A is for ADA
and
E is for EEOC
History

- Americans with Disabilities Act of 1990
- 1992 Legislature enacted sweeping changes
- 1999 ADA changes stance regarding mitigating circumstances
- 2009 ADA Amendment Act
- 2011 EEOC Final Regulations
Changes with ADAAA

- Substantially limits
  - One major life activity that is limited doesn’t have to limit others
  - If an episodic condition or it is in remission still qualifies as a disability
- Major Life Activities
  - Includes work as a major life activity
  - Includes bodily functions
- Regarding as having impairment that limits MLA
  - If actual or perceived whether or not it limits or perceived to limit MLA
  - Not regarded if transitory or minor (less than 6 mths)
ADAAA Final Regulations
Top 7 Issues

1. Issue concerning activities individual is able to perform not just can’t.
2. Vague standard for “substantially limits”
3. Duration issues.
4. Mitigating Measures (Surgical Intervention) issue.
5. “Working” as a major life activity.
6. Whether certain conditions are always a disability
7. “Symptoms” as evidence of “regarded as”
EEOC FINAL REGULATIONS

- Able vs Unable
  - ADAAA “can’t do”
  - EEOC
    - Looks at what “can do”
    - Looks at outcomes
EEOC FINAL REGULATIONS

- **Substantial Limits**
  - Didn’t provide a standard for what means
  - ADAAA took the position that “the ability of an individual to perform MLA should be compared to general population”
  - EEOC regs assesses learning disabilities as “difference between an individual aptitude & actual vs expected achievement”
**Duration**
- Short term conditions
  - ADAAA “several months”
  - EEOC
    - Cover “short term”
    - Less than several months if condition is sufficiently severe.
Mitigating Measures

- Prior included “surgical interventions” unless “permanently eliminated” condition
- Removed this in EEOC regs
- The use may be relevant in determining qualification or direct threat to safety
**EEOC FINAL REGULATIONS**

- **Major Life Activities (MLA)**
  - Very expansive
    - Caring for oneself
    - Performing manual tasks
    - Includes working
      - Must be from doing a “class” or “broad range”
    - Added sitting, standing, lifting, reaching & moving
    - Added special sense organ, skin, genitourinary, CV, hemic, lymphatic & musculoskeletal functions
    - Added operation of an individual organ
EEOC FINAL REGULATIONS

- **Record Of**
  - Stated it could be anytime in person's life not just currently
  - If an accommodation might prevent reoccurrence then must accommodate

- **Regarded As**
  - Voluntary modifications
    - If help is at employee’s request can’t sue for this
  - If medical exam done to see what can do, won’t be considered this.
EEOC FINAL REGULATIONS

- **Regarded As (con’t)**
- Removed if took action against due to “symptoms” being this
  - Plan to address in separate document
- Giving a Workers’ Compensation or FMLA form isn’t considered this.
DISABILITY COMPONENTS

- Impairment
- Substantial limitation
- Major life activities
New Definition of “Disability”

- Disability now includes:
  - Having a past record of a disability, medical or mental condition.
  - Being perceived by an employer as having or had a disability.
  - Being regarded as having medical or mental condition that may become disabling in future.
Assess Disability

- Major Life Activities

  - Walking
  - Hearing
  - Sitting
  - Lifting
  - Learning
  - Caring for Oneself
  - Reproduction
  - Bowel Control/Function

  - Speaking
  - Seeing
  - Standing
  - Sleeping
  - Concentrating
  - Manual Task Function
  - Sexual Function
  - Interacting with others

  - Breathing
  - Eating
  - Reaching
  - Reading
  - Thinking
  - Running
  - Working
  - Other
Being Qualified

- Have required skills, education, licenses & / or experience
- If qualification standard eliminates employee/applicant, it must be “job related” & consistent with business necessity (necessary to perform essential job functions)
- What are essential functions of job
- What are “marginal” functions of job.
City of Glendale
Essential Job Functions Form

A list of physical, environmental, and psychological/situational factors appear below. Please complete this form while observing an employee who is currently performing the job appropriately in order to characterize the job accurately or from your first-hand knowledge of the job tasks. Please add any required items that are not listed under comments. In the column to the right of the frequency scale, please rate the necessity of the function to do this job. Return the completed form to Employee Health Services.

Job Classification:

How many hours per day worked? ____________________
How many days per week worked? ____________________
Is overtime required? ____________________
Are rotating shifts required? ____________________
If yes, what shifts? ____________________
Hours of computer use on the job daily? ____________________
If yes, how many hours of overtime normally? ____________________

<table>
<thead>
<tr>
<th>FREQUENCY SCALE</th>
<th>NECESSITY SCALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(please circle one)</td>
<td>(please hand write a number in the column)</td>
</tr>
<tr>
<td>N/A - Does not apply</td>
<td>0 - Not essential</td>
</tr>
<tr>
<td>R - Rarely (in emergency/unusual situations)</td>
<td>1 - Essential but minor and could be done by some other position</td>
</tr>
<tr>
<td>I - Infrequent (1-3 hours total work day)</td>
<td>2 - Essential to this position but could be modified without altering position</td>
</tr>
<tr>
<td>F - Frequent (3-6 hours total work day)</td>
<td>3 - Essential to this position - could not be modified or removed</td>
</tr>
<tr>
<td>C - Continuous (6-8 hours total work day)</td>
<td></td>
</tr>
</tbody>
</table>

Physical Demands of the Job
(Using the scale above, please indicate the frequency and necessity of performance of the following activities)

**VISION**
- Use of near vision N/A R I F C
- Use of far vision N/A R I F C
- Use of depth perception N/A R I F C
- Use of color differentiation N/A R I F C
- Accommodation (focal length changes) N/A R I F C
- Field of vision (peripheral vision) N/A R I F C

**HEARING**
- Need for hearing protection N/A R I F C
- Ability to perceive spoken voice clearly (with or without hearing aid) N/A R I F C
- Ability to perceive warning horns or sirens N/A R I F C

**SPEECH**
- Ability to be understood when speaking N/A R I F C

**OTHER ACTIVITIES**
- Lifting N/A R I F C
- Detecting odors N/A R I F C
- Sitting N/A R I F C
- Standing N/A R I F C
- Walking N/A R I F C
- Kneeling N/A R I F C
- Crawling N/A R I F C

**OTHER ACTIVITIES (continued)**
- Ascending/Descending stairs and/or ramps N/A R I F C
- Turning wrenches/valves/handles N/A R I F C
- Bending N/A R I F C
- Twisting N/A R I F C
- Stooping N/A R I F C
- Crouching N/A R I F C
- Reaching above shoulders N/A R I F C
- Reaching at elbow shoulder height N/A R I F C
- Hand operation of knobs, levers, or cranks N/A R I F C

**CLIMBING**
- Ladders N/A R I F C
- Hills N/A R I F C
- Power Poles N/A R I F C

**REPETITIVE MOTION**
- Neck N/A R I F C
- Shoulders N/A R I F C
- Elbow N/A R I F C
- Wrist N/A R I F C
- Bending at the waist N/A R I F C

**FINE ASSEMBLY (i.e. keyboard, mouse)**
- Left hand N/A R I F C
**Interactive Process**

**When Does The Obligation Arise?**

- Upon a request from the employee for accommodation or when the employer becomes aware that an accommodation is needed
- When a further request is made by the employee or employer becomes aware that a further accommodation is needed
- If employer attempts to initiate interactive process and employee claims no need, obligation met

**THE OBLIGATION IS A CONTINUING ONE**
Accommodation Exclusion

Direct Threat

- Significant risk of substantial harm to the health and safety of the individual or others which cannot be corrected with accommodation

- **Not** considered a direct threat
  - A history of psychiatric disability or treatment.
  - Side effects of medication that diminish concentration or coordination.
  - Prior suicide attempt.
Evaluate Direct Threat

- If screened out on safety-related reasons
  - Provide a detailed analysis of risk’s significance
  - Detail duration of risk
  - Describe specific harm associated with risk
  - Detail analysis of substantial nature of harm (seriousness, scope)
What Is A Reasonable Accommodation

Any change in the work environment or the way things are customarily done which will allow an individual with a disability equal employment opportunity.
REMEMBER:
ALL MUST BE QUALIFIED TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB WITH OR WITHOUT REASONABLE ACCOMMODATIONS.
Accommodate The Employee

- Must be effective
- Cost not always a factor
- Doesn’t have to be the “best” accommodation
- Not all employees need to be accommodated in the same manner for the same disability
What Is An Employer **NOT** Required to Do

- Eliminate essential functions (fundamental duties of the job)
- Lower production standards
- Provide additional paid leave (unpaid maybe –even if FMLA exhausted)
- Maintain same rate of pay/benefits when there is a reduction in hours/duties
- Create a new job or additional position
- Adopt the accommodation proposed by applicant or employee
What is An Employee NOT Required to Do

- Accept an accommodation, aid, service, opportunity, or benefit.
- If rejected, and require it to perform the essential functions of job then the individual will not be considered a qualified individual.
  - If this occurs, then the obligation has been met.
Reassignment to a Vacant Position

- Only if no other reasonable accommodation is available
- Lower level position is acceptable (no promotion is required)
- Must be comparable in terms of pay, status and geographic location.
- Usually no duty to bump a more senior employee to create a vacancy
Possible Accommodations

- Schedule modifications
- Extra time off
- Adjusting supervisory methods
- Modifying workplace policy
- Providing job coach

- Job modifications, such as reassignment of marginal tasks to other workers
- Environmental modifications
- Reassignment to vacant positions
ASK JAN
If you have a question about workplace accommodations or the Americans with Disabilities Act (ADA) and related legislation, we can help.
JAN's Accommodation Toolbox

- **JAN Publications** JAN offers numerous publications for free. For example, learn how to approach evacuation procedures, effective communication for individuals who are deaf or hard of hearing, ergonomics, and disability etiquette. JAN consultants distribute accommodation idea publications that address specific disabilities. Share their Accommodation Ideas.

  Select One  Go!

- **Searchable Online Accommodation Resource (SOAR)** Explore workplace accommodation options by moving through a five-step accommodation process, which includes common questions asked during the accommodation process and popular organizations that will help you research additional information.

- **Consultants' Corner** JAN's on-line newsletter addresses accommodation situations and solutions.

  Select One  Go!

- **Funding** Search for information on funding computers, education, insurance, and transportation.

Legal Information

- **General Information on the ADA**

  - The ADA: A Brief Overview
  - The ADA: Questions and Answers
REACHING MATERIALS BELOW THE KNEE AND AT BENDING LEVEL

Materials at a low level may need to be accessed by individuals with bending, squatting, and kneeling restrictions. To reach materials at this height, it is helpful to either lower the worker or raise the materials. Low task chairs, reachers, and adjustable platform hand trucks are all products designed to access low work.

Other accommodations may exist. If you have questions, please contact the Job Accommodation Network at 1-800-526-7234 (TTY).

Start SOAR again! Explore another accommodation option.
JAN is a service of the U.S. Department of Labor's Office of Disability Employment Policy.

Go Back
ALTERNATIVE COMPUTER INPUT DEVICES: OPTIONS TO CONSIDER

By Beth Loy, Ph.D., and Linda Carter Batiste, J.D.

Preface

Individuals may have limitations that interfere with the ability to access computers. Traditionally, a computer user accesses a computer with a standard point and click mouse and a QWERTY keyboard (named for the top left-hand side of the rows). Individuals with physical and/or developmental limitations may not be able to use these standard computer input devices effectively so may benefit from using alternatives. Standard keyboards are made for typists who use two hands and ten fingers; alternative input devices are made for computer users with a variety of limitations, including individuals with no hand or finger movement. Individuals with these limitations may benefit from alternative input devices if they have tremors or spasticity, lack of coordination, loss of vision, paralysis or numbness, and/or a decline in cognitive function.

Alternative computer input devices come in many shapes and sizes to accommodate a variety of limitations. Available alternative input devices replace the “traditional” keyboard and mouse, translating the movements of a user into directly proportional movements of the computer mouse pointer. Alternative input devices allow the user to activate a computer in a variety of ways, such as using his/her feet, head, eye, mouth, breath, thumb, or a single finger. Some devices are activated by motion while others can be controlled with nerve or muscle signals, even brain activity and mind energy.

This publication is a non-inclusive list of alternative computer input devices typically used by individuals with upper and lower extremity limitations. If you would like additional information contact the Job Accommodation Network (JAN) directly. JAN also has information on alternative input devices designed specifically to accommodate individuals with cognitive and sensory impairments.

SOFTWARE | USE OF HANDS AND FEET | USE OF SPEECH |
USE OF HEAD | USE OF BREATH AND MOUTH | USE OF EYES | USE OF FEET | ENVIRONMENTAL CONTROL UNITS
Miniature keyboards are smaller than "traditional" QWERTY keyboards. They are small size alternative keyboards that are typically covered with plastic membranes. Keys are closely spaced for easy access, and the keyboard surface is very sensitive to touch. For additional information on miniature keyboards, visit:


One-handed keyboards and software assist individuals with no or limited use of one hand in entering data into a computer by allowing more convenient "one-handed" entry and control. For additional information on one-handed keyboards and software, visit:

G in for GINA
Employers are prohibited from requesting genetic information and from taking adverse employment actions based on that information.
Areas Affected

- Medical Documentation Requests
  - ADA
  - FMLA
- Medical examinations
- Wellness Programs
Exceptions

- Information acquired inadvertently
- When requesting documentation for FMLA leave to care for a family member
- Information provided voluntarily
- Information obtained from commercially and publicly available sources
- Acquired as part of voluntary or legally mandated genetic monitoring
- Acquire by employers that conduct DNA testing for law enforcement purposes
Suggestion

- To avoid liability for requesting genetic information, the regulations allow employers to add a disclaimer to their requests for medical information that will essentially create a “safe harbor” defense should an employee provide too much information.
The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to request for medical information. Genetic information as defined by GINA includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, that fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. (75 Fed. Reg. 68934)
Recommendations

- ADA & FMLA - add disclaimer
- Required medical exams (post offer/fitness-for duty)
  - must exclude family medical history or any other genetic information
- Wellness Programs
  - If voluntary no problem
  - If offer financial incentives – may not tie incentives to provision of genetic information
    - For both genetic information may only be disclosed to employer in aggregate form.
SB 559

- Amends Unruh Civil Rights Act of 1959
- More expansive than GINA
- Includes
  - genetic information as a prohibited basis for discrimination in the areas of housing, employment, education, public accommodations, health insurance coverage, life insurance coverage, mortgage lending, and elections.
D is for DOT
DEPARTMENT OF TRANSPORTATION

Random Drug Testing
TYPE OF DRIVER’S LICENSE

- Commercial driver’s license (CDL) A & B, or a regular C endorsed license
- Interstate and intrastate truck and motor coach drivers
TYPE OF VEHICLE DRIVEN

- COMMERCIAL MOTOR VEHICLE
  - **Weight**
    - Gross combination vehicle weight rating (GVWR) in excess of 26,000 pounds or inclusive of a towed unit with a GVWR of more than 10,000 pounds.
    - Vehicle in excess of 26,000 pounds GVWR
TYPE OF VEHICLE DRIVEN (Con’t)

- COMMERCIAL MOTOR VEHICLE (Con’t)
  - Hazardous Waste
    - Any size vehicle with hazardous placards are displayed.
  - Passenger
    - Vehicle designed to carry 8 or more passengers
EMPLOYMENT STATUS

- DRIVER
  - Full-time
  - Part-time
  - Intermittent basis
- CONTRACT DRIVER
- NEW HIRES
  - Only subject to drug testing
TYPES OF TESTING

- CONTROLLED SUBSTANCE TESTING
  - Urine sample
  - Drugs analyzed for
    - Marijuana
    - Cocaine
    - Amphetamines
    - Opiates
    - Phencyclidine
Changes in Drug Testing as of 10/1/10

- Addition of testing for
  - 6-actylmorphine (6-AM)
  - 3,4-methylenedioxymethamphetamine (MDMA)
  - 3,4-methylenedioxyamphetamine (MDA)
  - 3,4-methylenedioxyethylamphetamine (MDEA)
TYPES OF TESTING (con’t)

- ALCOHOL
  - Through breath test
  - Uses an evidential breath testing device (EBT)
REQUIRED TESTS

- Pre-employment
- Reasonable suspicion
- Random
- Return-to-duty/follow-up
- Post-accident
PRE-EMPLOYMENT
(Pre-Placement)

- Controlled substance testing only
- Pre-assignment
  - Both alcohol and controlled substance testing
  - If for a new CDL or being transferred/promoted to safety sensitive position
RANDOM TESTING

- Must Be Unannounced
- **Alcohol**
  - 10% of CDL holders per year
- **Controlled Substance**
  - 50% of CDL holders per year
POST-ACCIDENT TESTING

- Criteria for testing
  - A fatality
  - Injury requiring immediate medical treatment
  - Citation for moving traffic violation due to accident
  - Substantial damage to motor vehicle requiring it to be towed
  - Signs of reasonable suspicion

- **NOTE:** Must be driving a CMV
POST-ACCIDENT TESTING- (con’t)

- Must be done as soon as feasible
- Test for alcohol and controlled substance
POST-ACCIDENT TESTING PROCEDURE-Documentation

- After 2 hours--document reason not tested
- After 8 hours—don’t do alcohol portion and document why
- After 32 hours—don’t test at all and document
- Employee must
  - Remain available for testing
  - Consume no alcohol for 8 hours following accident or until tested
A POSITIVE ALCOHOL/CONTROLLED SUBSTANCE TEST

- MRO speaks with employee--can be up to 72h
- SAP evaluation mandatory
- No safety sensitive functions until has negative test -- modified work ok
- Possible mandatory drug/alcohol rehabilitation program
- At least 6 follow-up tests
REFUSAL TO SUBMIT TO TESTING

- Fails to:
  - Provide adequate breath or urine without valid medical explanation
  - To stay until testing process complete
- Engages in conduct that clearly obstructs the testing process
- Refuses to take a “second test”
- Refuses to allow direct observation when required by regs
- Refuses or fails to undergo a medical exam when required
REFUSAL TO SUBMIT TO TESTING
Additional Conditions Per Aug. 2008 Regulation Changes

- Found to possess or wear prosthetic or other device that could interfere with collection
- Refuses to allow visual assessment for devices
- Refusal to follow collector’s instructions during on observed collection
- Admits has adulterated or substituted the specimen
PROHIBITED BEHAVIOR

- Possessing drugs or alcohol while on-duty
- Refusing to take any of the tests required
- Adulterating or substituting the specimen
- Testing positive for drugs or having a result of 0.04 or greater on a Breath Alcohol test
- Consuming drugs at any time
- Consuming alcohol before or after an accident, for up to 8 hours
- Consuming alcohol less than 4 hours prior to reporting for duty
Record Keeping as of 2004

- Copy of driver’s written authorization to obtain driver’s alcohol & controlled substances history
- Copy of response(s) from previous employers for investigations or why didn’t do it documented.
- Safety performance history from previous employers
  - Must be retained for as long as driver employed plus 3 yrs
- Rule came into effect Oct. 29, 2004
Accident Register Must Contain

- List of accidents
- Date of each
- City or town & state occurred
- Driver’s name
- Number of injuries
- Number of fatalities
- Whether hazardous materials (other than fuel from MV tank) released
- Copies of all accident reports required by state or other entities
Accident Register Retention

- After April 29, 2003—3 yrs from date of each accident
- Prior to April 29, 2003—1 yr from each accident
Driver Investigation Histories

● Must maintain:
  – Records related to an investigation
    ● Into safety performance of new or prospective drivers
    ● Maintained in secure place with controlled access
      – Limited to those involved in hiring, or
      – Who control access
Past Employee Records That Must Be Kept

- Investigations of performance history—preceding 3 yrs.
- Copy of driver record(s) obtained from inquires to each state driver record agency
  - Within 30 days of DOE
- Replies to investigations of safety performance history
  - Within 30 days of DOE
C is for CFRA
F is for FMLA
Leaves Incorporated In These

- Federal Family and Medical Leave Act (FMLA)
  - Includes pregnancy
- National Defense Authorization Act
- California’s AB 392
- State of California Family Rights Act (CFRA)
  - Excludes pregnancy
FMLA & CFRA Eligibility & Leave Time Availability

- **Eligibility**
  - Employed by company for at least 12 months. (CFRA one extra day)
  - Worked for at least 1,250 hours during the 12-months immediately preceding the commencement of leave.

- **Availability**
  - 12 weeks over 12 month period
  - No minimum amount of leave (FMLA)
  - Reduced leave schedule or intermittent leave: permissible if medically necessary
  - Exception is bonding leave: 2wk intervals except of 2 times of 1 day each
CALCULATION OF THE 12 MONTHS

- Employer may choose a method
- Methods
  - Current calendar year
  - Any fixed 12-month period
  - The 12-month period following the date begins
  - A “rolling” 12-month period measured backward from date began
Leave is Unpaid

- Paid Options:
  - Not required to use accrued paid leave prior to using this unpaid leave
  - May elect to defer unpaid leave until used appropriate accrued leaves
  - May use paid accrued leave concurrently
  - If employee has contributed may use those funds (only available to companies who utilize SDI)
FMLA & CFRA Leave is Permitted for What Reasons?

- Birth of child/care for newborn
- Placement of child with an employee
  - Adoption
  - Foster care
- Care for child, parent or spouse with serious health conditions, including psychological discomfort
  - Does not include in-laws
  - CFRA includes domestic partners
- Serious health conditions that makes employee unable to perform functions of his/her position
  - FMLA includes prenatal care CFRA doesn’t
DOMESTIC PARTNER

- Same sex partner.
- Different sex if over age of 62.
- Must be registered.
SERIOUS HEALTH CONDITION (SHC)

- Overnight stay in hospital, hospice or residential medical care facility.
- Injury or illness causing 3 or more consecutive days of incapacity and continuing treatment by a HCP.
- Injury or illness causing 3 or more consecutive days of incapacity and involves at least 2 treatment by a HCP and/or regimen of continuing treatment.
- Any period of incapacity due to pregnancy / prenatal care; or chronic condition or permanent or long-term condition.
- 1st visit establishing SHC must be in person within 7 days of incapacity & treatment.
Examples of Possible Serious Health Conditions

- Appendectomy
- Poison Ivy
- Pregnancy*
- Asthma Attack
- Bad Back
- Conjunctivitis
- Depression
  *FMLA only

- Gall Bladder Attack of Employee’s Spouse
- Alzheimer’s Disease in Employee’s Mother
- Sprained Ankle
Conditions Generally Not Qualifying

- Cold
- Flu
- Earaches
- Stomach distress
- Headaches
- Routine dental problems

**NOTE:** However may be considered “serious health conditions” if cause incapacity for more than 3 days
Married Couples Who Both Work For Same Company

- Under FMLA and CFRA - 12 weeks total for birth or placement of a child.
- For illness of a child or personal illness, 12 weeks each.
Continuation of Employer Paid Portion of Medical Benefits

- Only requires 12 weeks per year
- If use separately FMLA & CFRA may have more than 12 wks leave but only 12 wks of employer paid portion of medical benefits.
Employer’s Responsibility

- Must notify the employee within two business days that the leave will be counted as FMLA leave (within 10 days for CFRA)
- The employer must make a written record of the notification
EMPLOYEE'S RESPONSIBILITY

- Notify employer (supervisor) in a timely manner, if possible
- Provide documentation of need for leave
- Provide recertification documents from HCP if needed.
“Supervisors, managers and any other person who acts, directly or indirectly, in the interest of an employer”.
Medical Insurance

- **FMLA/CFRA**
  - Must maintain coverage under any group health plan to the same extent as if employee not on leave
  - If employee fails to return from leave, employer may recover the health insurance premiums, unless reason for failure to return is continuation of medical condition which originally took employee out.
Intermittent Leave

- To be used when medically required
- Reduction in work hours may be granted when medically necessary.
- Right to transfer employee to another position more adaptable to reduced work schedule.
Duration of Leave Summary

- **If for birth, adoption or foster care:**
  - Leave must be concluded within one year of event (FMLA/CFRA),
  - Leave must be a minimum duration of two weeks (CFRA);
  - No minimum amount of leave (FMLA)
  - Leave of at least one day, but less than 2 weeks, is allowed on two occasions only. (CFRA)

- **If for serious health condition of child, parent, spouse, domestic partner, or employee:**
  - No minimum leave requirement (both).
Notice of Leave

- Give advance notice if possible.
- Planned medical treatment:
  - Request consult with supervisor regarding scheduling.
  - Must provide health care provider justification
- Not requested:
  - Company determines if qualifies.
  - Company will notify within two days.
Certification

- Required if serious health condition.
- Company may require second opinion, at their expense.
- Required before leave commences if foreseeable.
- Reasonable recertification may be required.
- If unforeseeable, certification required within 15 days.
Reinstatement

- For FMLA to same or equivalent position (CFRA-same or comparable)
- CFRA-employer must give written guarantee if requests
  - May be required to periodically report on status and intent to return.
- Fitness for duty certification (RTW)
- Denial of reinstatement if position was eliminated through layoff during leave
  - Must return within 2 business days after indication of readiness to return.
Key Employee Exemption

- FMLA allows the company the right to deny reinstatement to salaried employees among the highest paid 10% in the company’s employment.
CALIFORNIA’S ADDITION TO UNPAID LEAVE
AB 392

- Approved Oct. 2007
- Addition to Military and Veterans Code
- Allows spouse of members of Armed Forces (including deployed members of National Guard and the Reserves) to take up to 10 days unpaid leave when service member is home on leave from duty.
- Employee must work and average of 20 hours per week to be eligible.
ADDITIONS TO FMLA
Effective January 2008

N is for National Defense Authorization Act
National Defense Authorization Act

- Provisions
  - 26 weeks of unpaid leave during one 12-month period
  - For care of a spouse, child, parent, or next of kin who is a service member
    - undergoing medical treatment,
    - recuperating or undergoing therapy,
    - is on out-patient status, or
    - is on the temporary disabled retired list for a serious injury or illness

OR
National Defense Authorization Act

- 12 weeks of unpaid leave during any 12-month period for “any qualifying exigency”
  - When is on active duty
  - Is notified of an impending call or order to active duty
  - When the service member is already on active duty – in the Armed Forces (including Reserves and National Guard in support of a “contingency operation”)
National Defense Authorization Act
Limitations

- Either type of leave may be taken intermittently or on a reduced leave schedule
- It is a one-time leave that must be used in one 12-month period
- Intermittent leave must start and stop within one 12-month period.
- Any combination of any other FMLA leave with it is limited to the 26 weeks.
National Defense Authorization Act Limitations

- Spouses who work for the same employer are limited to a shared 26 weeks to care for a wounded child
- Notice for service member being activated is “as is reasonable and practicable”
QUALIFYING EXIGENCIES

- Short-notice deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
EXAMPLES OF ELIGIBLE ITEMS

- Handle financial matters
- Set up care for children or elderly parents
- Settle legal matters
- Cover household duties the service member had been handling
- Finding quality time before relative ships out
V is for VICTIMS OF DOMESTIC VIOLENCE
EMPLOYMENT LEAVE ACT
VICTIMS OF DOMESTIC VIOLENCE EMPLOYMENT LEAVE ACT
Provisions of AB 2357:

- Provides victims of domestic violence with protection against:
  - Discharge;
  - Threatened Discharge;
  - Demotion;
  - Suspension; or
  - Other discrimination or retaliation based on exercise of rights under this act.
Provisions of AB 2357:

- Up to 30 days unpaid leave in 12-month period to obtain:
  - Medical Attention
  - Services from Support Program
  - Psychological Counseling
  - Participate in Safety Planning
  - Comply with Subpoena or other Court Order
Provisions of AB 2357:

- May not exceed leave permitted under FMLA (12 weeks).
- Reasonable advance notice required if possible.
- Confidentiality must be maintained to fullest extent possible.
Certification Required:

- **Certification to employer shall be provide within reasonable time period:**
  - Police Report indicating employee was a victim.
  - Court order protecting or separating employee from perpetrator of an act.
Certification Required:

- **Certification (Continued)**
  - Evidence from court or prosecuting attorney that employee has appeared in court.
  - Documentation from medical professional, domestic violence advocate, health care provider or counselor stating that employee underwent treatment for physical or mental injuries/abuse.
P is PDL

Pregnancy Disability Leave
PDL Eligibility & Leave Time Availability

- **Eligibility**
  - First day of employment
    - No required amount of time worked in the year
    - No required amount of employment time

- **Availability**
  - Provides up to four months unpaid leave for:
    - Prenatal Care
    - Childbirth
    - Disability due to pregnancy
  - No insurance coverage

- **NEWS FLASH**—just signed by Brown—effect Jan. 1, 2012—prohibits employers from failing to maintain health coverage for an employee on a statutorily protected pregnancy leave of up to four (4) months. The employer will be required to pay the premiums normally paid by the employer under the same conditions as if the employee was working.
  - Only available to disability related to pregnancy not for well child care

**NOTE:** CFRA can be used to care of sick child.
W is for Workers’ Compensation
THE UNKNOWN
Recent Changes

- **2008**
  - Chapter 34, Statutes of 2004
    - Now final ratings take into account the worker’s diminished FEC

- **2010**
  - Amendment to Labor Code 3600 to make it illegal for employers to deny claims based on employee’s sex, race, color, religion, ancestry, national origin, marital status, or sex orientation.
New Proposed Bills

- AB 375 (Skinner) would extend presumptive eligibility to nurses who have suffered neck/back injuries or contracted MRSA or other blood-borne infectious diseases (failed in Senate 9/14/11)
- AB 889 (Ammiano) will require household “employers” who hire a baby sitter to pay minimum was to any sitter over the age of 18, provide substitute caregiver every two hours to cover rest and meal breaks, in addition to workers’ compensation coverage, overtime pay, and a meticulously calculated timecard/paycheck. (not passed in Appropriation, in suspense files.)
That's All Folks!