Family Medical Leave and the Americans with Disabilities Act Management
What is FMLA?

- The Family Medical Leave Act was passed into law in 1993
- Requires employers with more than 50 employees in a 75 mile radius to provide eligible employees up to 12 weeks of unpaid leave
- Also required to provide continuation of health care benefits and job protection
- Reasons for the leave can include:
  - Birth of a child
  - Adoption or foster placement of a child
  - Employees own serious health condition
  - Serious health condition of a spouse, son/daughter, or parent
  - Military Exigency
  - Military Caregiver Leave
Regulations Prior to 1993

• Prior to 1993, the United States was one of the only industrialized countries to not have a national medical and family leave law

• 1979, Pregnancy Discrimination Act
  – If a business already offered temporary disability protection the company was required to treat pregnancy equally
  – Did not mandate that a company offer temporary disability protection

• Many employers offered some level of protection but it varied widely from company to company

• No outlined protection for employees needing to care for family members health issues
Changing Workforce

• The year round full time work force has increased by 23% between 1979 and 1989
• Of this increase, the female population working full time has increased from 31% in 1949 (WWII era) to 46% in 1989
• According to the 1990 census, what state had the highest percentage of working females prior to the implementation of the FMLA?
  – Pennsylvania had 54% of women working year round, full time in 1990

Source: Bureau of Census, Census Questionnaire Content, 1990 CQC-23, April 1995
Family and Medical Leave Act of 1993

- Signed into Law February 5, 1993
- Became effective August 6, 1993
- Unlike prior regulations, the FMLA provided protection for an employee’s job and company sponsored health care benefits for the duration of the FMLA leave
- Designed to help employees balance work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons
- Provides coverage to an estimated 94.4 million Americans
- Provides up to 12 weeks of leave time in a 12-month period, with continued health care coverage
Effects of the FML Act

Employer

• 2/3 of covered employers changed some aspect of their leave policy after 1993 to comply with the law

• 83.7% of covered employers provide all 5 mandated benefits

• Gap between the benefits provided by covered and non-covered employers is narrowing

Employee

• Most Employees took short leaves
  – Median length 10 days
  – 90% shorter than 12 weeks

• Unhappy that leave benefit is unpaid as they “cannot afford” to be away from work

• 72.6% of leave takers reported being somewhat or very satisfied with the amount of time they took while on leave

Source: Family and medical leave: evidence from the 2000 surveys, Monthly Labor Review, 9/01
Effects of the FML Act

• Administration of FML benefits
  – 1995 survey results show 85.1% of employers indicate that compliance with the administrative requirements of FMLA was “fairly easy”
  – By 2000 survey this number had decreased to 63.6% finding compliance “fairly easy”
  – Identified issues were
    • Maintaining additional records
    • Determining employee eligibility
    • Coordinating Federal and State leave requirements
    • Coordinating the Act with other Federal laws
    • Coordinating the Act with other leave policies

Source: Family and medical leave: evidence from the 2000 surveys, Monthly Labor Review, 9/01
Effects of the FML Act

- Administration of FML benefits by 2007
  - Three of the most challenging issues related to FMLA are
    - Tracking/administering intermittent leave
    - Determining the costs of complying
    - Determining whether an intermittent serious health condition should be protected by FMLA
  - FMLA is now being seen by employers as having a negative impact on:
    - Employee attendance
    - Employee productivity
    - Business productivity
  - This study showed a significant decrease in the number of employers offering leave protection beyond FMLA (down from 59% to 44%)

Source: FMLA and Its Impact on Organization, Society of Human Resource Professionals (SHRM), 2007 survey results
FMLA 2008 Revisions

• In 2007, the Department of Labor put out a Request for Information (RFI) inviting comments on the FMLA
• This RFI garnered over 15,000 comments
• Top areas of concern for employers
  – Intermittent Leave
  – Determining a Serious Health Condition
  – The Medical Certification Process
• Top area of concern for employees
  – FMLA is an unpaid benefit
  – Should provide protection for more family members
  – Should be longer than 12 weeks
FMLA Revisions 2008

• Attempted to provide clarity to some of the identified issues presented by the employers in the RFI
• Provided additional leave under the Family Military provisions
  – Military Caregiver Leave
  – Qualifying Exigency
• Provided clarity to the definition of continuing treatment and chronic condition
• Provided multiple sample certification forms
• Provided the ability for an HR Professional and/Leave Administrator to speak to an employee’s Health Care Provider for Clarification and Authentication
• Provided guidelines for recertification
When is an Employee Eligible?

• Employees must have worked for the employer for 12 months (need not be consecutive)
• In the last 12 months, the employee must have worked 1,250 hours
  – Hours worked are defined consistent with the FLSA
• Upon request the employee must submit a complete and sufficient certification form from a health care provider providing information regarding the medical need for the leave
Case Review

  - Plaintiff filed suit against the defendant for FMLA interference and retaliation. Prior to his one year anniversary, the plaintiff suffered a non-work related injury, leading to a request for a leave. EE was granted leave and at one year anniversary, ER informed EE that the prior leave time would be counted retroactively.
  - On 3 different occasions, the MD changed the EE’s RTW date. ER asked the EE to update his status and actual RTW date. EE did not and failed to RTW. The employee was fired for job abandonment.
Case Review

  - Court found that the employers more generous leave policy met the FMLA minimum requirements regarding leave time taken prior to becoming eligible for FMLA could be counted against the FMLA 12-week entitlement
  - The retaliation claim was dismissed because the court found it to be reasonable that the employee be required to report periodically and since this employee failed to follow this procedure, the termination was not done in retaliation
  - The interference claim was dismissed as well as the employee did have a serious health condition that required time away from work
  - Summary Judgment was granted to the employer
Case Review

  - EE alleged that she took FMLA to go the Philippines with her husband to participate in faith healing activities and argued that this conduct was protected leave under the FMLA. The employer argued that the employee provided multiple different reasons for the leave including husband’s recovery from heart surgery. Almost ½ of the employee’s trip was spend on vacation-type activities; therefore, not eligible under FMLA. Additionally, faith healing activities are not protected. Leave was denied and the employee was terminated.
Calculation of a Leave Year

• The employer has the right to designate how the company will determine the leave year
  – The calendar year
  – Any fixed 12-month leave year (i.e. fiscal year, a year that matches state leave requirements)
  – 12 months beginning the first day the employee starts a leave
  – A rolling backward year, calculated from the first day the employee takes/requests FMLA leave

• If the employer does not designate a leave year, the leave year most beneficial to the employee will be used

• State leave laws may mandate the type of leave year the employer uses

• Employers should notify employee of the way in which the leave year is calculated

• Preece sued employer for interference in the amount of FMLA to which she was entitled

• Using the “rolling year method” Preece had exhausted all leave entitlement; however, the employee was not aware of the way the leave year was calculated

• EE was awarded 1 year of front pay and liquidated damages
  – EE did not seek reinstatement
Leave Reasons

• Birth of a child
  – Not limited to only the mother
  – If mother and father are married and work for the same employer, 12 weeks of leave time must be split between the two
  – The leave time can also be used to attend prenatal appointments
  – Leave time after the mother has been medically released to return to work may continue at the employees discretion up to the full 12 weeks allowed
  – Leave time following the birth of a child can be used intermittently with the employer’s permission for bonding purposes but must be completed within 12 months
  – In loco parentis relationships are recognized under the FMLA for purposes of bonding leave
    • Employer may require a statement from the employee requesting leave that he/she will be providing day to day care or financial support for the baby
Leave Reasons

• Adoption or foster care placement
  – Applies to both fathers and mothers
  – Must be completed within 12 months of the adoption or placement
  – Leave may include time prior to the placement to account for placement related activities i.e. court hearings, meetings, etc.
• Care for one’s own *serious* health condition
  – What is a *serious* health condition?
  – Illness, injury, impairment or physical or mental condition that involves:
    • An overnight stay in a hospital, hospice or residential medical facility
    • Any period of incapacity requiring absence of more than 3 full calendar days that also involves continuing treatment by or under the supervision of a health care provider
    • Any period of incapacity due to pregnancy or for prenatal care
    • Any period of incapacity due to a chronic serious health condition (i.e. asthma, diabetes, etc.) or treatment of the same
    • Any period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (Alzheimer’s, stroke, terminal disease)
    • Any absence to receive multiple treatments for a condition that would likely cause incapacity if left untreated
Case Review

• *Brown v. Kansas City Freightliner Sales, Inc.*, No. 09-3324 (8th Cir. Aug. 19, 2010)
  - Mr. Brown, employed by the defendant as a service technician for more than seven years, verbally reported to his employer that he hurt his back while on the job and wanted to go home. He called in sick the next four workdays even though he had already used up all authorized sick and vacation leave provided by the company. Brown had previously injured his back on the job and, after completing an injury incident form and visiting an occupational doctor, was released back to work without restriction prior to the date of his subsequent back injury.
  - The company terminated Brown's employment the day he returned to work. Mr. Brown sued for alleged failure to reinstate him to his position and for wrongful termination. The district court granted summary judgment in favor of the employer, finding that Brown did not experience a "serious health condition" during the absence period, as required by the FMLA, nor did he provide adequate notice that he was seeking FMLA leave.
Case Review


- "Employees… have an affirmative duty to indicate both the need and the reason for FMLA leave, and must let employers know when they anticipate returning to their position," the Court explained. "Absent the required notice, the employer's duty to provide FMLA leave is not triggered."

- Brown had "ample opportunity to inform his employer that his condition was more serious than [his] previous back injuries," the Court noted. In addition, the plaintiff did not submit a written injury report or accept medical attention. He merely called in sick four consecutive workdays without providing any additional information. These factors, together with a lack of evidence showing a connection between the plaintiff's previous back injuries and the injury prompting his four-day absence, led the Court to conclude Brown provided inadequate notice and, as such, the employer's responsibilities under the FMLA were never triggered.
Leave Reasons

• Care for a serious health condition of employee’s family member
  – Spouse: FMLA regulations defer to state definitions of a spouse
  – Parent: also includes individuals acting in loco parentis
  – Child
    • Under 18 years of age, or
    • 18 or over and incapable of self-care because of a mental or physical disability
  – Definition of “care”
    • Most think that care is simply dealing with a family member’s physical needs; however, the FMLA actually defines care as psychological support
Leave Reason: Qualifying Exigency

- New to the regulations in 2009
- Introduced to support the family members of military service members
- 8 acceptable leave reasons
  - Short-notice deployment
  - Military events
  - Childcare and school activities (not routine, regular or everyday)
  - Financial and legal arrangements
  - Counseling
  - Rest and recuperation (only 5 days per occurrence)
  - Post-deployment activities
  - Other---leaves open discussion with the employer
- This leave is available for only 12 weeks in a leave year
Leave Reason

Military Service Member Care

- Up to 26 weeks of leave during a 12 month period to care for a service member with a serious injury or illness that occurred or was aggravated in the line of active military duty
- Includes veterans who receive care within 5 years of becoming a veteran
- Only available during one single 12 month period

- Available leave extended to the service member’s “next of kin”
  - Other than spouse, parent, child;
  - Blood relatives who had legal custody
  - Brothers or Sisters
  - Grandparents
  - Aunts and Uncles
  - First Cousins

Calculation of the 26 week leave year begins on the first day the employee missed for this reason
Leave Process

EE misses time from work related to a FMLA Protected issue

Employer recognizes the need for leave

Employer completes eligibility check

Complete and sufficient Certification; ER sends Designation Notification

Employee returns Certification of Health Care Provider form

Employer mails eligibility notice and rights & responsibilities
Intermittent FMLA

- Allows the employee to miss time from work in small increments for the same reason and provides the same protections as a continuous leave
- The need to miss time from work must be medically necessary
- Health Care Provider is required to provide the employer an estimated frequency and duration of the time the employee may miss work
- If the attendance surpasses this frequency and duration, the employer may request a recertification to document the change in the medical condition leading to the increase in usage
Intermittent FMLA

• Challenge to the productivity in the workforce
• Regulations allow employer to request that scheduled intermittent time be arranged to be the least disruptive to the employers operations
  – Does not take into account call-offs for medical reasons
• Employers may temporarily reassign to an alternative position
  – Same rate of pay
  – Same benefits
  – Cannot be punitive
  – Employee can refuse the position if the transfer would adversely affect the employee
FMLA Certifications

• Employer has the choice to request a certification or not

• If the employer requests the certification, they must provide the employee at least 15 days from the date the certification is issued to return the form

• If the certification form is returned incomplete, the form should be returned to the employee with a written list of what is needed to make the form complete and sufficient
  – Employer must provide a minimum of 7 days to return this certification unless there are extenuating circumstances

• Failure to return the corrected certification form may result in denial of the FMLA protections
Certification Definitions

- **Complete**
  - All answers are filled out

- **Sufficient**
  - Information provided is not vague, ambiguous or non-responsive

- **Clarification**
  - Obtaining information to understand the handwriting or the meaning to a response

- **Authentication**
  - Verifying the information was completed and/or authorized by the health care provider who signed the certification
  - Only the HR professionals, Leave Administrators or Health Care providers can contact the provider completing the certification NEVER the supervisor
Recertification

• Can occur for various reasons
  – New health condition (i.e. out on maternity leave but breaks leg)
  – Leave extension requested
  – Medical circumstances have changed
    • Over utilization of intermittent leave
  – Doubt the continuing validation of the leave

• Employee on leave must submit updated certification within 15 days of the request for the recertification
End of FMLA Leave

- The FMLA leave will end when:
  - The employee returns to work
  - The employee fails to return a medical certification
  - The employee is released to return to work with restrictions
  - The employee requests a permanent accommodation (i.e. Americans with Disability Act Amendments)

- With notification at the beginning of the leave, the employer may require a fitness for duty certification
  - Note from the physician indicating that the employee is ready and able to return to work
Fitness for Duty Certification

• Can be either a note from the employee’s provider or an actual examination based on the employer’s policy and preference

• Case Review
  – *Wisbey v. City of Lincoln*, 612 F.3rd 667, 16 Wage & Hour Case.2d (BNA) 493 (8th Cir. 2010)
  – EE worked as an emergency dispatcher. EE requested FMLA after exhausting all available sick leave. Leave was intermittent for anxiety and depression. Certification indicated the EE could perform the essential functions of the job, but would need time off periodically for at least 6 months. No RTW date was provided.
  – Fitness for duty examination was conducted showing the EE was not able to perform the job. EE was fired.
  – Courts ruled that since there was no timeframe for RTW the employer did not have to provide leave for “leave’s sake”. The expectation is that the leave will allow the employee to RTW able to perform the position.
American with Disability Amendments Act

• Requires an employer to provide reasonable accommodations to employees and candidates with disabilities who are otherwise qualified to perform the essential functions of a position
• Requires the employer engage in the “Interactive Process” with the employee requesting an accommodation
• Does not require that a position be created for a person with a disability
The ADA: Pre-2009

• Americans with Disabilities Act was signed into law on July 26, 1990 by Pres. George Bush

• Title I requires employers with 15 or more employees to provide “qualified individuals with disabilities” an equal opportunity to benefit from the full range of employment-related opportunities available to others.
  – Put another way, the ADA requires employers to:
    • Refrain from discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment; and
    • Make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.
The ADA: Pre-2009

• Who are “qualified individuals with disabilities”?
  – We know, at the very least, such individuals must:
    • have a disability (or, as the ADA explains, “a physical or mental impairment that substantially limits one or more of the major life activities of an individual”); and
    • satisfy the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and with or without reasonable accommodation, be able to perform the essential functions of such position.
  – Simple enough – or is it?
    • Over the last 18 years, most plaintiffs have had a rough road getting past even that first prong — that she or he had a disability that is protected by the ADA. The Supreme Court did would-be plaintiffs no favors in that regard.
The Troublesome Trio

  - Sutton involved a pair of severely myopic twin sisters who were rejected for employment because of poor vision corrected with prescription lenses. The employer’s policy required “uncorrected visual acuity of 20/100 or better.”
  - The Court held that because the sisters’ vision was corrected they did not satisfy the definition of “disability” and thus could not challenge the employer’s policy. The Court announced this rule:
    - If a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures — both positive and negative — must be taken into account when judging whether that person is “substantially limited” in a major life activity and thus “disabled” under the Act.
  - With this rule applied, the sisters failed to cross the “disability” threshold
  - Court never dealt with the core issue of whether the employer’s position was justified
The Troublesome Trio #2

  - Employer hired a mechanic who had high blood pressure that was being treated with medication. When the employer discovered his condition, he was terminated because a clinical diagnosis of high blood pressure violated Department of Transportation (DOT) requirements for commercial drivers.
  - Because his doctor testified that he functioned normally in everyday activities when medicated, the Court held that the high blood pressure was not a disability.
  - As in Sutton, this holding precluded consideration of the employer’s action under ADA standards.
Troublesome Trio #3

  – Employer terminated a truck driver because he had uncorrectable poor vision in one eye that caused him to effectively have monocular vision, which the employer felt violated DOT safety standards.
  – The Supreme Court again applied Sutton, but with a nuance: the mitigating measure was the driver’s brain, which had adequately learned to compensate automatically for his vision impairment.
  – The Court found that an assembly line worker with carpal tunnel syndrome was not disabled because she was not substantially limited in the major life activity of performing manual tasks. The Court’s reasoning pivoted around the fact that she could still “brush her teeth, wash her face, bathe, tend her flower garden, fix breakfast, do laundry, and pick up around the house,” although she had to “avoid sweeping, . . . quit dancing, . . . occasionally seek help dressing, and . . . reduce how often she plays with her children, gardens, and drives long distances.”
  – Rather, the Court found, to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives. The impairment’s impact must also be permanent or long term.
  – The Court also said that the terms “substantially limited” and “major life activity” “need to be interpreted strictly to create a demanding standard for qualifying as disabled.”
A 2006 study showed that plaintiffs lost more than 97% of ADA employment discrimination claims — more than under any other civil rights statute.

- This rate is the highest federal case failure rate, behind only prisoners’ rights cases.

The courts’ focus on a plaintiff’s “disability” forced plaintiff’s counsel to hire experts — a costly endeavor, especially on a contingency fee basis.
Legislative History of ADAAA

• The ADAAA originally was introduced in July 2007.
  – Immediately garnered hundreds of cosponsors in Congress
  – To address concerns that the amendments extended protections too far, business and disability communities were invited to negotiate and offer an alternate, joint proposal
    • A final agreement was reached in May 2008, and it formed the basis of the ADAAA.
  – The ADAAA was signed by the President on September 25, 2008. It took effect January 1, 2009.
The ADAAA explicitly overturns the decision in Toyota Motor by clarifying that “substantially limits” does not mean “prevents or severely restricts.”

Instead:
- The term “substantially limits” must be interpreted consistently with the broad remedial purpose of the ADAAA — that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations.
- The question of whether an individual’s impairment is a disability under the ADA “should not demand an extensive analysis.”

Congress went so far as to include a nonexhaustive list of major life activities and major bodily functions, which are designed to restore protections for employees who were affected by various court decisions, including Toyota Motor.
- The list of major life activities includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Included on the list of major bodily functions are functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
ADAAA Major Provisions

- Elimination of the Disability Mitigation Defense
- ADAAA explicitly overturns the Sutton trilogy by permitting courts to evaluate an employee’s disability without regard to “mitigating measures.”
- These mitigating measures now cannot be analyzed in interpreting an employee’s alleged disability.
- This will cause a significant expansion of the group of individuals protected by the ADA by including, for example, employees suffering from epilepsy, diabetes, depression, bipolar disorder, cancer, and many other conditions that can be managed through medication or other treatment.
  - E.g., employer receives a request for accommodation from an employee who suffers from high blood pressure, albeit controlled by medication.
ADAAA Major Provisions

- Expansion of the “Regarded As” Provision
- The ADA currently defines “disability” as a “physical or mental impairment that substantially limits one or more of the major life activities.” In addition, those with “a record or such an impairment” or who are “regarded as having such an impairment” are also protected by the ADA.
- The ADAAA modified what it means to be “regarded as” disabled. Previously, employees often were required to show that their employer perceived them to be incapable of performing not just the job they had been denied, but also a range of jobs.
- Now, an individual can establish protection under this prong by establishing that he or she was subjected to an adverse action prohibited by the ADA because of an actual or perceived impairment, whether or not the impairment limits to limit a major life activity.
  - E.g., Employer subjects employee to adverse action because employee is perceived to suffer from severe food allergies although the employee does not, in fact, have any such allergies.
• Expansion of the “Regarded As” Provision
• This extension is limited, however, to exclude transitory and minor impairments with an actual or expected duration of six months or less (such as the common cold or a broken leg).
• Also note that an employer need NOT undertake reasonable accommodation to individuals who are regarded as disabled.
ADAAA Major Provisions

• Episodic Impairments and Those in Remission
• The ADAAA modifies the ADA to clarify that when evaluating a person who suffers from an episodic impairment or one that is in remission, employers and courts must determine whether the condition would substantially limit a major life activity when active.
• Certain conditions like epilepsy or post-traumatic stress disorder may now be protected under the ADA.
  – E.g., Employer terminates an employee who, in the past, suffered occasional seizures. At the time of termination, the employee was seizure free for over one year.
Definition of Disability
Individual has an impairment that substantially limits one of more major life functions

Disability impacts one or more bodily system:

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<th>Musculoskeletal</th>
<th>Special sense organs</th>
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<td>Reproductive</td>
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Substantially Limited Activities**

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**Please note this list is not all inclusive**
The Interactive Process

• Formal discussion between the employee and the employer regarding the requested accommodation

• The individual with a disability must tell you there is a need for a change/modification to the workplace
  – Plain language; does not need to use the words “reasonable accommodation”
  – Representative for the employee may make the request

• If the disability is not obvious, you may ask for reasonable documentation of the disability and the limitations
Interactive Process

• The employer may need to request the following from employee and/or physician:
  – What is the nature of the disability
  – Does the disability impact one or more major life functions
  – How does it impact the employee’s ability to perform the essential functions of the position
  – Does the employee have a specific accommodation in mind or are they simply looking for ideas

• Clarify what the individual is requesting to change
• Determine the essential functions of the position
• Determine the best way to modify the position/tasks to allow the employee to perform the essential functions of the job
Reasonable Accommodation

• Modification or adjustment to the job, the work environment or the way things are usually done that allows a qualified individual with a disability to enjoy the same rights of employment as a non-disabled individual

• Should reduce or eliminate any barriers that prevent the employee from performing the essential job functions

• Required to provide reasonable accommodations in:
  – The application process
  – To perform the job
  – To enjoy equal benefits and privileges of employment
Reasonable Accommodation

• Modification or adjustment must be reasonable and effective
• Applies only to employment situations
• Does not need to be the “best” accommodation available as long as it is effective
• Not required to provide an accommodation for mainly personal use
• The median cost of an accommodation is $600 (Job Accommodation, Workplace Accommodations: Low Cost, High Impact, 2010)
Types of Reasonable Accommodations

- Job restructuring
- Flexible leave policies
- Modified work schedules
- Modified workplace policies
- Work at home/telework
- Acquisition/modification of equipment
- Reassignment to a vacant position
- Example:
  - EE with developmental disability worked in a box factory. Needed to stack 20 boxes, but could only keep mental count to 10. ER provided a punch counter on her station and trained her to include this in her routine. Her productivity soared. Installed in all work stations
  - Cost: $10.00
Steps to Successful Accommodations

• Respond timely to all request for changes within the workplace
• Look at your jobs to make sure physical demands and essential functions are clearly defined
• Work with the individual to identify the functional limitations
• Determine potential accommodations
• Make to accommodation
• Determine the effectiveness of the accommodation, if not effective, begin again…
Coordination of FMLA and ADAAA

- The EEOC has found that inflexible leave policies that terminate an employee after a specific period of time even if the leave is complaint with FMLA, may be in violation of the ADAAA
- Additional leave time may be used to:
  - Attend medical treatment
  - Repair prosthesis or equipment
- Additional leave time does not need to be paid
- Court case:
  - Bus driver. Chronic heart disease, hypertension and uncontrolled diabetes. Failed CDL. EE asked for indefinite leave to get issues under control. ER refused.
  - Court sided for the ER. Noted: “reasonable accommodations are not for the individual’s future ability to perform the essential functions of the job; rather they are a change that will presently, or in the immediate future allow the employee to perform the essential functions of the job.”
  - Myers v. Hose, No. 94-1840, 4th Circuit Court of Appeals, March 29, 1995
Case Review

• Pinnacle Airlines v. Cowie
  – EE was hired to perform an essentially sedentary duty position performing administrative tasks. Periodically required to go between a few concourses.
  – Shortly after being hired, EE developed pain in her knee and was ultimately diagnosed with arthritis. She needed to walk with a cane and did have a limp.
  – Pinnacle fired her.
  – Paid the former Flight Operations Clerk $20,000 in lost wages.
  – The company has also agreed to:
    • Revise its policies and practices to comply with the ADA;
    • Provide training to its Human Resource Department and all of its managers on disability discrimination;
    • Post an EEOC approved Notice that informs employees how to contact the EEOC if they believe they have been discriminated against; and
    • Report any complaints of disability discrimination to the EEOC during the term of the consent decree.
Case Review

• McBride v. City of Detroit
  – EE has asthma and developed sensitivity to perfumes resulting in migraines, breathing difficulty and chest tightening
  – Detroit refused to adopt a scent policy in the workplace
  – Defense argued that the employees case was flawed as the exposed did not threaten a major life activity
  – Case settled for $100,000
  – City posted notices in all 3 building the employee worked in asking employees to refrain from wearing scents
Questions?