



Warner Norcross + Judd

HR ESSENTIALS FOR BUSINESSES: LEGAL INSIGHTS

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September 16, 2025



PRESENTED BY:



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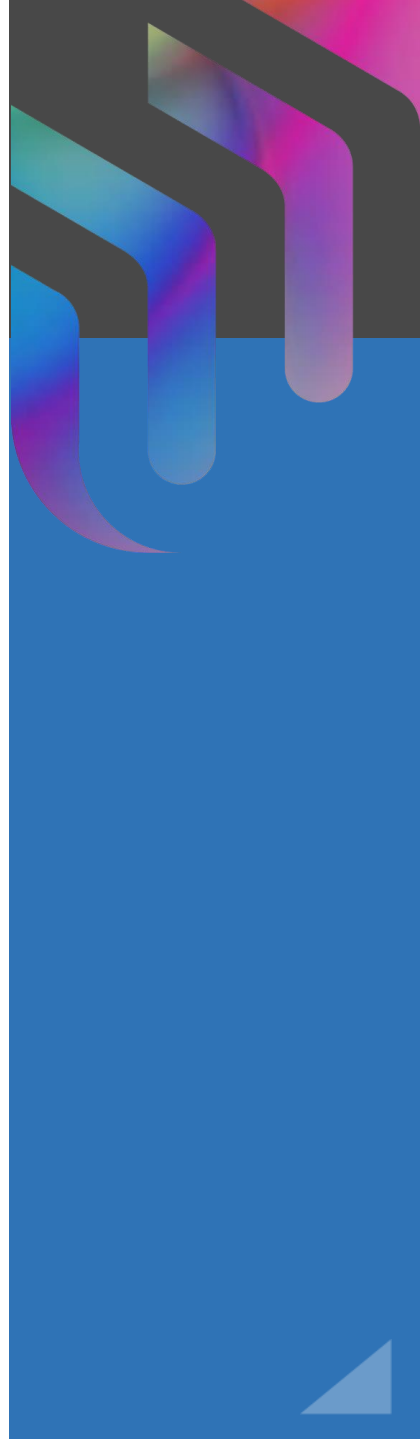


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AGENDA

1. Best Practices for Hiring and Onboarding Employees
2. Avoiding Common Wage and Hour Mistakes
3. Managing Performance Issues and Discipline
4. Managing Attendance and Leave Issues
5. Best Practices for Conducting Employment Terminations





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Best Practices for Hiring and Onboarding Employees



WRITTEN JOB DESCRIPTIONS

1. **Basic Information**

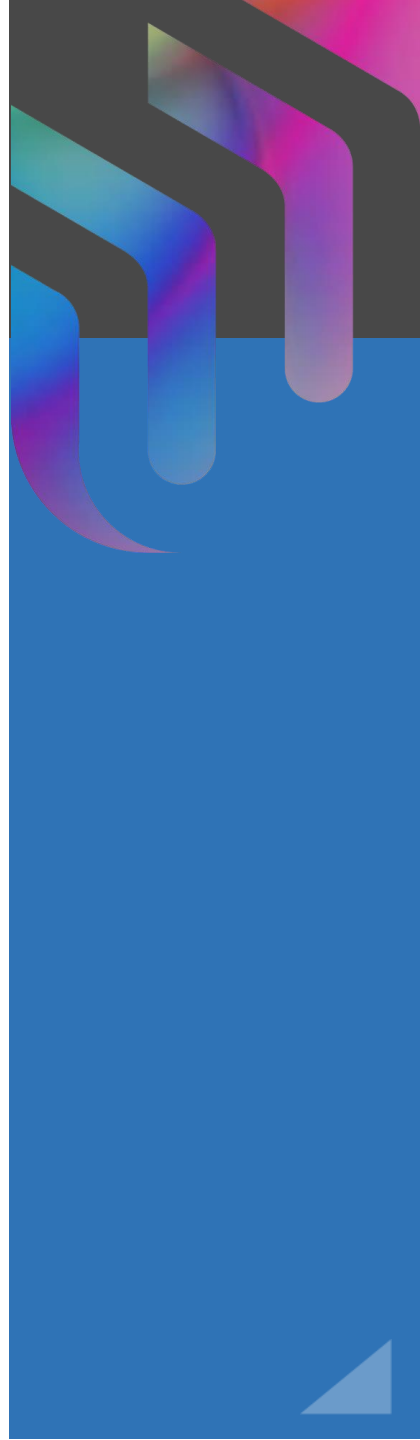
- Job title;
- Type of position (full- or part-time, temporary, or remote);
- Department or section where the job is located;
- The person to whom the jobholder reports; and
- Exempt / nonexempt status

2. **Essential Functions and other Tasks and Responsibilities**

- List duties in order of importance; be detailed and inclusive

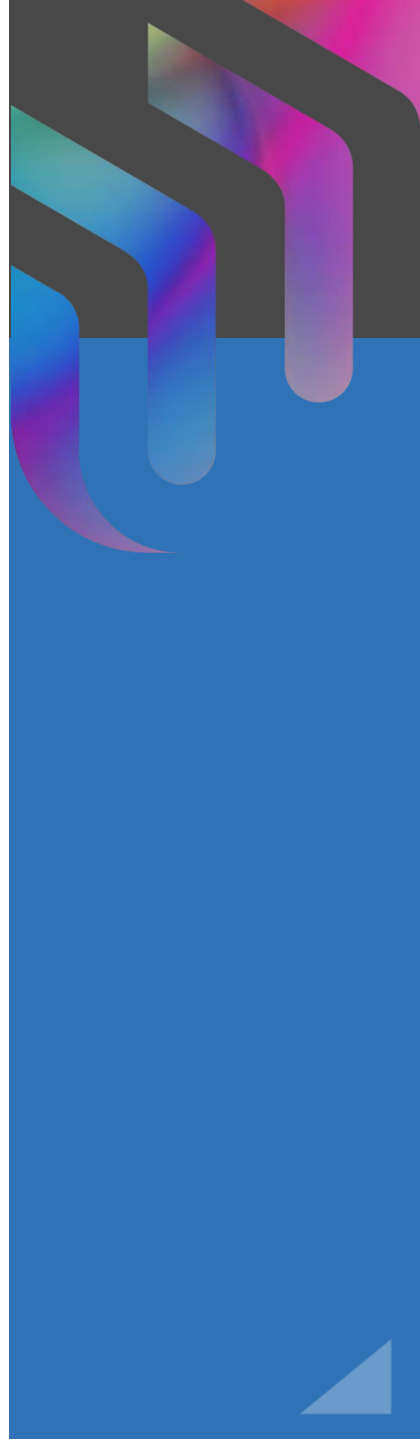
3. **Additional Statements**

- Statement that the employer is an equal opportunity employer
- Statement that the job's responsibilities and tasks may be modified and expanded from time to time



INTERVIEWING

- **Inappropriate interview questions create a risk of discrimination claims.**
- Polite personal conversation may accompany an interview, but indirect or inadvertent questions about a **protected class characteristic** can provide grounds for discrimination claims.
- Employees conducting interviews should not inquire into personal details that might reveal protected class information.
- Questions should focus on gathering information necessary to determine the applicant's suitability for the position for which the applicant is interviewing.
- It's OK to ask about history of dependability but stay away from "why."
- If an applicant starts to tell you about an impermissible topic, do not make a record and move the discussion along.



INTERVIEW QUESTIONS

Ask legally permissible questions!

Don't ask:

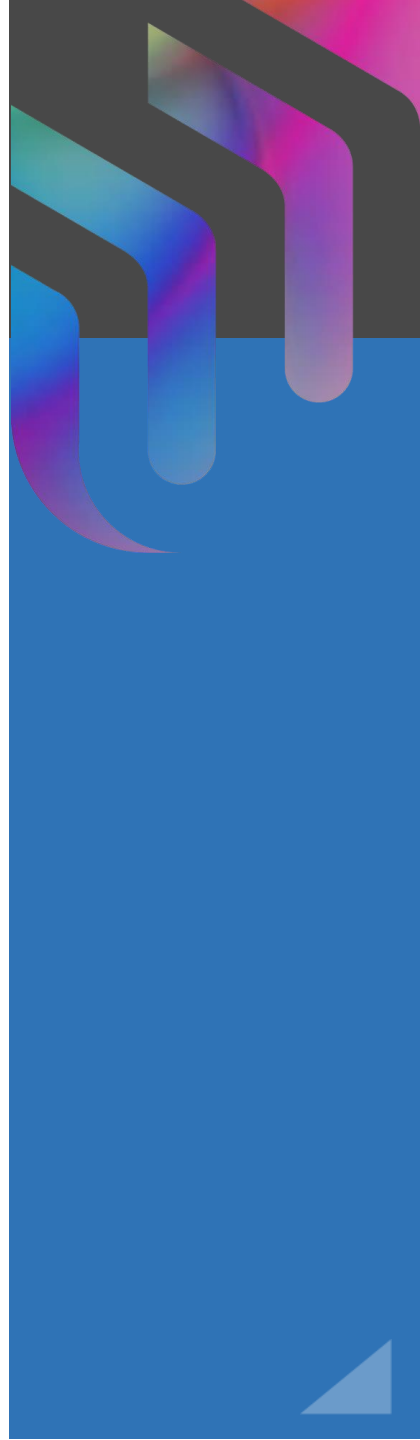
- When did you graduate high school?
- What age did you start working?
- Where were you born?
- Have you ever suffered a workplace injury?
- Who is your emergency contact? (can ask only after hired)
- Are you married? Do you have any children?
- Would working on Sundays be a problem for you?



REASONABLE ACCOMMODATIONS DURING THE INTERVIEW PROCESS

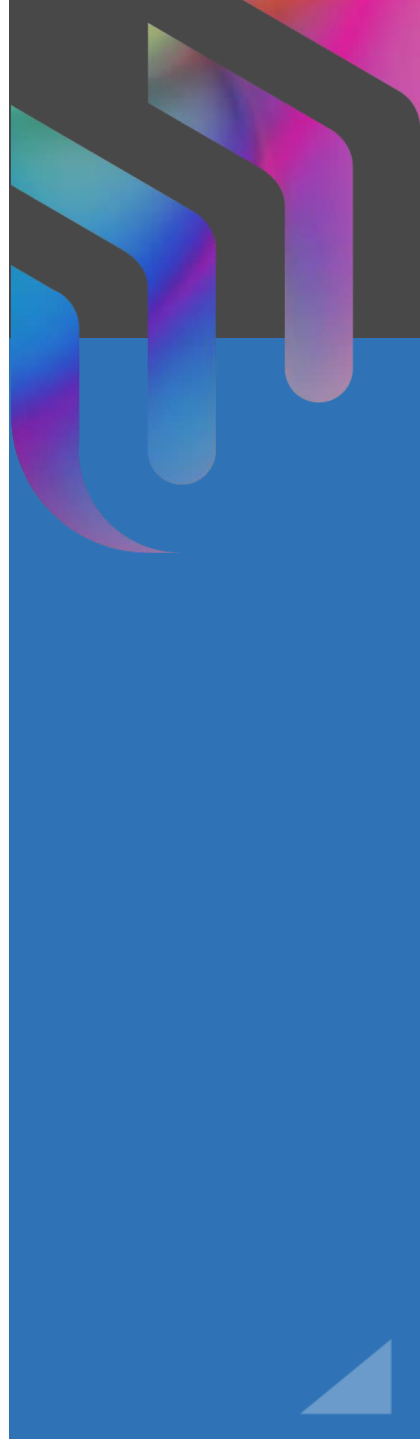
Employers must provide reasonable accommodations to applicants with disabilities (in addition to employees).

- Employers must engage in the interactive process.
- Blanket denials or failure to explore options = liability.
- *Champion Media* (June 2025): Newspaper publishing company agreed to pay \$102,500 to resolve a U.S. EEOC lawsuit alleging disability discrimination after the Company canceled the job interview with a deaf job applicant upon her request for a sign language interpreter.



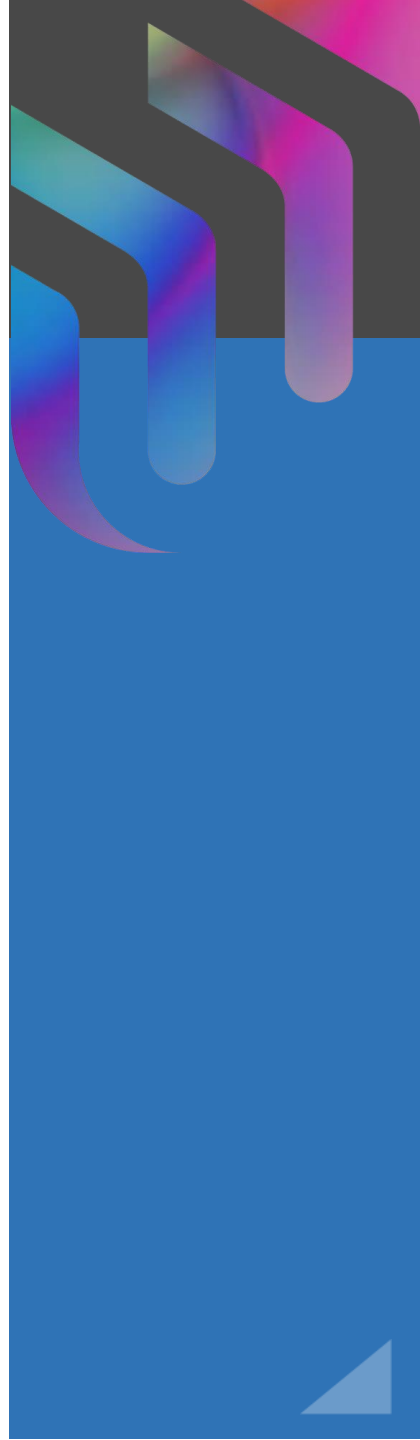
BACKGROUND CHECKS

- Employers using a third party must comply with the Fair Credit Reporting Act (FCRA).
- **Before the check:**
 - Stand-alone written disclosure (not buried in the application)
 - Obtain written consent from applicant/employee
 - Consent can be on same form as disclosure but nothing else
- **Before taking adverse action:**
 - Provide copy of consumer report + “A Summary of Your Rights under the FCRA” to the applicant
- **After taking adverse action:**
 - Inform of decision, contact information for reporting company, their right to dispute the information, and their right to obtain a free copy of the report within 60 days



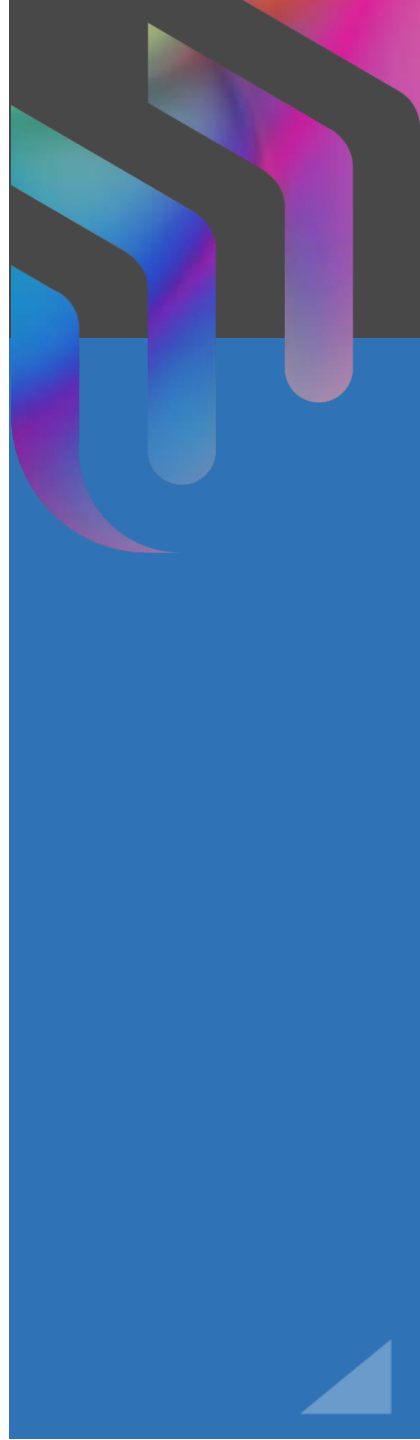
LEGAL BARRIERS TO HIRING EMPLOYEES

- **Did the applicant sign anything that prevents him or her from accepting employment or which limits the applicant's ability to do the job?**
 - Non-compete Agreement
 - Non-solicitation Agreement
 - Trade Secret or Invention Agreement
- **Update re: FTC Noncompete Rule:**
 - The FTC Noncompete Rule is not in effect and is not enforceable.
 - On Aug. 20, 2024, a district court issued an order stopping the FTC from enforcing the rule.
 - The FTC appealed that decision on October 18, 2024.
 - On September 5, 2025, the FTC withdrew its appeal.
 - FTC September 10 Warning Letter – FTC will pursue enforcement actions – focusing on noncompete agreements with healthcare employers and staffing companies.
- **Noncompete agreements still enforceable subject to Michigan state law.**



AT-WILL EMPLOYMENT DOCTRINE

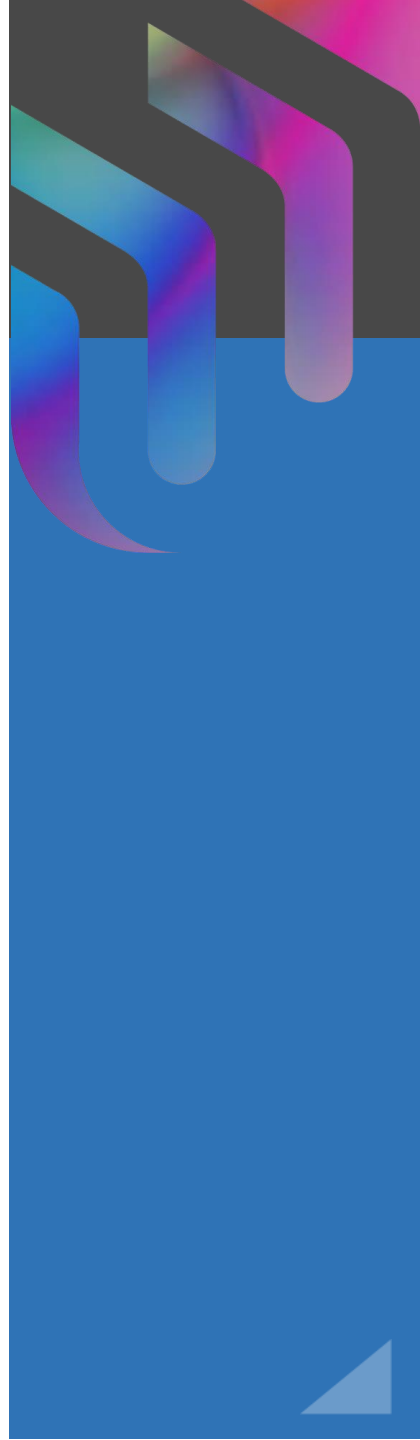
- Do not undo at will status. Avoid statements that create implied job security.
- Reinforce at-will language in handbooks, offer letters, and policies.
- Train managers to avoid implied promises of job security.
- Have employees sign an acknowledgment that they have read and understand their at-will employment status. (This is typically included in the handbook acknowledgment form or a separate document).
- Be clear that completion of the introduction/”probationary” period does not change an employee’s at-will employment status and that an employee’s employment can still be terminated during this period.
- Use caution when drafting discipline policies. Language that suggests “just cause” or progressive discipline steps can undermine at-will employment.



MICHIGAN LAW UPDATE – SHORTENED LIMITATIONS PERIODS

- Michigan Supreme Court Revises Standard for Evaluating Legality of Limitations Periods For Employment Claims
 - Employee Handbook Acknowledgment included 180-day limitations period for bringing claims.
 - Shortened limitations periods must be reviewed for reasonableness
 - Plaintiff lacked bargaining power
 - EE not required to prove they don't have other employment options
 - Remanded to trial court to determine if shortened limitations period was procedurally unconscionable

Rayford v. American House Roseville I, LLC (July 31, 2025)





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Avoiding Common Wage and Hour Mistakes



WAGE AND HOUR LAWS

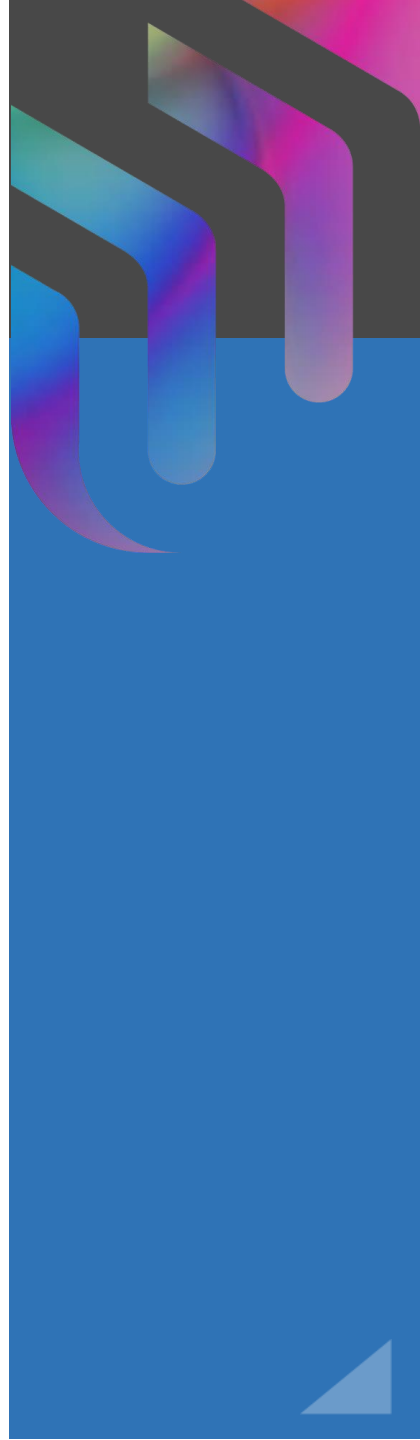
- There are five key wage and hour laws that need to be considered:
 - Federal Fair Labor Standards Act
 - Michigan Improved Workforce Opportunity Act (Minimum Wage)
 - Michigan Payment of Wages and Fringe Benefits Act
 - Michigan Youth Employment Standards Act
 - Michigan Sales Representative Commission Act

Minimum Hourly Wage Rate

Effective Date	Minimum Hourly Wage Rate	Tipped Employee		85%** Rate
		Minimum Hourly Rate	Reported Average Hourly Tips	
February 21, 2025	\$12.48	\$4.74	\$7.74	\$10.61
January 1, 2026	\$13.73	\$5.49	\$8.24	\$11.67
January 1, 2027	\$15.00	\$6.30	\$8.70	\$12.75

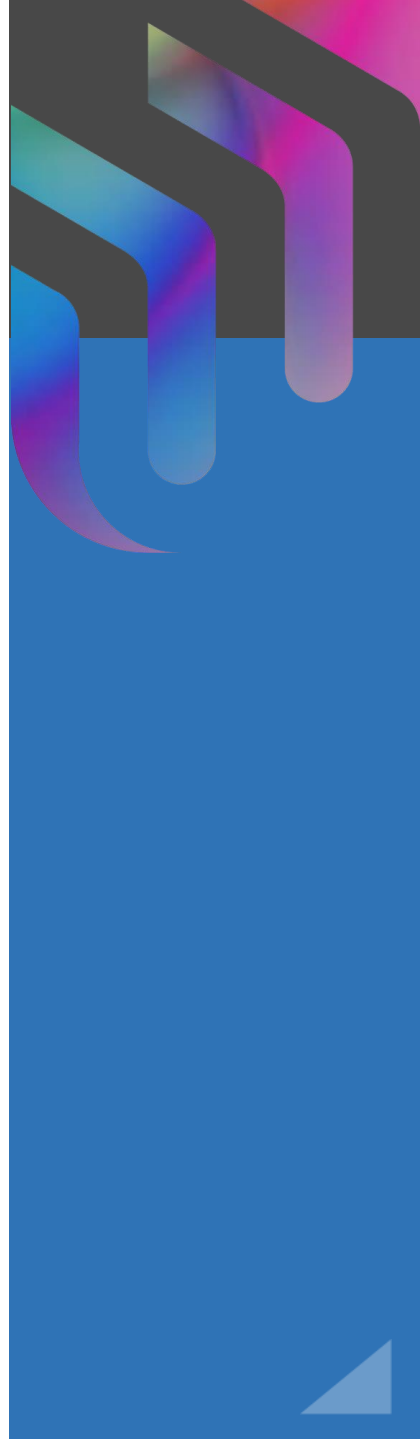
WAGE AND HOUR LAWS

- Requires that non-exempt employees be paid at least the minimum wage, free and clear, for all “**hours worked**”
 - This may include time where employee is engaged to wait, on-call, in training, or traveling, and even sleep time in certain circumstances
 - Work not requested but “suffered or permitted” = work time
- Also requires payment of overtime pay for hours worked over 40 in a workweek
- Overtime must equal one and one-half the employee’s “**regular rate**”



COMMON WAGE AND HOUR VIOLATIONS

- Requiring/allowing employees to work “off the clock”
- Not paying employees for waiting time
- Not paying for training during work time
- Miscalculating overtime
- Interrupting meal and rest periods: not free from duty
- Misclassifying non-exempt employees as exempt
 - Minimum salary level; paid on a salary basis; specific duties
- Impermissible salary deductions
- Managers / supervisors sharing in tips





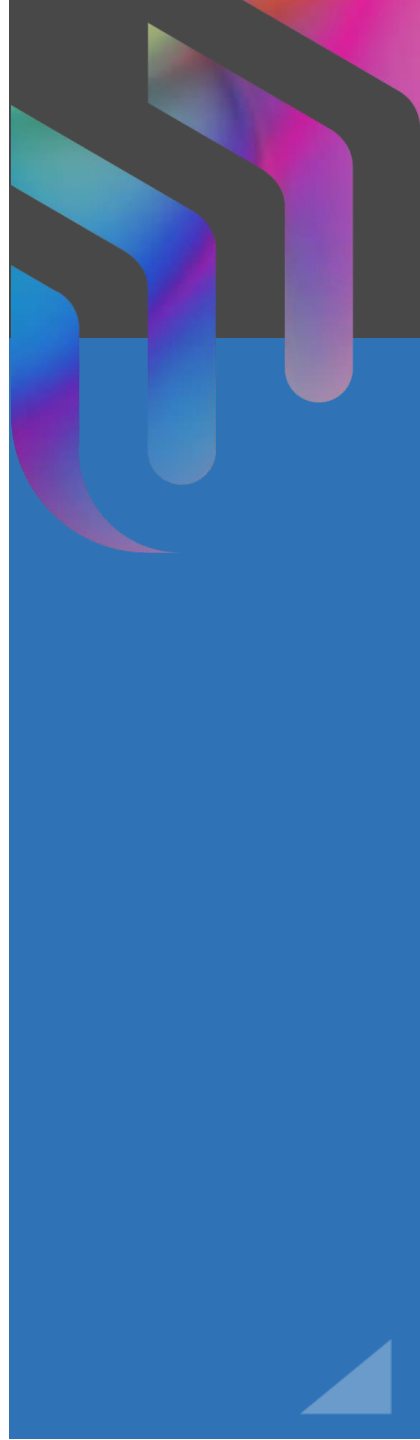
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Managing Performance Issues and Discipline



DISCIPLINE DOCUMENTATION TIPS

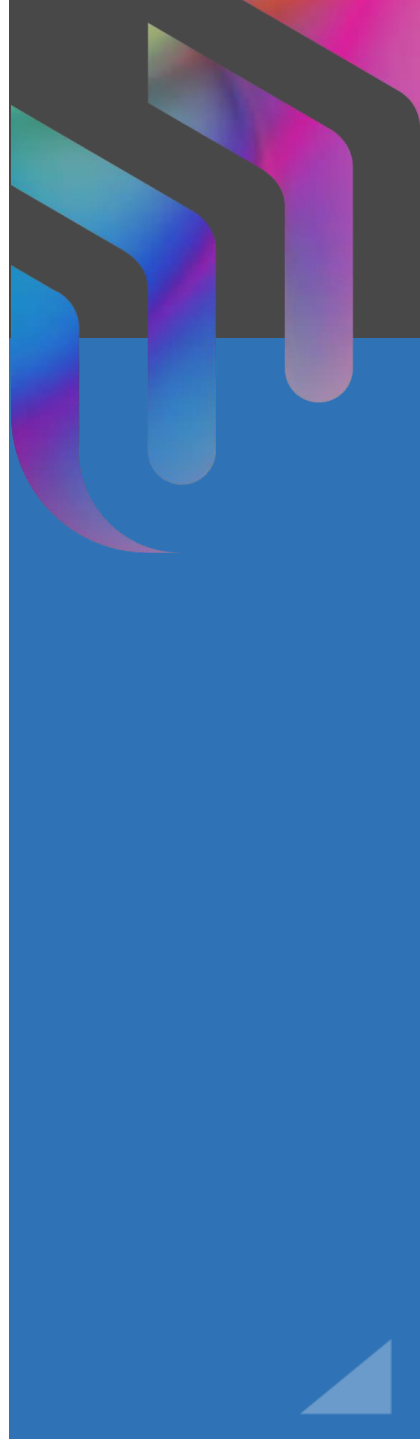
- Will a total stranger (like a judge or juror) read the record and conclude that the employee should have been fired?
- Don't use slang or nicknames in your write-ups.
- Don't use technical terms that an outsider will not understand.
- Don't use abbreviations.
- Make a contemporaneous record.
- Answer these questions: who, what, when, where, why, and how.
- Provide a copy to the employee.
- Allow the employee the opportunity to dispute it in writing (use the form).
- Place the official form in the employee's file.



FEDERAL LAW UPDATE – TITLE VII

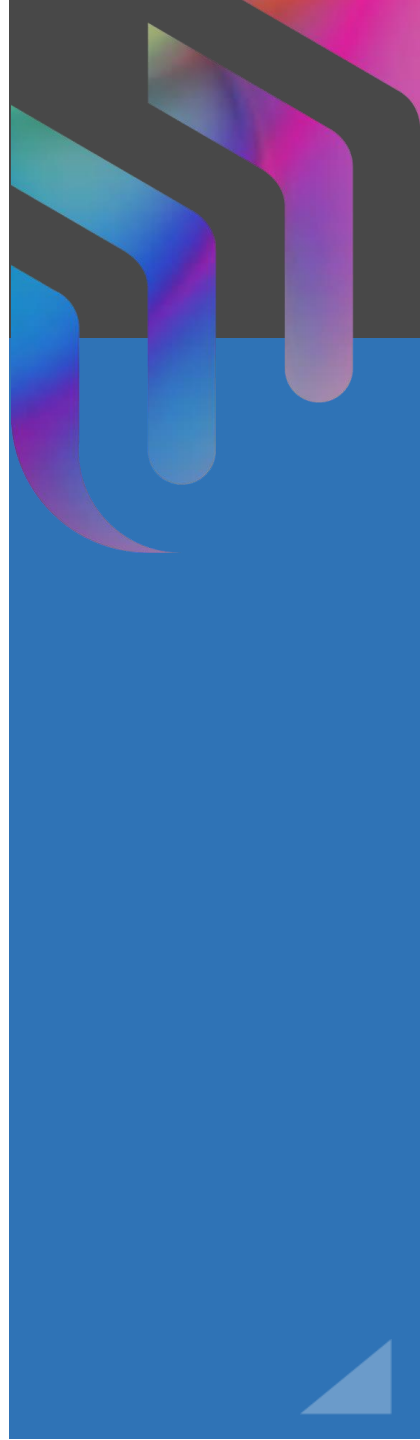
- **Majority-group employees face same standard in discrimination cases**
 - Reverse-discrimination case
 - Plaintiff claims she was passed over for promotion in favor of lesbian woman, then demoted and replaced by gay man
 - SCOTUS struck down the “background circumstances” rule
 - Decision may increase reverse-discrimination cases and scrutiny of DEI initiatives

Ames v. Ohio Dept. of Youth Services, 145 S. Ct. 1540 (2025)



FEDERAL LAW UPDATE – TITLE VII

- Developments after *Muldrow v. City of St. Louis*, 144 S. Ct. 967 (2024)
 - *Muldrow* lowered bar for employees to bring discrimination claims.
 - “some harm respecting an identifiable term or condition of employment”
 - Some harm means adverse actions leaving employees “**worse off**”
 - Significant adverse employment action is no longer required
 - Examples of what may constitute “some harm”:
 - Loss of opportunity to make overtime pay
 - Lack of adequate training
 - Supervisory responsibilities over difficult trade employees
 - Evening hours
 - Forcing employees to work by themselves





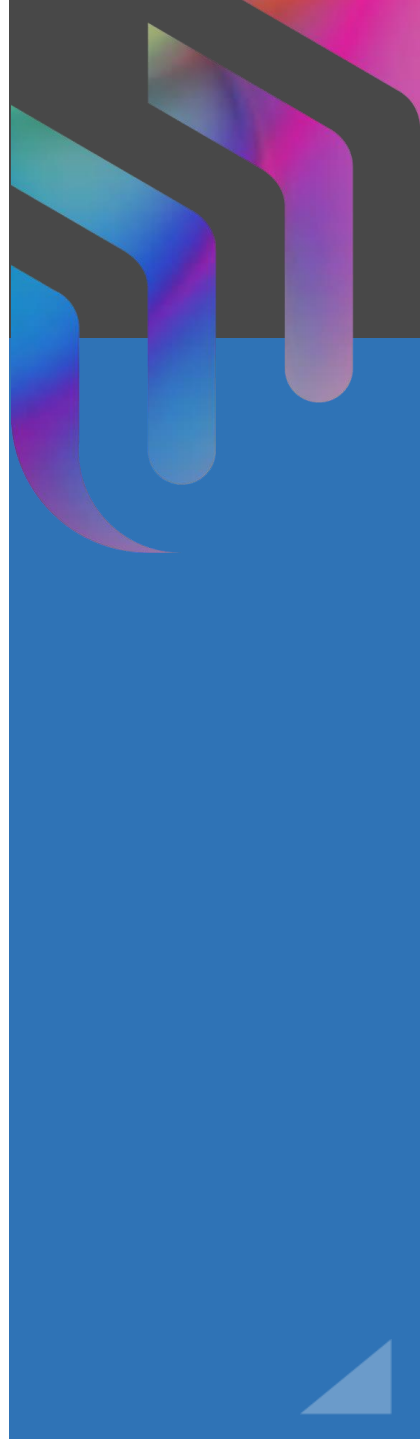
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Managing Attendance and Leave Issues



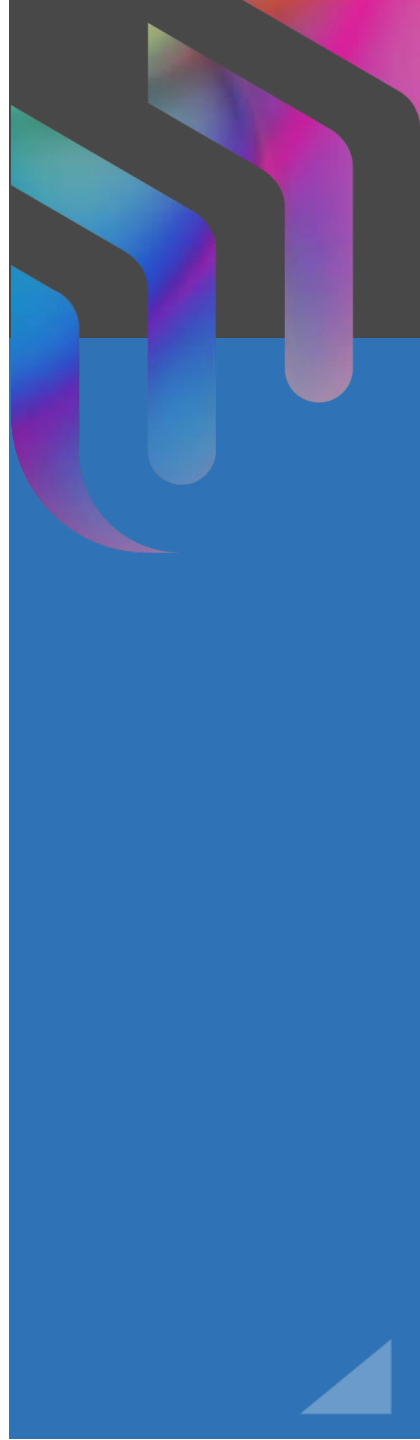
ABSENCE MANAGEMENT STRATEGIES

- Set Expectations:
 - Have a policy that addresses excessive, unauthorized absences
 - Distinguish b/w unforeseeable absences and scheduled time off
- Disciplinary Action:
 - Workplace policy
 - No fault attendance point system
- Yearly Review:
 - Part of performance review
 - How much weight is given to absences?
 - What are the consequences?
- Verification of Illness:
 - Doctor slips required
- Be Good Recordkeepers:
 - Occurrences
 - Reasons
 - Whether the employee followed proper procedures



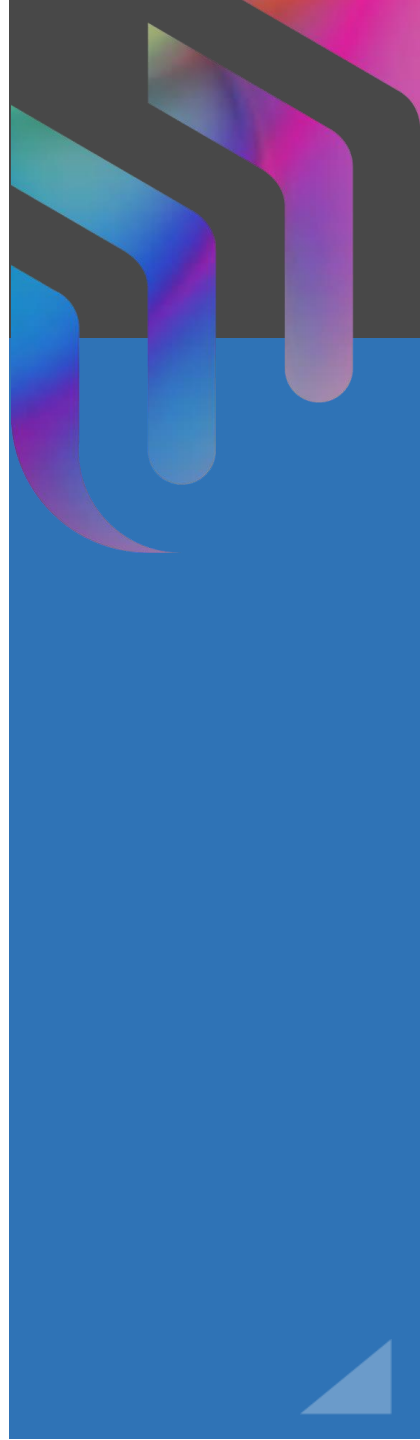
ABSENCE MANAGEMENT STRATEGIES

- Be consistent, but flexible
- Expect the unexpected:
 - Religious leave
 - Military leave
 - Jury duty leave
- Have an internal review process based on facts before employment action is taken



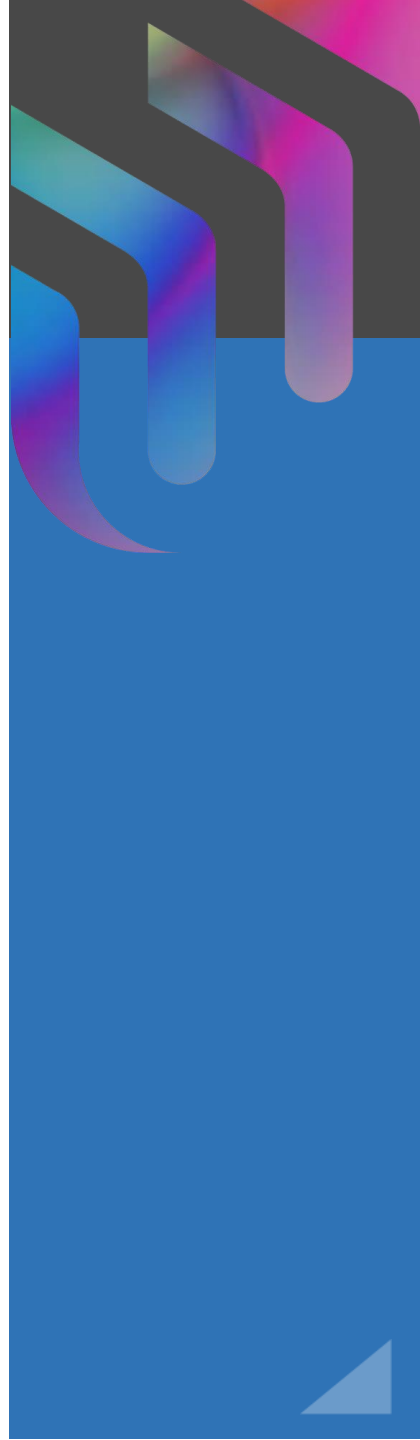
KEY LEAVE LAWS

- Family and Medical Leave Act (FMLA)
- Americans with Disabilities Act (ADA)
- Pregnant Workers Fairness Act (PWFA)
- Earned Sick Time Act (ESTA)



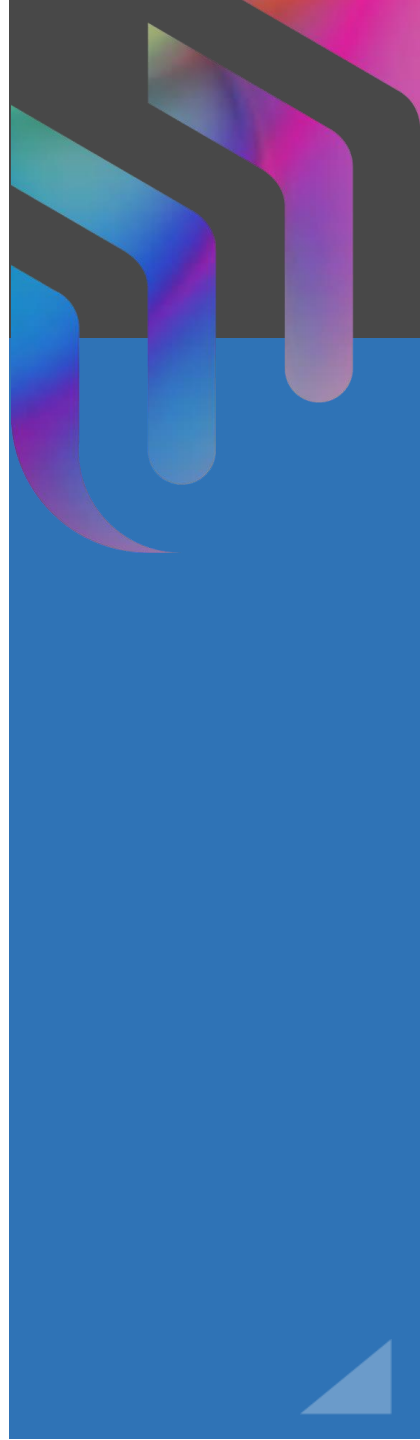
WHO IS COVERED UNDER THE FMLA?

- **Employers** who have 50 or more employees in 20 or more work weeks per year.
- **Employees** who have worked:
 1. With the employer for one year or more;
 2. 1250 or more hours in the past 12 months; AND
 3. At a site within 75 miles of which the employer has 50 employees.



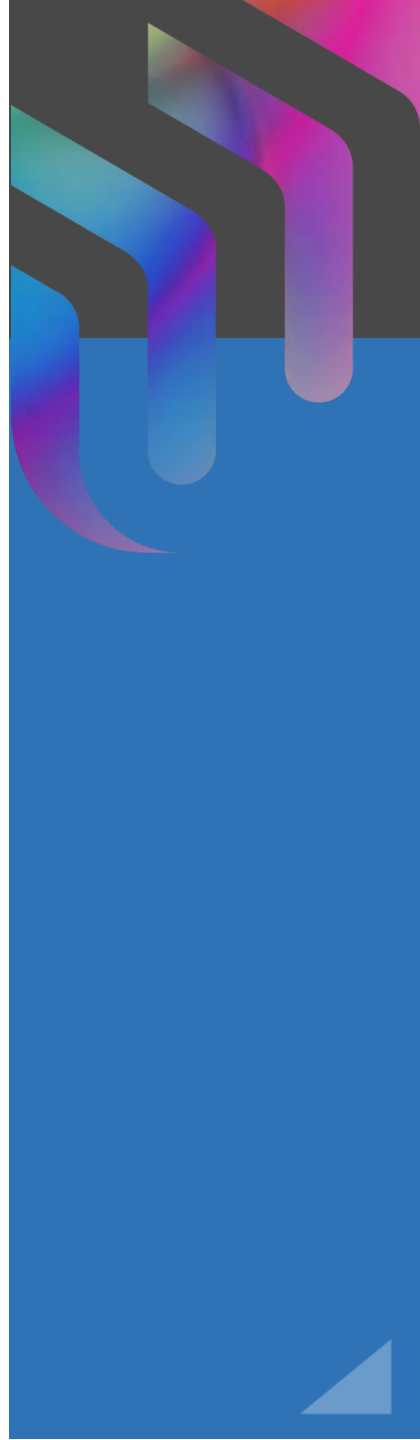
WHAT DOES THE FMLA PROVIDE?

- 12 work weeks of leave within a 12-month period
- 26 work weeks to care for a covered service member
- Leave can be intermittent (one day or one hour)
- Continued health benefits
- Reinstatement to the same or an equivalent position



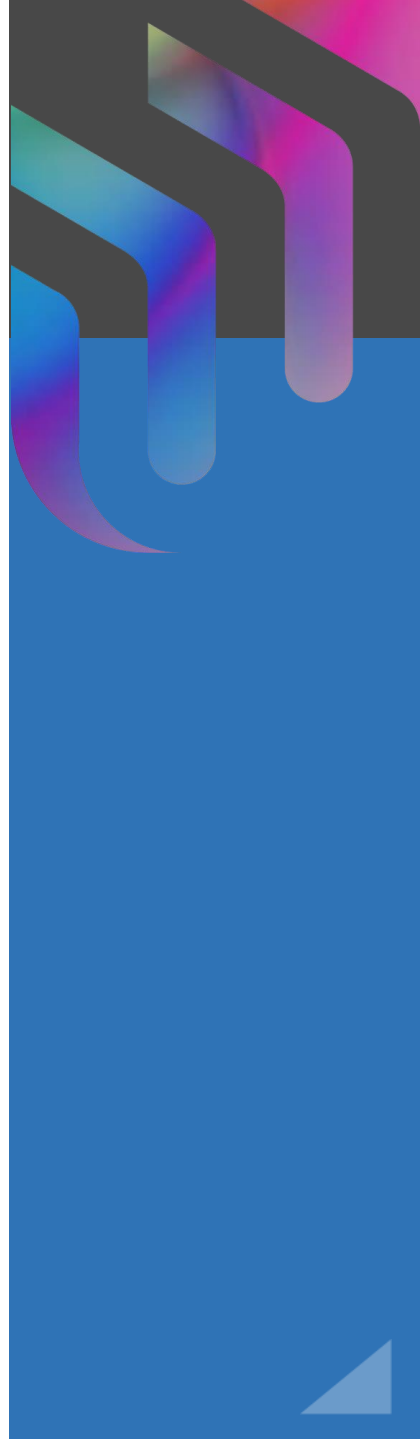
REASONS EMPLOYEE MAY TAKE LEAVE

- Serious Health Condition
 - Employee's own condition
 - To care for spouse, parent, or child with a serious health condition
- Birth, adoption, or placement of a child for foster care
- Care for a covered service member . . . or qualifying exigency



EMPLOYEE NOTICE REQUIREMENTS

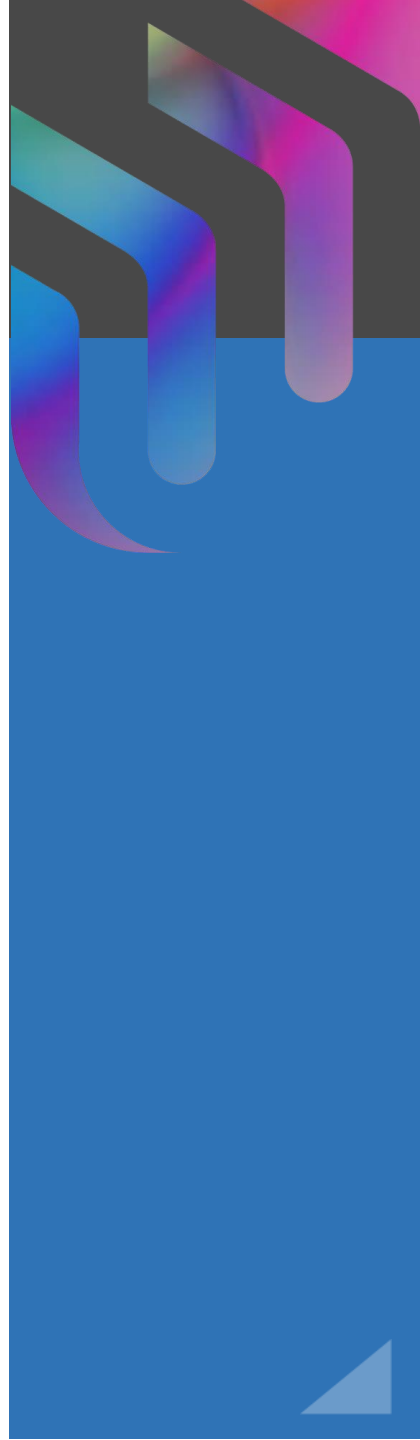
- Employees need not expressly assert FMLA, but must explain reasons for leave so as to allow employer to determine whether leave qualifies as FMLA leave.
- If in doubt, employer must “inquire further”.
- If leave is foreseeable, employee must provide at least 30 days’ notice.
- If leave is not foreseeable 30 days in advance, employee must provide advance notice as soon as practicable (i.e., same or next day).



FEDERAL LAW UPDATE – FMLA

- Third Circuit clarified FMLA notice requirements:
 - Employees don't need to specifically reference FMLA
 - No special wording is required (but “sick” ≠ enough)
 - Must give sufficient info to indicate absence may qualify (e.g., hospital visit + FMLA application may suffice)
 - Employers can't rely on one stated reason for absence and ignore other relevant information provided (employee mentions medical emergency and childcare issues → record both reasons)
 - Notice “as soon as practicable” when need is unpredictable
 - Employers cannot treat FMLA leave as a negative factor in employment decisions or count it under no-fault attendance policies

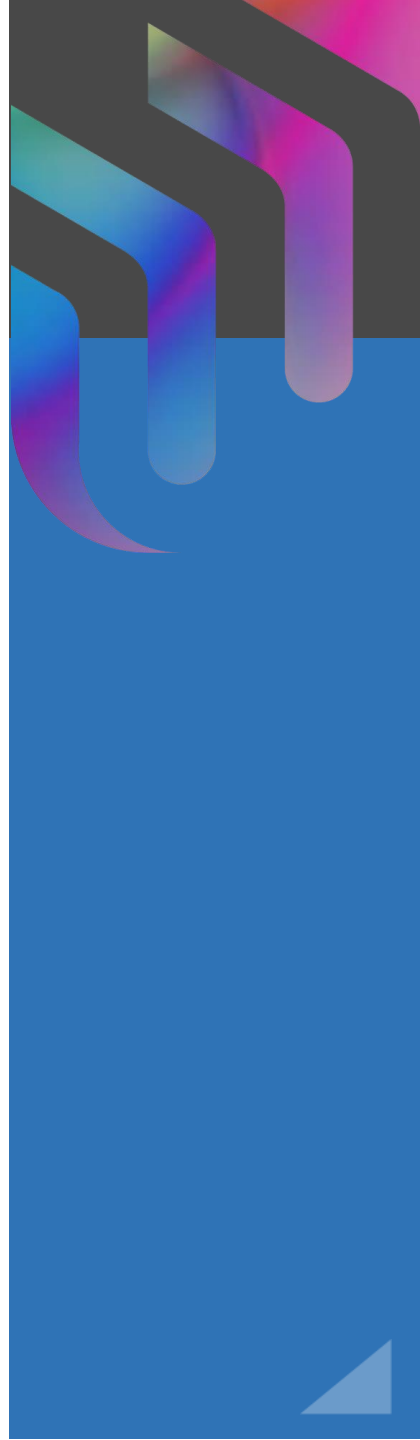
Walker v. SPTA, No. 24-2275 (July 8, 2025)



FEDERAL LAW UPDATE – FMLA

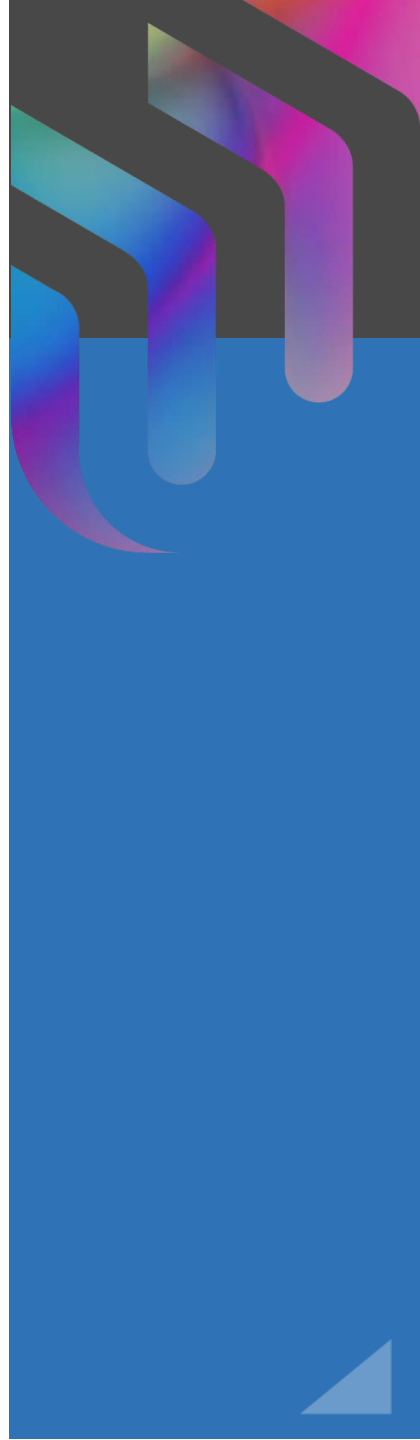
- Sixth Circuit rules that health care provider FMLA medical certification re: frequency of intermittent absences is an estimate, not hard cap
- Applies to intermittent ***unforeseeable*** leave
- Random and unpredictable flareups = unforeseeable
- Employers may request recertification if absences exceed estimates or the circumstances described by the prior certification have changed significantly
- Employers must notify employees of FMLA form deficiencies and allow time to fix them

Kristopher Jackson v. USPS, et al., No. 24-1860 (Aug. 21, 2025)



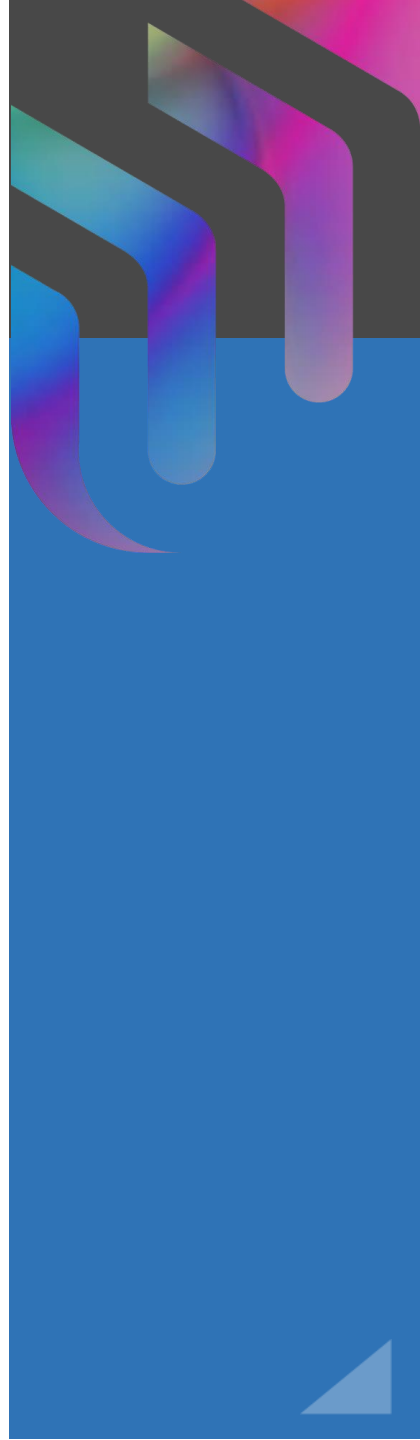
EMPLOYER NOTICE REQUIREMENTS

- DOL Poster
- Handbook Policy
 - Can expand FMLA coverage!
 - *Tilley v. Kalamazoo Cnty. Road Comm'n* (6th Cir. 2015)
- Eligibility Notice
- Rights & Responsibilities Notice
- Designation Notice



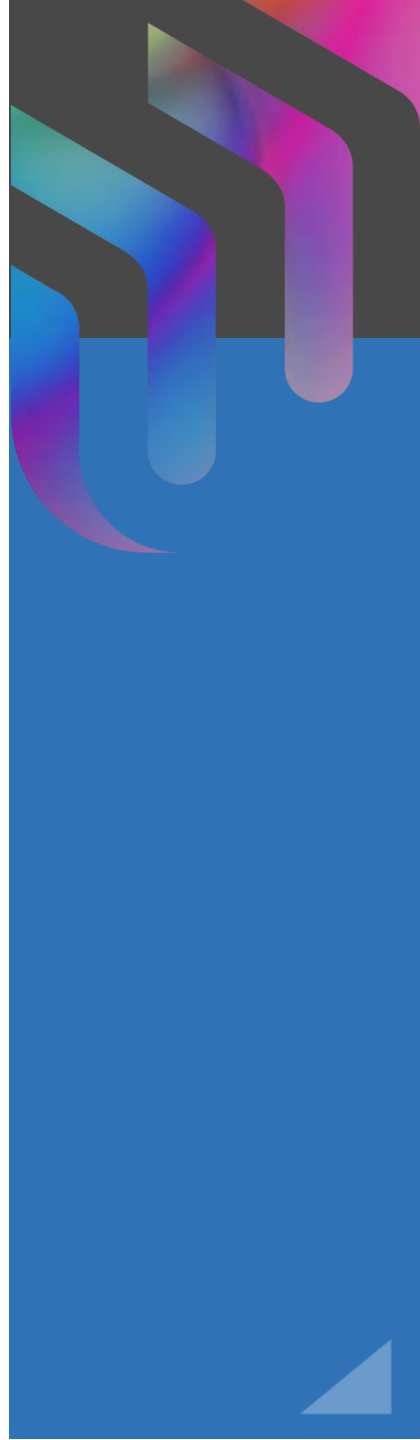
PRACTICE POINTER

- Send notices by certified mail
- Send by email as well
- Follow-up



CURBING FMLA LEAVE ABUSE

- Require certifications.
- Authenticate / clarify certifications.
- Require leave notice in writing to HR.
- Update job descriptions.
- Require use of PTO/vacation.
- Require efforts to schedule treatment to minimize disruption.
- Require compliance with call-in procedures.



AMERICANS WITH DISABILITIES ACT

Disability: Physical or mental impairment that substantially limits one or more major life activity

OR

Having a record of a disability

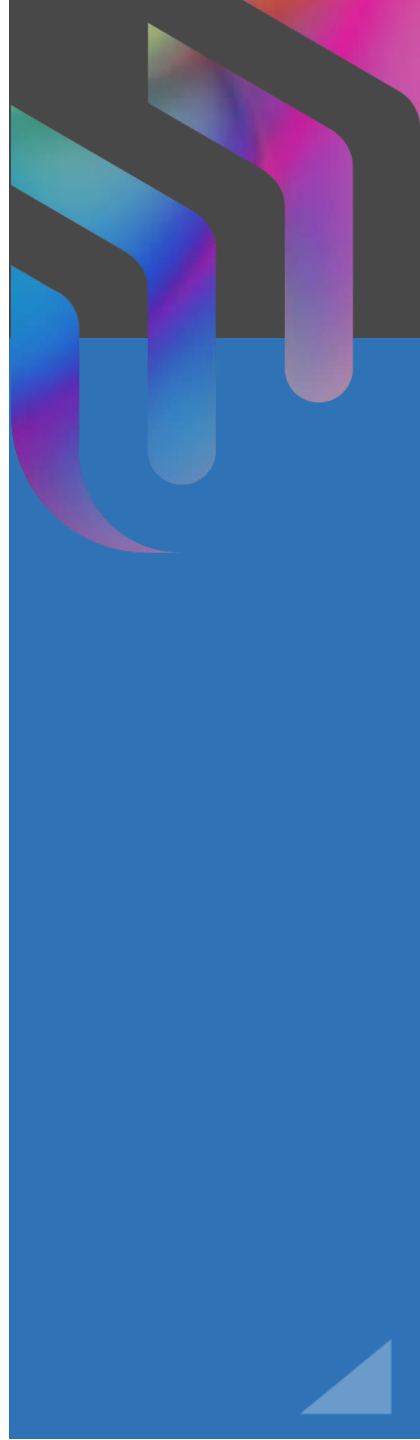
OR

Being “regarded as” having a disability

If Disabled: Can’t discriminate against

AND

must reasonably accommodate a request unless it would impose an undue hardship



WHAT IS A DISABILITY?

- ADAAA didn't change definition of "disability," but EEOC added list of Impairments that will meet definition of disability in "virtually all cases":

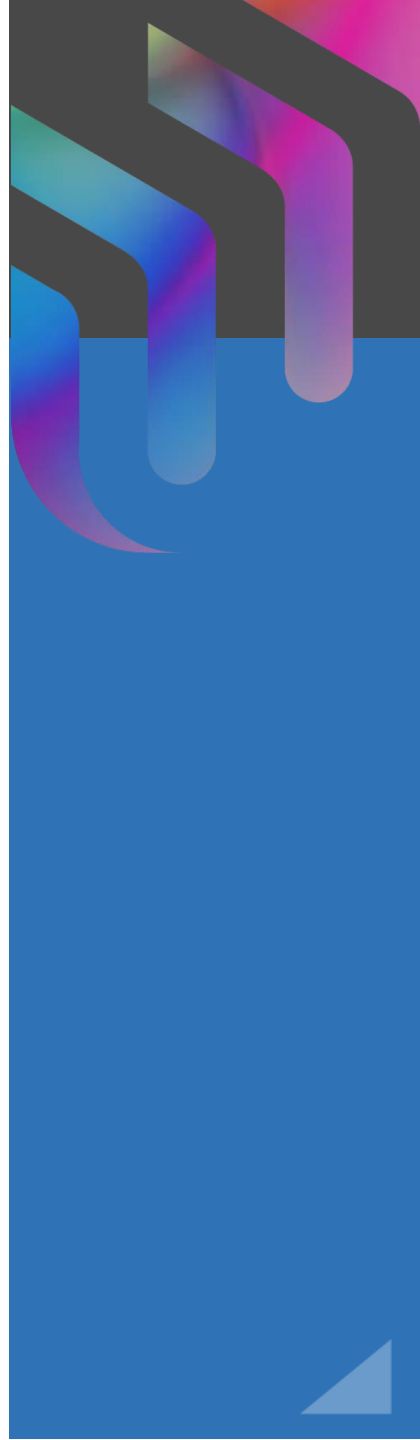
- Autism
- Cerebral Palsy
- Epilepsy
- Multiple Sclerosis
- Major Depression
- Schizophrenia
- PTSD
- Cancer
- Diabetes
- HIV or AIDS
- Muscular Dystrophy
- Bipolar Disorder
- OCD
- Missing Limbs



REASONABLE ACCOMMODATION

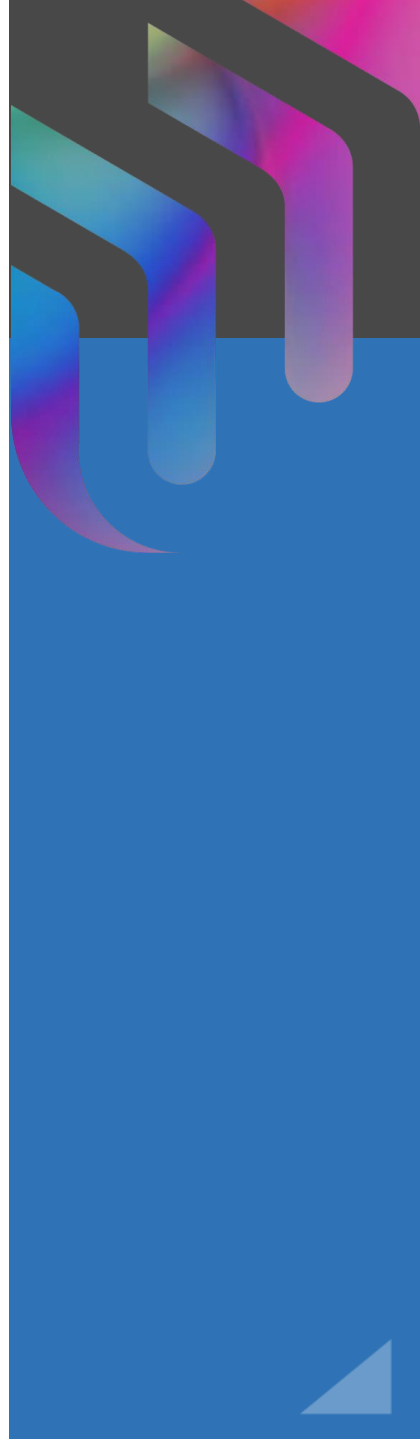
Employers do not have to:

- Tolerate unpredictable and unacceptable attendance.
- Reduce productivity/performance standards.
- Allow indefinite leave.
- Excuse employees from performing essential job functions.



INTERACTIVE PROCESS

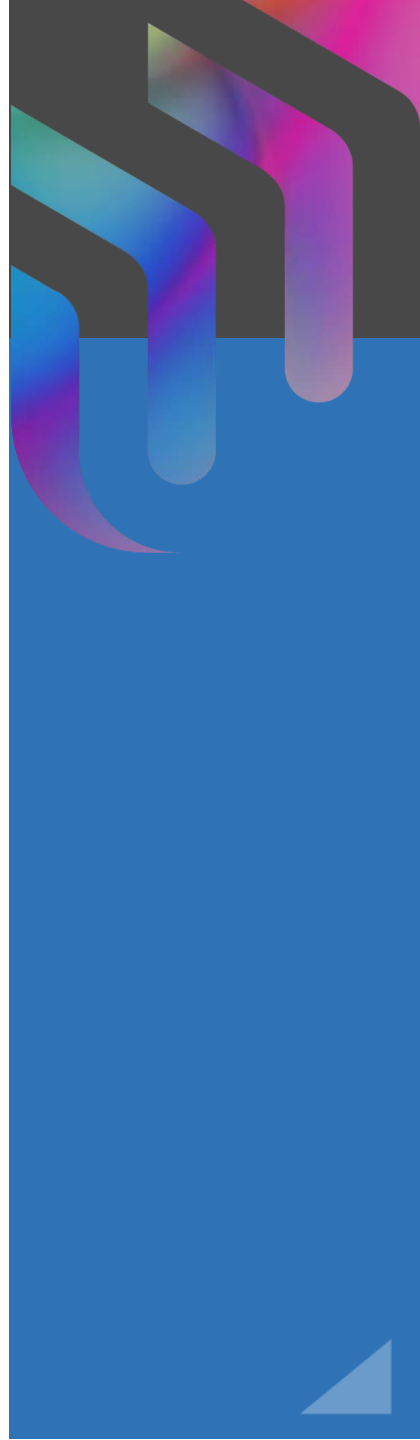
- Exchange information about employee's condition, essential functions of the job, reasonable accommodation.
- When possible, implement one of the identified accommodations.
- Consider calling the Job Accommodation Network.
- Document, Document, Document



WHAT MEDICAL INFORMATION CAN AN EMPLOYER REQUEST?

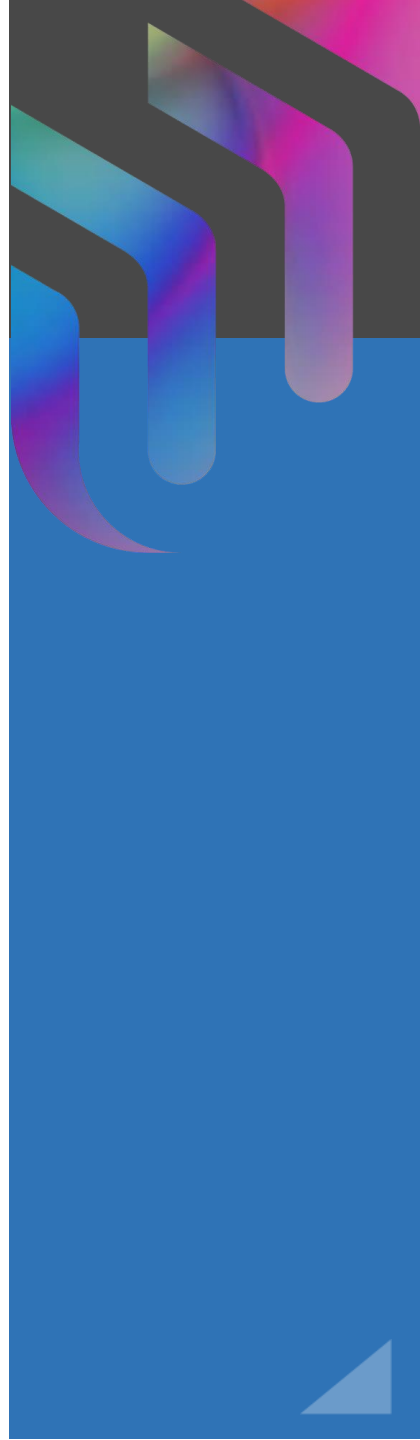
If the disability is not obvious, an employer can request:

- Description of impairment
- Nature and severity
- Duration
- Activities it limits
- Whether the employee can perform the essential job functions



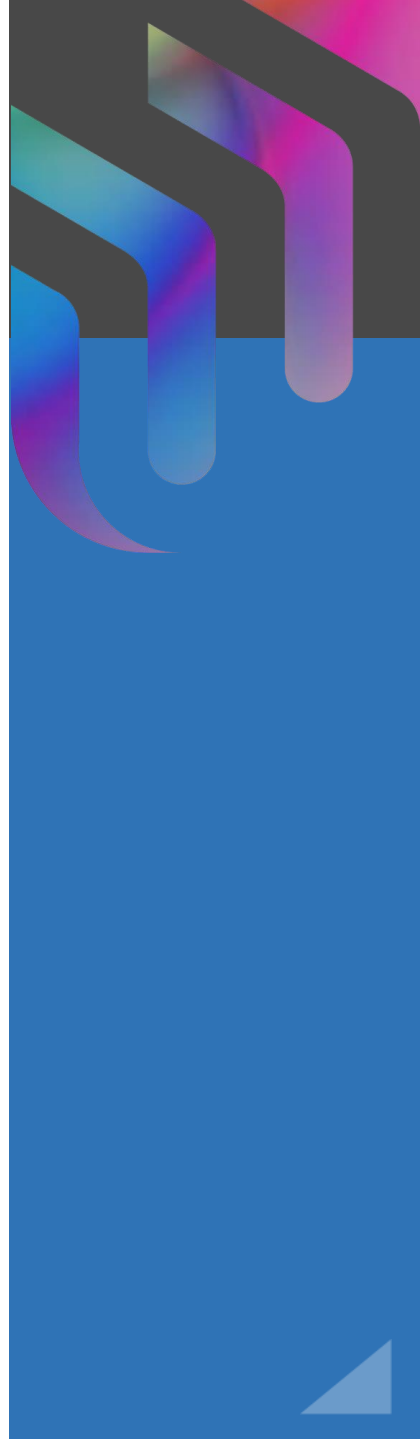
PREGNANT WORKERS FAIRNESS ACT

- Requires covered employers to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless they can demonstrate that the accommodation would impose an undue hardship
- Employers cannot require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided



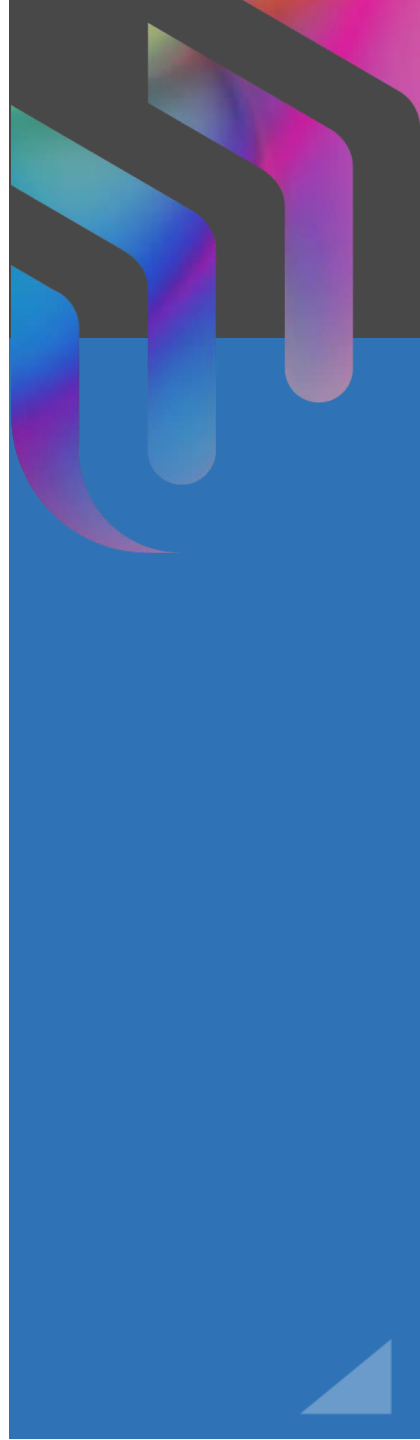
PREGNANT WORKERS FAIRNESS ACT

- “Pregnancy” and “childbirth” are still defined as including current pregnancy, past pregnancy, potential or intended pregnancy (which can include infertility, fertility treatments and the use of contraception), labor, and childbirth (including vaginal and cesarean delivery).
- EEOC has identified four “predictable assessments” that will not impose an undue hardship in “virtually all cases”:
 - Carry or keep water near them to enable them to drink;
 - Take additional restroom breaks as needed;
 - Allowing an employee whose work requires standing to sit and whose work requires sitting to stand as needed; and
 - Allowing an employee to take breaks to eat and drink as needed.



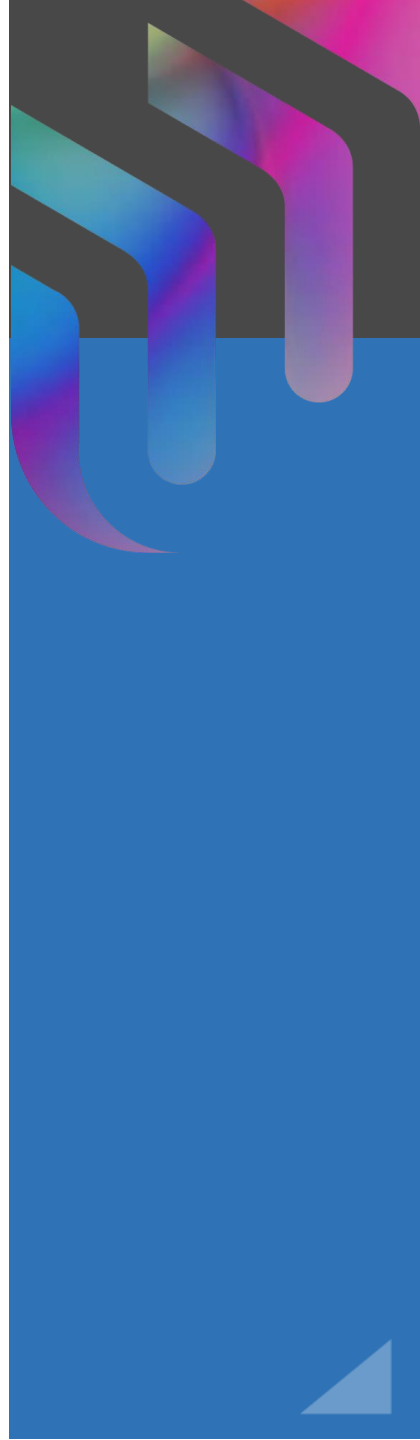
PRACTICE POINTERS

1. Keep job descriptions up to date.
2. If the accommodation is easy, just do it. Don't ask questions, and don't call it an accommodation.
3. Engage in the interactive process and document your efforts.
4. If temporarily agree to make an accommodation, document that it is, in fact, "temporary."
5. Don't play doctor!!



MICHIGAN LAW UPDATE – ESTA

- Mar. 23, 2025 compliance deadline for large employers
- **Oct. 1, 2025** compliance deadline for small businesses
 - Small business: 10 or fewer employees
- CBA Court of Claims opinion – ESTA applies to employers/employees with a CBA that is silent on the issue of earned sick time
- LEO FAQs can be helpful but they change without notice





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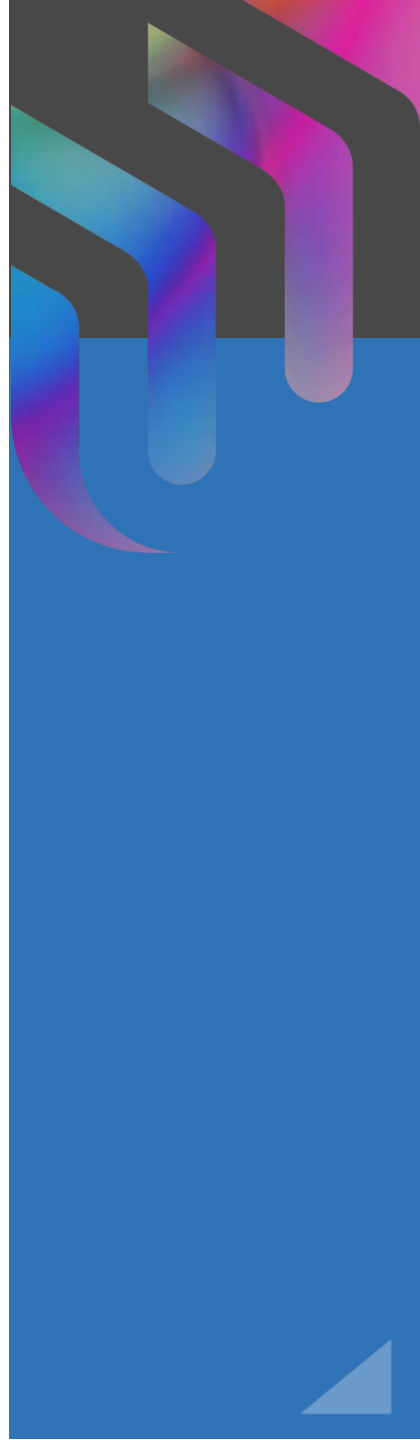
Best Practices for Conducting Employment Terminations



EMPLOYMENT TERMINATIONS

Does the employee file scream, “Fire this person!”?

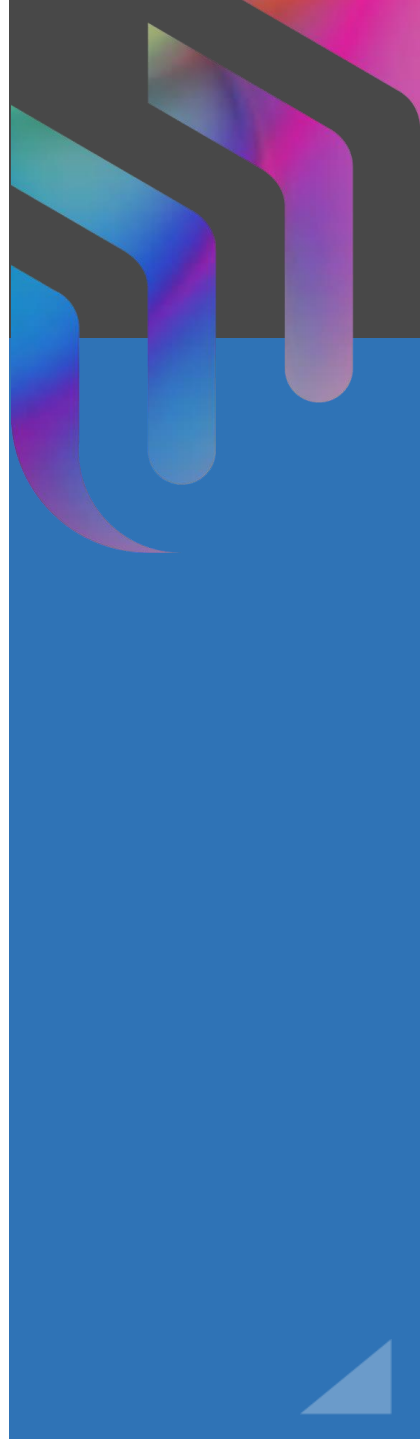
1. Don't make a hasty decision
2. Review exposure for breach of contract
3. Just cause employer?
4. Review exposure for a discrimination or other wrongful discharge claim
5. Follow your own policies
6. Be professional
7. Group layoff/termination?
8. Consider a separation agreement
9. Enforcement of other agreements



EMPLOYEE TERMINATIONS

10. Dot the I's & cross the T's

- **DOCUMENT, DOCUMENT, DOCUMENT!!**
- State candidly the reasons for discharge
- Ensure confidentiality
- Return of Company Property
- Allow opportunity to gather personal effects
- Cancel all access to Company systems
- Last Pay Check
- Vacation Payout
- Benefits Issues (e.g., COBRA)





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Thank you!

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