Study #2

May an employer properly have a policy that, *if consistently applied*, provides for no-light duty and any employee who is unable to return to work, full-duty, following a medical leave of absence will be terminated?

ADA - Case Study #3

An employee works the night shift and drives to work. She has developed glaucoma resulting in monocular vision, making driving at night dangerous. After being denied her request to transfer to day shift and trying to find friends or family members to drive her to work the employee resigned. Does the employer have any legal liability? If so, what?

ADA - Case Study #4

An employee is morbidly obese and suffers from sleep apnea. He decides to take a weight loss medication despite his doctor's advice to not do so once they realize its side effects (excessive bathroom use). Is the employer required to grant the employee's request for additional breaks to use the bathroom as a reasonable accommodation under the ADA, when that condition arises as a result of his medication?

FMLA - Case Study #1

An employee's doctor provide a note excusing her from work for two consecutive days. The employee taped the doctor's note to her supervisor's door and left work. She was then ill and absent from work for four consecutive work days. Six days following her return to work, the employer fired her for failing to follow procedure (she left the note rather than calling her supervisor). Are there any legal issues here? If so, what are they?

FMLA - Case Study #2

A regional VP had previous complaints about her mgmt style. She was issued a verbal warning and placed on a PIP. The employee then advised her Er that she was pregnant and would likely be unable to complete the PIP timely. The deadline was extended. During her absence, an interim RVP filled in and production improved. When the RVP returned, she was offered the opportunity to resign or be demoted. The employee sued for FMLA interference and retaliation. Who wins?

USERRA - Case Study #1

An employer conducts an investigation related to an employee's unsatisfactory work performance, independent of the employee's supervisor, and concludes that they will terminate the employee. Upon notice of termination, the employee sues asserting he was discharged in violation of USERRA, citing his supervisor's harassment about his military obligations. Who wins?

USERRA

- **Uniformed Services** – broad definition
- **Employment** – at will (not)
- **Re-employment** – for up to how many years?
- **Rights Act**



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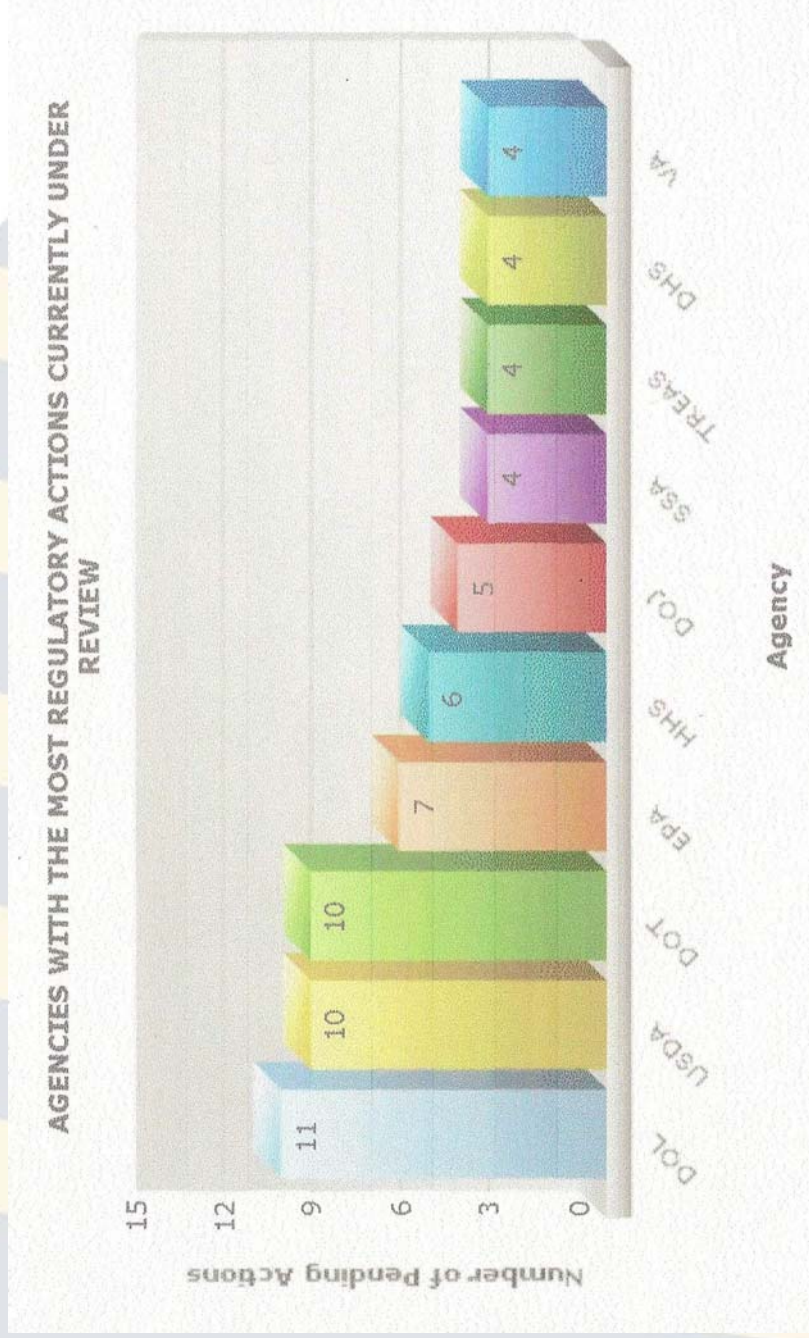
Challenges/Pending Issues

- Workplace Flexibility
- Workplace Wellness Programs
- ADA Final Regulations
- FMLA/USERRA Compliance
- January 2009 New FMLA Forms *THEN*
- October 2009 NDAA redefines “serious injury or illness” and “qualifying exigency”
- <http://www.dol.gov/whd/fmla/2010ndaa.htm>

Challenges/Pending Issues

- ADA Final Regulations

*Federal Regulatory Info “Snapshot” as of 5/3/10



Related Legislative Trends/Updates

- H.R. 4855, Work-Life Balance Award Act
- At least how many states have their own FMLA-like laws?
- How many local jurisdictions have FRD laws enacted?
 - family status, responsibilities, familial / parental status
- H.R. 2460/S. 1152 Healthy Families Act

*Healthy Families Act: Does Your Company...

- Employ at least 15 employees?
- Currently offer at least one hour of paid leave for every 30 hours worked to a maximum of 56 hours.
- Permit employees to begin accruing leave on the first day of employment?
- Permit employees to begin using leave by the 60th day of employment?
- Permit employees to carry over at least 56 hours of accrued leave from year to year?
- Permit employees to use that leave if the employee is a victim of domestic violence?
- Permit employees to use that leave to care for a “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship?”
- Permit employees to use leave in the smallest increments that your payroll system tracks?
- *Not* count these absences for purposes of corrective action, performance appraisals, etc?

Practical Tips

- Policy Development
 - ADA Accommodation
 - EPLI Discount
 - EEO/Harassment Prevention
 - Association & Perception
 - Equal v Equitable
 - Legislative Advocacy
 - SHRM's HR Voice
 - <http://www.shrm.org/ADVOCACY/Pages/default.aspx>
 - WC/Light Duty
 - WorkLife Balance Policies & Practices!
 - What presumptions, assumptions, stereotyping
 - Focus on today, not tomorrow
 - Define essential functions then focus on them

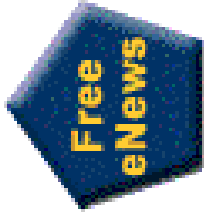
Resources

- Workplace Flexibility
 - White House Report - <http://www.whitehouse.gov/files/documents/100331-cea-economics-workplace-flexibility.pdf>
 - WorkLife Law Center www.worklifelaw.org
 - Georgetown Law's Workplace Flexibility 2010 <http://www.workplaceflexibility2010.org/>
 - EEOC's 2009 "Best Practices"
<http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>

Questions?

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Thank you!

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