



ADA Reasonable Accommodation Process

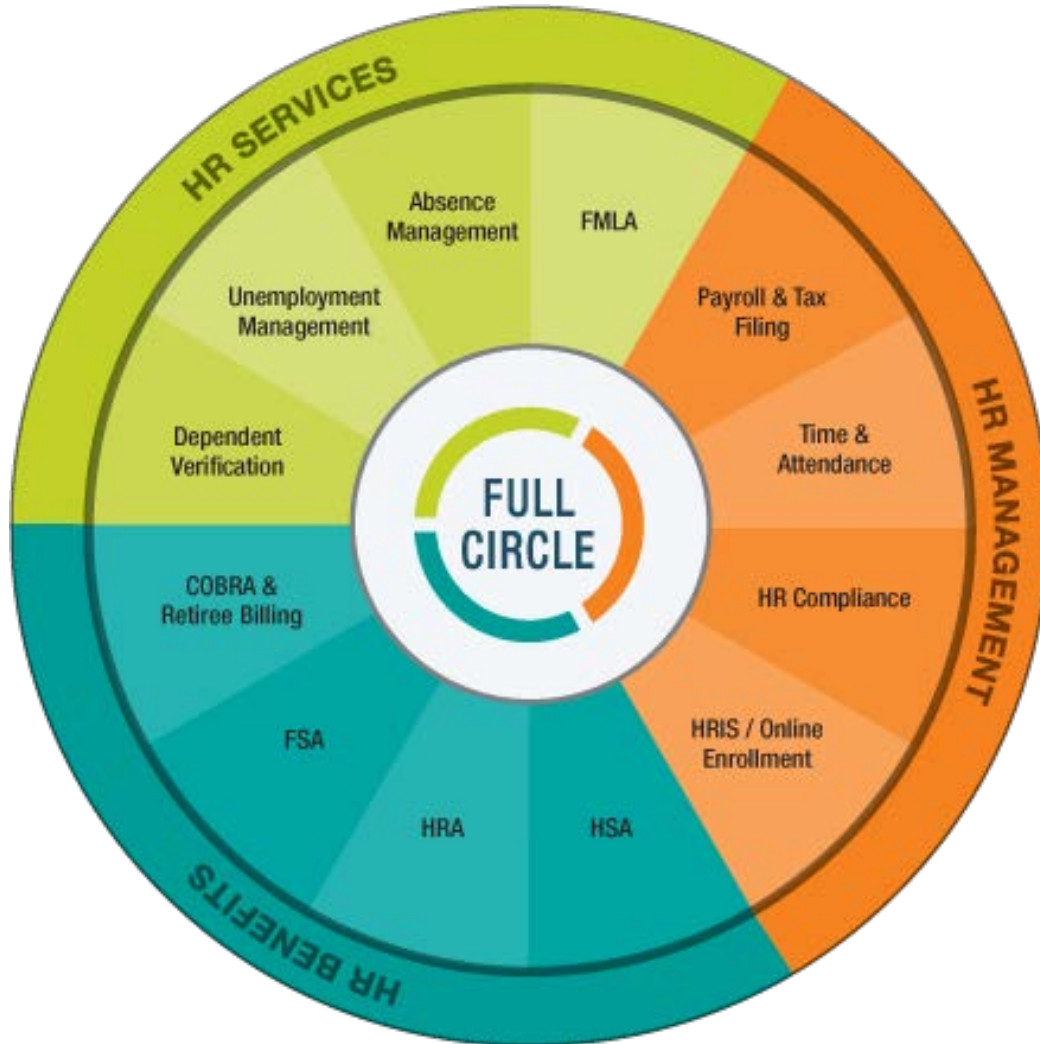
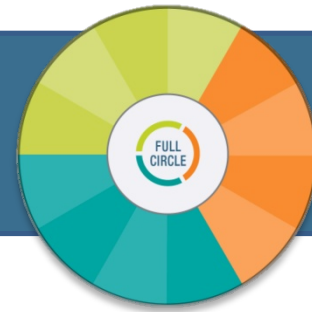
Presented by: Sarah K. Willey



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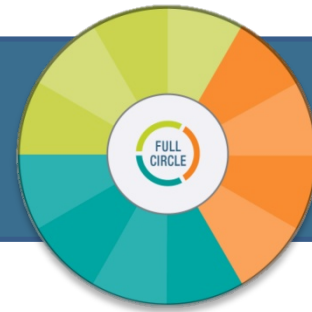
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EEOC – 2015 ADA Claims



ADA Claims filed:

- 2014: 25,369
- 2015: 26,968

Reasonable Cause

- 2014: 893 [3.7%]
- 2015: 1237 [4.5%]

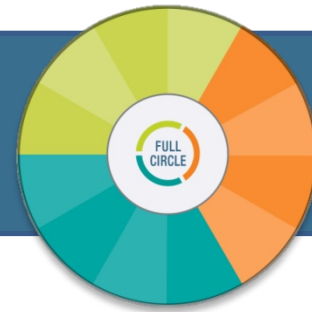
No Reasonable Cause

- 2014: 15,074 [61.7%]
- 2015: 16,526 [60.3%]

Monetary Settlements

- 2014: 95.6 million
- 2015: 128.7 million

EEOC – 2015 ADA Claims



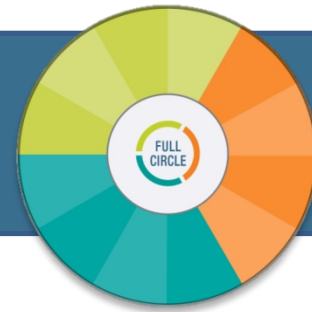
EEOC all lawsuits filed:

- 2014: 167
- 2015: 174

EEOC ADA lawsuits filed:

- 2014: 49
- 2015: 53

Americans With Disabilities Act Scope



Protection is provided to individuals:

- With a **physical or mental disability**, [have it]
- With a **history** of having such a disability, [had it] or
- Who are **regarded** as having such a disability. [you think I have it]

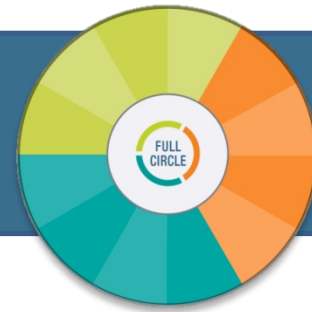
Employer Obligations under the ADA



Employers have an affirmative obligation to:

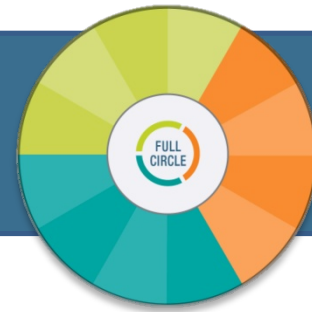
- provide **reasonable accommodations** to qualified individuals
- who have an **actual disability** or a disability record,
- if such accommodations are **necessary** for them to perform the essential functions of the job the employee performs

ADA Requirements



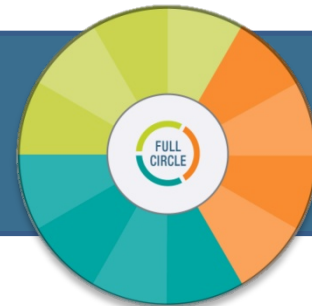
- Employers **cannot** discriminate against an individual because the employer regards the person as having a disability (or the person actually has a disability)
- Limited medical examinations and inquiries (job-related and consistent with business necessity)
- Required confidentiality for **all** medical information

The ADA Prohibits...



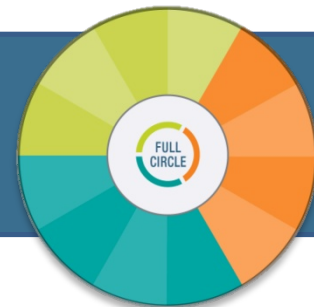
- An Employer is prohibited from creating a **hostile** work environment due to a disability
- An Employer is prohibited from **retaliating** against an employee for reporting or complaining about :
 - disability discrimination, or
 - for requesting a reasonable accommodation
- An Employer is prohibited from **coercing, intimidating and/or threatening** an employee for exercising a right under the ADA.

The ADA Protects...



- Employees who:
 - Have a disability [had it; think I have it] **and**
 - Are qualified to perform the position applied for or held
- Specific Exclusions include [remember, the ADA was passed in 1991]:
 - current use of illegal drugs
 - homosexuality
 - bisexuality
 - compulsive gambling
 - kleptomania
 - transsexualism
 - pedophilia
 - exhibitionism
 - voyeurism

The ADA Protects...

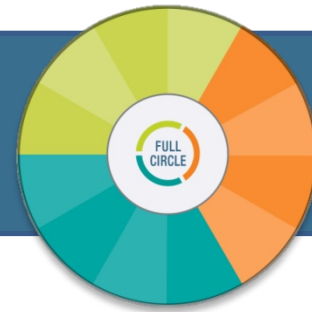


- Employees must have a “disability” which means:
 - Any physical or mental impairment that makes it more difficult than most people
 - to perform a major life activity
 - or that impacts a major bodily function
 - [Think of this as the “normal box”]
 - This **includes** impairments that are episodic or in remission
- Mental and physical impairments are treated the same under the ADA [mental impairments are more challenging to accommodate]
- The employer **must know** about the disability
 - NOTE: Employer includes:
 - Managers
 - Team leaders
 - Supervisors

The EEOC's Confusing Position on Pregnancy



- The EEOC has stated that pregnancy will **not** normally be considered a physical or mental impairment under the ADA.
- 2013-2016 EEOC Strategic Enforcement Plan – identified “dealing with and accommodating pregnancy related limitations under the Americans with Disabilities Act and the Pregnancy Discrimination Act” as important emerging issues
- 7/14/2014 – EEOC published new enforcement guidance on pregnancy discrimination and related issues



Pregnancy Discrimination Act (PDA)

- In 1978, the PDA amended Title VII to clarify that pregnancy discrimination was a type of unlawful sex discrimination

Pregnancy and Discrimination Legal Issues



- While pregnancy itself is **not** a protected disability under the ADA, pregnancy-related impairments may trigger ADA protection
 - Pregnancy can give rise to ADA disability discrimination issues and reasonable accommodation issues
 - The EEOC is watching this issue very closely

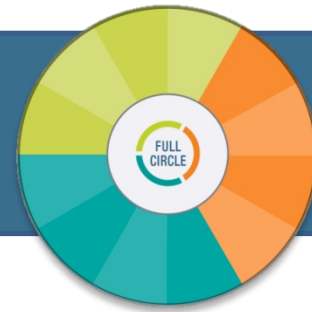
The ADA and Pregnant Workers



Pregnancy is not a disability, but some pregnancy related medical impairments may be ADA protected disabilities:

- Nausea causing severe dehydration
- Pregnancy related anemia
- Pregnancy related sciatica
- Gestational diabetes
- Abnormal heart rhythms
- Circulatory problems
- Preeclampsia





Pregnancy related medical impairments (cont.)

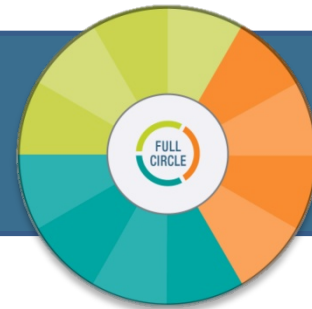
- If the impairment “substantially limits a major life activity,” then it may be protected.
- **Remember:** After ADAAA, focus should be on reasonable accommodation, not whether there is a disability
- If you have a protected impairment
 - ADA anti-discrimination provisions apply; **and**
 - You may be required to provide a reasonable accommodation to the employee

Reasonable Accommodations- Pregnancy



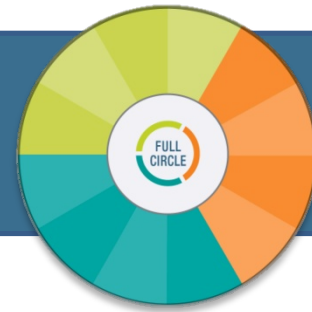
- Some potential reasonable accommodations which the EEOC suggests for pregnancy disabilities:
 - More frequent breaks
 - Water bottle at work station
 - Use of a stool
 - Job restructuring – redistributing non-essential job duties or altering how essential job functions are performed
 - Temporary restricted duty work
 - Modified work schedules
 - Other accommodations that would not result in an undue hardship for an employer

ADA & Leaves of Absence



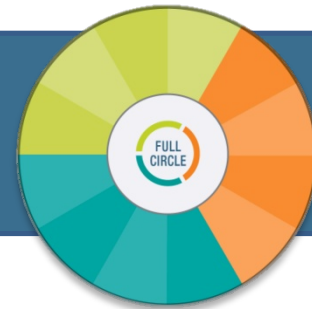
- EEOC Guidance on Leaves of Absence and ADA
- Issued May 10, 2016
- EEOC statement: “As with any other accommodation, the goal of providing leave as an accommodation is to afford employees with disabilities equal employment opportunities.”

ADA & Leaves of Absence



- EEOC published Leaves of Absence Guidance because:
 - “Some employers may be unaware of Commission positions about leave and the ADA.”
 - Employers may not know they **must**:
 - Modify policies that limit the amount of leave an employee may take when an employee needs additional leave as a reasonable accommodation
 - Not require that employees be 100% healed to RTW from a leave

ADA & Leaves of Absence



- Employers may not know they must (con't):
 - Consider reassignment to an open and available position on return from a leave of absence as an option when the employee is unable to return to his/her prior position even with a reasonable accommodation

ADA & Leaves of Absence



EEOC Leave Rule #1: Treat all employees the same

- Disabled employees must be provided the same access to leave policies as non-disabled similarly situated employees
- Two examples: [1] 4 days paid sick leave annually; no conditions required. Can't ask someone with depression to provide doctor's note when don't ask anyone else for a doctor's note; [2] annual leave can be used for any reason; can't require an employee taking a day off to get wheelchair repaired to use sick leave
- An employer can uniformly require all employees taking leave to produce a health care provider note

ADA & Leaves of Absence



EEOC Leave Rule #2: Leave must be considered as a last option reasonable accommodation

- The entire purpose for a reasonable accommodation is to help the employee perform the essential job functions
- A “leave” does not accomplish that task
- “Leave” is intended to allow the employee to RTW at some point to perform his/her essential functions with or w/o reasonable accommodation
- Employers must consider unpaid leaves:
 - Even if the employee has exhausted FMLA; STD; WC
 - Even if the employer does not have a leave policy
 - Even if the employee is not eligible under the employer leave policy

ADA & Leaves of Absence



EEOC Leave Rule #2 (Con't): Leave must be considered as a last option reasonable accommodation

- **[You must modify your leave policies.]**
- Examples provided:
 - Leave is not available until you have worked for the Employer for 6 months. [**Wrong:** Where an employee has a disability, the leave must be immediately available.]
 - No leaves are available for the first 6 months of employment. [**Wrong:** Where an employee has a disability, the leave must be immediately available.]
 - No leaves are available to part-time employees. [**Wrong:** Where an employee has a disability, the leave must be immediately available.]

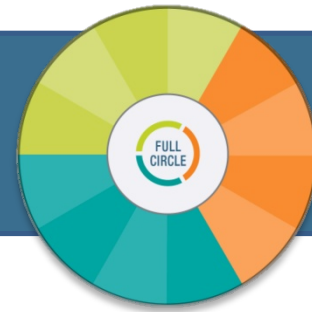
ADA & Leaves of Absence



EEOC Leave Rule #3: An employer must engage in the interactive discussion process with an employee who needs leave as a reasonable accommodation

- The employee has obligations to include:
 - Telling the Employer an accommodation is needed
 - Meeting and discussing relevant information about the leave
 - The Employer may need more information about the disability

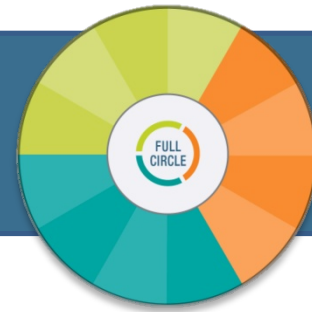
ADA & Leaves of Absence



EEOC Leave Rule #3 (Con't): An employer must engage in the interactive discussion process with an employee who needs leave as a reasonable accommodation

- The Interactive Discussion Primary focus must be on three issues:
 - the specific reason(s) the employee needs leave [surgery; medication adjustment; doctor visits; physical therapy]
 - whether the leave will be a block of time or intermittent
 - when the need for leave will end

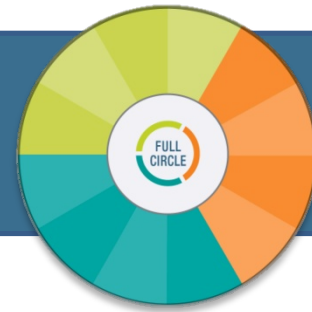
ADA & Leaves of Absence



EEOC Leave Rule #3 (Con't): An employer must engage in the interactive discussion process with an employee who needs leave as a reasonable accommodation

- During the Interactive Discussion, the Employer may:
 - Obtain information from the employee's health care provider
 - Ask the health care provider to respond to questions like
 - What is the need for the leave
 - Amount & type of leave required
 - Are accommodations other than leave possible
 - The employee "should respond to questions from the employer as part of the interactive process **...as quickly as possible.**"

ADA & Leaves of Absence



EEOC Leave Rule #3 (Con't): An employer must engage in the interactive process with an employee who needs leave as a reasonable accommodation

- The Interactive Discussion Process continues after a leave begins
 - If the employee's leave extends beyond the time off granted, then the Employer can request information about the likelihood of RTW if specific additional time off granted
 - If an Employer grants a leave with a fixed RTW date, the Employer cannot ask the employee to update the RTW date but may check on the employee's progress toward RTW

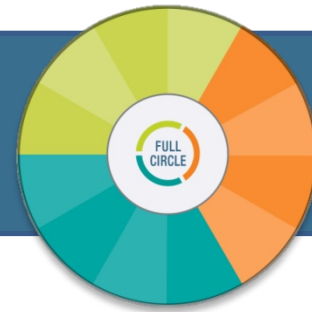
ADA & Leaves of Absence



EEOC Leave Rule #4: Throw your maximum time off leave policies out the window.

- Why?
 - The ADA requires that Employers make exceptions to policies [modify policies] as a reasonable accommodation. **So, you can have a maximum time off leave policy, you just can't apply it to ADA leaves of absence.**
 - The Employer may always try to raise the “undue hardship” defense.

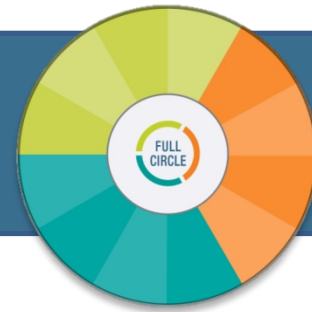
ADA & Leaves of Absence



EEOC Leave Rule #4 (Con't): Throw your maximum time off leave policies out the window.

- Why? (Con't)
 - **Example 12** confirms that ADA is the FMLA for employees ineligible for FMLA.
 - Ineligible for FMLA
 - Employer policy allows 4 unplanned / unscheduled leave days annually
 - Employee requests reasonable accommodation for intermittent absences exceeding 4 days in a year
 - Employer must engage in an interactive discussion dialogue with the employee to determine if:
 - Disability requires intermittent absences
 - The likely frequency of the unplanned absences
 - Is there an undue hardship

ADA & Leaves of Absence



EEOC Leave Rule #5: Be very careful how you communicate in writing to an employee on a medical leave under the ADA.

- Form letters are risky [Return to work by “x” date or be terminated – this does not allow for extensions.] EEOC suggestion: Modify the form letter to indicate if employee needs more leave time to request it asap.
- TPA’s: You better coordinate with the TPA because you own the TPA’s actions [STD; LTD; FMLA TPA’s]
- Communicate with the employee about expected RTW date and needs – Identify who will have that communication [develop a RTW specialist]

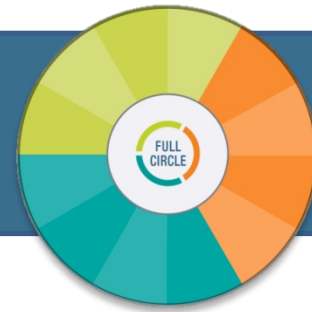
ADA & Leaves of Absence



EEOC Leave Rule #5 (Con't): Be very careful how you communicate in writing to an employee on a medical leave under the ADA.

- Where the employee needs time beyond the specified RTW date, the Employer may:
 - Obtain medical information specifying additional leave needed
 - Get response to why the original time off was insufficient
 - Determine if there will be any expected RTW restrictions

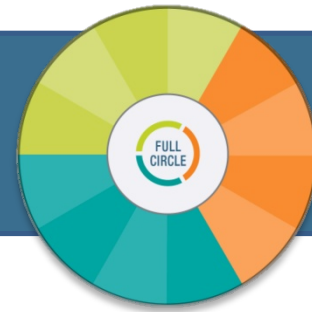
ADA & Leaves of Absence



EEOC Leave Rule #6: You must be responsive to RTW accommodation requests from employees on ADA leave.

- An employee may make this request
- An employee may provide restrictions to RTW from a health care provider
- 100% healed policies violate the ADA
- Employers have the right to engage the health care provider to ask:
 - How long will the restrictions last
 - Whether there are accommodations which will enable the employee to perform the essential functions with restrictions
 - The length of time the accommodation will be needed

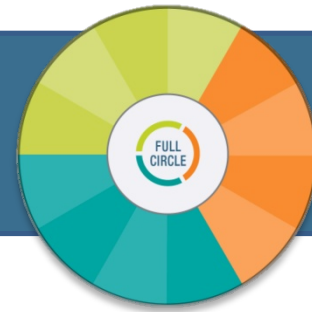
ADA & Leaves of Absence



EEOC Leave Rule #7: You must consider reassignment as part of the RTW reasonable accommodation process.

- When?
 - Where the employee is unable to perform the essential functions of his/her prior position even with a reasonable accommodation
 - Where the RTW in the prior position creates an undue hardship
- Disabled employee gets the open & available position
- No requirement to compete for the position
- Employee just needs to be marginally qualified [need not be the best applicant]
- Exception: Uniformly applied seniority system

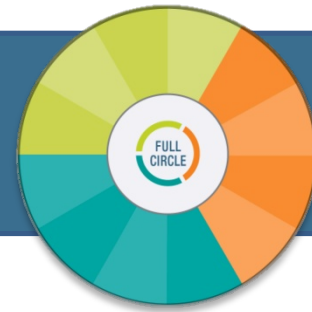
ADA & Leaves of Absence



EEOC Leave Rule #8: An indefinite leave really is an undue hardship.

- But what is an “indefinite leave?”
 - Sometimes health care providers cannot provide specific RTW dates
 - Sometimes only a date range is possible such as:
 - During the end of September
 - Around October 1
 - Between September 1 and 30
- These “approximations” are not an “indefinite leave” and do not create undue hardship
- Only the employee’s inability to state “whether or when she will be able to return to work at all” is an indefinite leave

ADA & Leaves of Absence



EEOC Leave Rule #8 (Con't): An indefinite leave really is an undue hardship.

- But what is an “indefinite leave?”
 - The EEOC provides no guidance on the number of extensions which might trigger an “indefinite leave”

ADA & Leaves of Absence



EEOC Leave Rule #9: You really are required to hold the employee's position open for him/her for RTW after the leave ends.

- Unless you are able to show undue hardship in holding the position open
- Then you must consider “reassignment” to an open and available position and hold that position for the employee until the leave ends
- You need to communicate any reassignment to the employee on leave

ADA Analytical Framework



1. Does the employee have an ADA “disability?”
2. What are the essential job functions?
3. Is there a reasonable accommodation which enables the employee to perform the essential job functions?
4. Is there an open and available position for which the employee is qualified which is available as a reasonable accommodation?
5. Would a leave of absence help the employee to RTW later to perform the essential functions?

Step 1: Is the Employee Disabled?

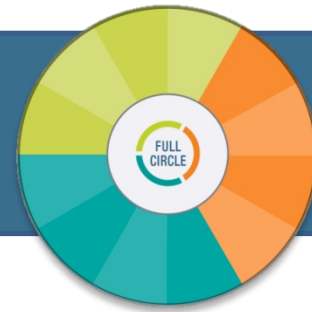


- **If the need for accommodation is not obvious, an employer can require medical documentation that substantiates:**
 - (1) that the employee has a disability
 - (2) the need for the requested accommodation.
 - The employer can also ask about alternative accommodations.
- The employer cannot ask for documentation that is unrelated to the request at issue.
- For example, requesting the employee's entire medical record would likely be overbroad.

Consider Opt-Out in Affordability



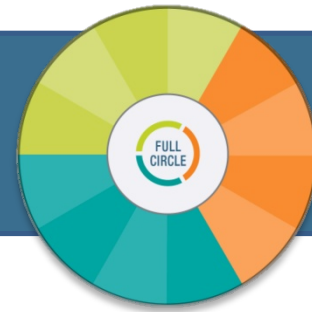
- As long as the opt out was in place as of December 16, 2015, it can be disregarded in measuring for affordability until a time period beginning after yet to be issued regulations are published
- If an employer conditions the opt out on the employee also providing proof of enrollment in other coverage such as through his or her spouse's employer, it is unclear whether this rule will apply



Strategy question:

- Should you use the employee's health care provider or use another health care provider?
 - Either are allowed under the ADA
 - Employer must pay the cost of the examination if its health care provider conducts the evaluation
- What information and documentation should Employer request from the health care provider?

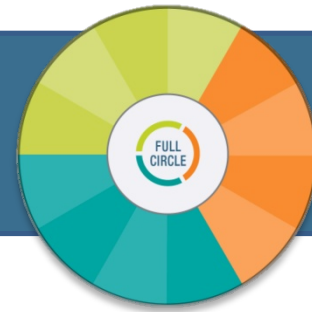
Medical Documentation Strategy



Strategy (con't):

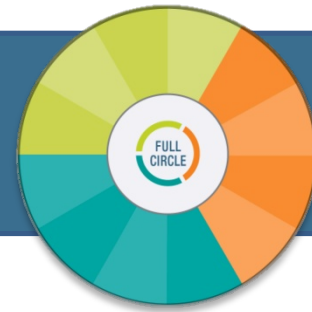
- [Consider sending the HCP the employee's position description so that questions can be in response to specific position duties]
 - Specific questions like:
 - What medical condition does the employee have?
 - Are there any current medical restrictions?
 - What is the prognosis for RTW?
 - Are the conditions permanent and/or what additional restrictions should we anticipate?
 - Why does the employee need this accommodation?
 - Is there any other potential accommodation available?

Refusal to Engage in Interactive Process



- Obtaining medical information is part of the interactive discussion process
- The interactive discussion is a two-way communication process
- Employees must participate in the interactive dialogue and the reasonable accommodation process, or the employer is not obligated to provide the requested accommodation.
- This includes submitting requested medical documentation.
- Remember, the EEOC has stated that employees “should respond to questions from the employer as part of the interactive process ...**as quickly as possible.**”
- **You are best protected to document the interactive discussion and provide the employee a step – by – step outline of what is required**

Step 2 - Essential Functions



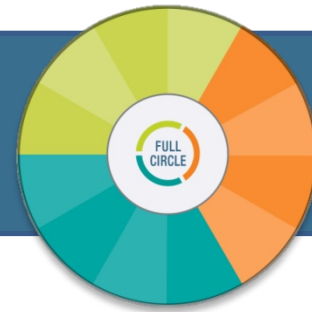
- In the ADA Analytical Framework Step 2, you need to examine the essential job functions
- **The employee must have the ability to perform the essential job functions:**
 - With
 - Or without reasonable accommodations.
- Essential functions are distinguished from marginal functions.
- Just because a job function is listed on a job description does not mean that it is an essential job function.

What Are the Essential Functions?



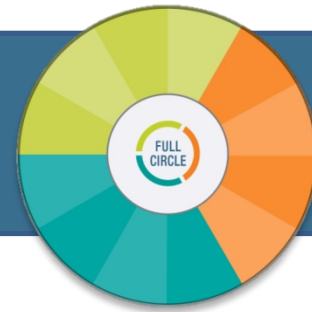
- The EEOC has said that a function may be essential because:
 - The position exists to perform the function
 - There are a limited number of employees available who could perform the function
 - The function is highly specialized

Essential Job Functions



- Other factors that courts consider include:
 - The employer's judgment
 - The job description
 - The amount of time spent performing the function
 - The consequences of not requiring someone in the job to perform the function
 - The experience of incumbents and prior employees **[Day in the life of an employee – create some evidence]**
 - The terms of a CBA

Essential Job Functions



Day in the life of the Employee:

- To determine what the employee thinks the essential job functions include
- Have the employee write down one typical day from time punches in until leaves the facility
- This can help frame the discussion with the employee regarding the position description essential job functions compared to what the employee actually does
- This can improve the interactive dialogue and better define any differences regarding what the essential job functions include

Essential Job Functions



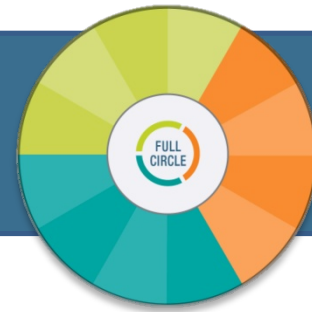
- Courts have found the following to be essential job functions:
 - Mental stability
 - Ability to handle stress
 - Ability to get along with others
 - Ability to work independently
 - Regular and predictable attendance (EEOC disagrees)
 - Ability to stay awake
 - Ability to work full-time and overtime
- *But the analysis is always job specific*

Essential Job Functions & Over-Accommodation



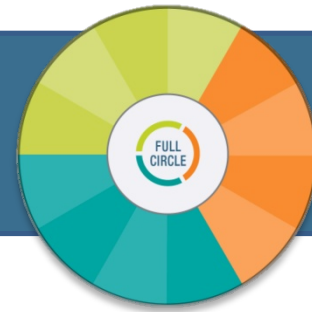
- There is a saying that “No good deed goes unpunished”
- Accommodating an employee for an extended period of time by eliminating a job function makes it difficult to prove the task is an essential job function
- *Feldman v. Olin Corp.*
 - Employee was allowed to work only days and was excused from overtime due to fibromyalgia
 - Two years later, the employer took the position that overtime was an essential job function
 - The court refused to dismiss the case, sending it to a jury
- Compare *Kallail v. Alliant Energy Corporate Services, Inc.*
 - Court upheld the requirement to work rotating shift as an essential job function. The difference? Consistency.

Essential Functions



- Without extensive and accurate position essential functions information, you really cannot conduct an ADA analysis
- You really do need to approach each disability accommodation discussion like it will end in litigation
- Did you take all reasonable steps to meet and discuss the position with the employee?

Physical Requirements – Essential Job Functions



- Physical requirements
 - lifting
 - bending
 - pushing
 - pulling
 - Etc - on a job description are often unreliable
- The best practice is to confirm by inspection
 - EEOC's anecdotal position: if an HR representative personally observes the physical requirements of a job position, it will defer to the employer on the issue.

Telecommuting – Essential Functions



- Performing work at the work site, rather than from home, can be an essential job function, but employers must include that in the job description and be prepared to prove it.
- *EEOC v. Ford Motor Company*: Ford refused to allow an employee with IBS to temporarily telecommute based on the argument that she could not effectively perform her job without on-site interaction with co-workers.

Telecommuting



The 6th Circuit said:

- “For many positions, regular attendance at the work place is undoubtedly essential.”
- It is not necessarily true “that the ‘workplace’ is the physical worksite provided by the employer,” and that “the workplace and an employer’s brick-and-mortar location [are] synonymous.”
- “[A]s technology has advanced in the intervening decades, and an ever-greater number of employers and employees utilize remote work arrangements, attendance at the workplace can no longer be assumed to mean attendance at the employer’s physical location. Instead, the law must respond to the advance of technology in the employment context, as it has in other areas of modern life, and recognize that the ‘workplace’ is anywhere that an employee can perform her job duties.”

Attendance – Essential Functions



- The EEOC has taken the position that “punctual attendance” is not an essential job function.
 - Depends on the position
 - Factory work cell
 - Lawyer
- Some courts have disagreed.
 - *Earl v. Mervyns* – being on time was an essential job function for a store coordinator because she was responsible for preparing her department for business that day, including stocking merchandise and arranging displays.
- **Practical Suggestion**: when disability is a factor, focus on **performing** the job duties on a regular and predictable basis rather than attendance.

Attendance



- Inform all employees about the attendance standards
- If an employee fails to meet those standards, issue counseling/discipline in accordance with the policy
 - **Interactive Dialogue:** Ask the employee whether there is anything you can do to help the employee meet attendance expectations
 - Be cognizant about requests for accommodation (e.g., modified work schedule or leave of absence)
- Also analyze whether the work is getting done

Step 3: Reasonable Accommodations



- **Employers must reasonably accommodate except if it creates an undue hardship**
- First Step in a 3 Step process: Can the employee perform his/her essential functions with or without reasonable accommodation?
- The 3 Step Process:
 - Accommodate to perform current position
 - Reassignment to open & available position
 - Leave of absence to heal



Stating the 3 Step reasonable accommodation process in another way: [In order of priority]:

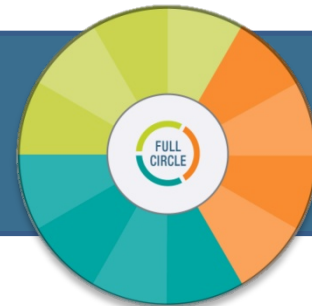
- Accommodation to perform current position
 - Job restructuring
 - Modified work schedules
 - Acquiring or modifying equipment
- Reassignment to a vacant position
- Leaves of absence

Reasonable Accommodations –Creating Work



- The ADA does not require employers to provide:
 - “light duty” / “restricted duty” work
 - if the work eliminates essential job functions
- So fight the urge to “create work”
- Employers sometimes choose to create work for:
 - Workers’ compensation
 - STD management
 - Don’t forget pregnancy accommodation

Restricted/Light Duty Work



- If offering restricted duty work to a disabled employee:
 - send a letter confirming that the assignment is for a defined duration
 - **and** confirm that the employer is exceeding its obligations under the ADA
- If you don't:
 - No good deed goes unpunished
 - You may have created a new reasonable accommodation option

Reasonable Accommodation



- The obligation to provide a reasonable accommodation to a disabled employee is triggered when the employee **requests** it.
- A request must be specific enough so that **two** issues are clear to the employer:
 - **First** - The employee has a disability that is causing a work-related limitation, and
 - **Second** - The employee believes that an accommodation is needed in order to do the job.

Reasonable Accommodation



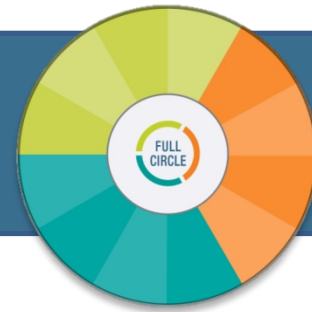
- Upon receiving a reasonable accommodation request, the employer must engage in the **interactive process**.
- The bottom line – the employer should make every reasonable attempt to help the employee be successful.
- This is usually not a quick or easy process.

Reasonable Accommodation



- Accommodation must be provided up to the point of undue hardship
- **Undue hardship** means that an accommodation would be:
 - Unduly costly
 - Substantial
 - Disruptive
 - Would fundamentally alter the nature or operation of the business
- Employers are not required to allow an employee to work if there is a direct threat to the employee or others

Reasonable Accommodation



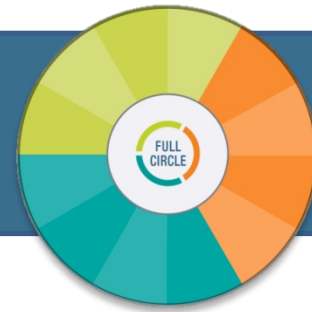
- Direct threat of harm to self or others
- Heart surgeon with ADD; Depression
 - Reading heart scans
 - Making findings regarding heart conditions
 - Performing long and intense surgeries
 - Is the employer obligated to provide a mentor co-surgeon for the first 15 surgeries as an accommodation?
- As part of a return to work process?
- Is there any obligation to tell the patient about the HCP?

Example - Gail



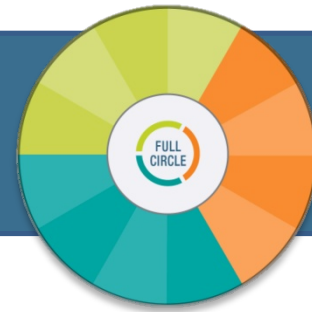
- Gail is an overweight production worker
- Gail twisted her left knee getting out of her vehicle in the Company parking lot one morning reporting to work
- Left knee twist occurred on August 6, 2015
- No time off until November 16, 2015 for left knee surgery
- Unable to RTW after left knee surgery because right knee hurts
- Right knee surgery on 2/24/16
- RTW date set for 5/24/16

Example - Gail



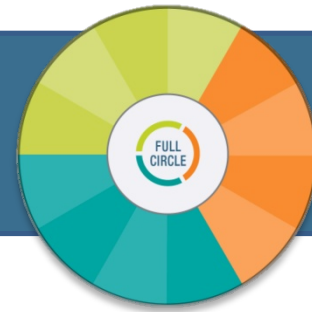
- Gail does not RTW on May 24, 2016
- Letter to Gail at the end of March 2016 requiring Gail to provide medical documentation immediately after her May 24, 2016 HCP appointment confirming medical status
- No contact from Gail as requested
- About to send a voluntary quit letter when Gail's attorney sends a WC notice of injury on June 6, 2016
- What are the employer's options at this point?

Example - Gail



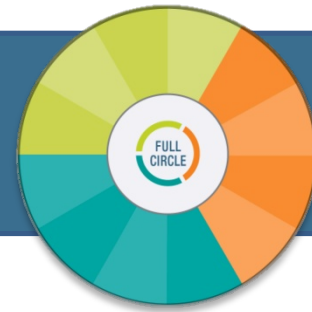
- Apply the ADA Analytical Framework
 - Step 1: Is this an ADA disability?
 - Typically a knee surgery for normal wear & tear is not a disability
 - Here, the first knee surgery leads to another
 - Total time off is 11/16/15 through 5/24/16 plus
 - Maybe the inability to walk for 6 months is a disability
 - Dr. note indicates: “Unable to work due to pain; taking pain meds and going to therapy.” Re-evaluation at next appointment on 5/24/16.

Example - Gail



- Apply the ADA Analytical Framework
 - Step 2: What are the essential job functions?
 - Production worker
 - Lift parts weighing less than 5 pounds
 - No sitting permitted
 - Handle parts for visual inspection

Example - Gail



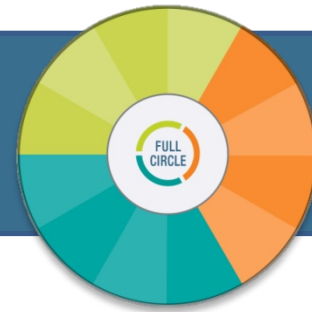
- Apply the ADA Analytical Framework
 - Step 3: Reasonable Accommodation
 - If medical restriction was ability to sit as needed, would employer be obligated to modify its no sitting rule as an accommodation?
 - If the Dr. really indicated that employee was prohibited from work until 5/24/16, is the employer obligated to provide a leave of absence as a reasonable accommodation?
 - Did Gail's leave become indefinite?
 - Is the company able to terminate Gail for failure to respond to the reasonable request for medical information?
 - How does the Company have an interactive discussion with an employee who refuses to communicate in any manner?

Example – Shellie



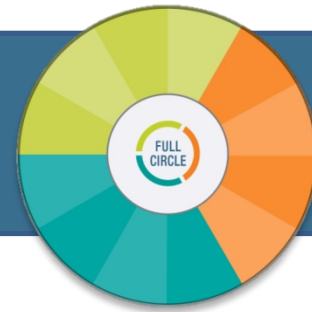
- Shellie has a diagnosed mental impairment. Shellie is paranoid, manic and needs to take frequent breaks to keep her focus.
- Shellie has had very poor performance in her normal production position which is in a work cell where she must engage with 5 other employees.
- Shellie calls the reporting hotline every day to report that her co-workers are harassing her; her supervisor is picking on her; and co-workers are following her to work and home from work

Example – Shellie



- The company investigates every hotline complaint Shellie makes
- It is clear after investigation that there is no factual basis for any of Shellie's allegations
- It is also clear that Shellie genuinely believes that the allegations are accurate
- In order to help Shellie focus and work, the Company moves her to an area where she can work alone pulling parts that are used in kits sold to customers to repair product

Example – Shellie



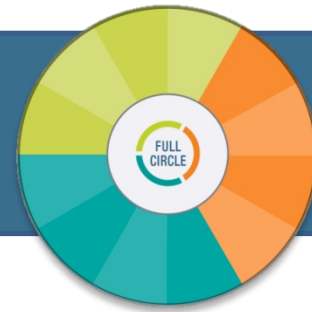
- This works for a while but then Shellie starts making hotline complaints again with the same allegations
- What should the company do?

Example – Shellie



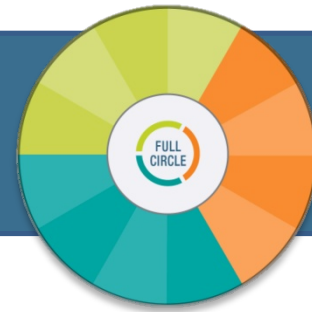
- Apply the ADA Analytical Framework
 - Step 1: Does Shellie have an ADA disability?
 - Oh yeah
 - Would it be helpful to further understand the extent of the mental health condition in an attempt to see if there is a reasonable accommodation that might reduce cycles?
 - How does the company have an interactive discussion with an employee who has a significant mental health impairment which includes paranoia?
 - Is the company able to discuss the issue with any outside third party [spouse; significant other; friend; medical professional?]

Example – Shellie



- Apply the ADA Analytical Framework
 - Step 2: What are the essential job functions for Shellie?
 - Company moved Shellie from her 5 employee team to a new position where she worked alone
 - Did the company make work?
 - Is the company obligated to leave Shellie in that position?
 - Will Shellie ever be able to work with 5 other employees if she is paranoid?
 - Will the other employees have claims against the company if Shellie continues to file complaints against the co-workers where there is no basis in fact?

Example – Shellie



- Apply the ADA Analytical Framework
 - Step 3: What is a reasonable accommodation here?
 - Can the company force Shellie to take a leave of absence for a condition she does not believe she has?
 - How would the company ever get Shellie to RTW and be productive given her un-medicated paranoia?
 - Can the company require Shellie to take medication?



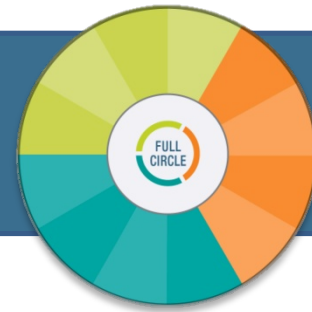
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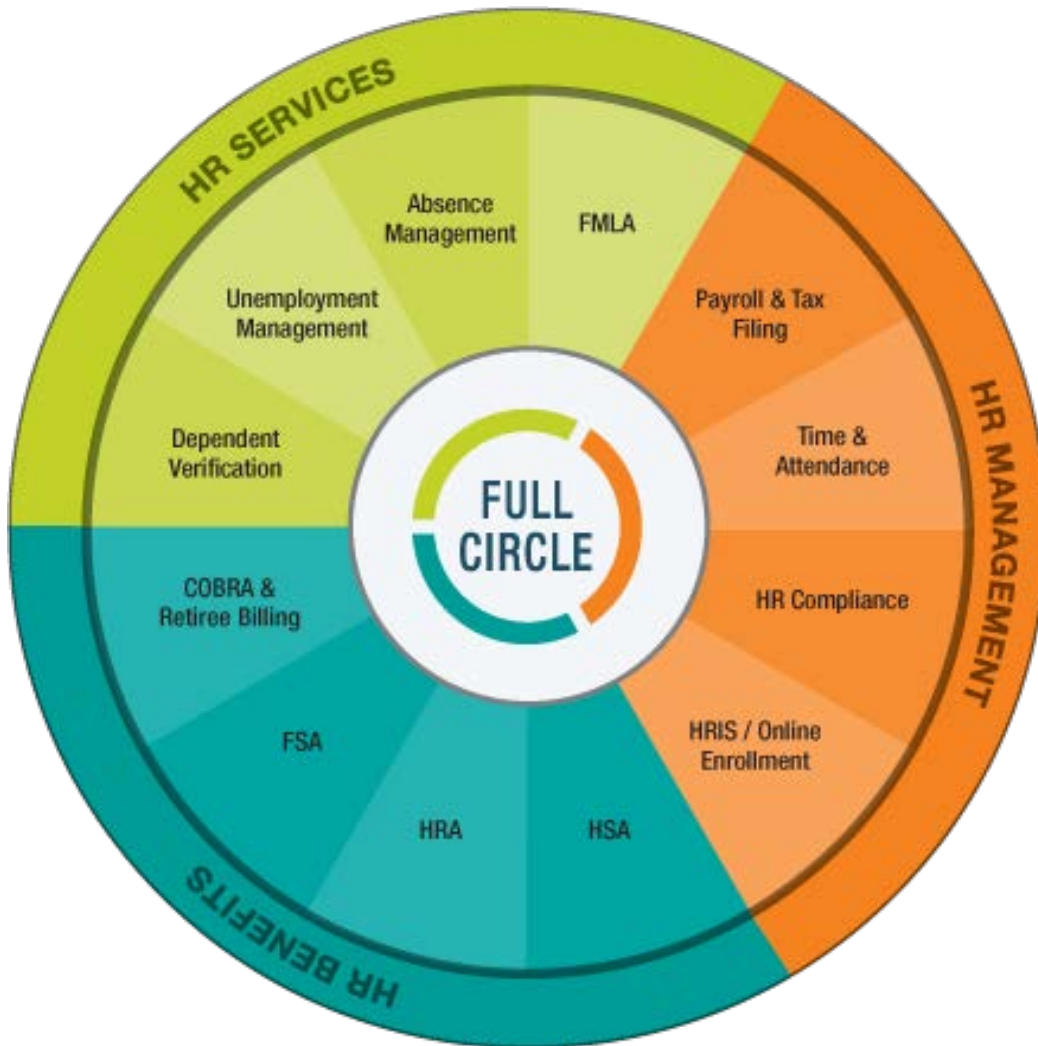
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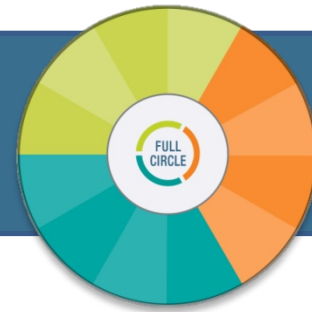


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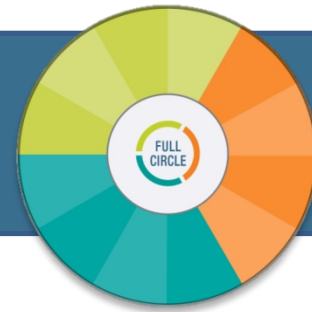
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