

# NHRMA

September 30, 2010

# Ill & Injured Workers

*Managing the Maze*

# Leave Laws

- Apply regardless of whether the injury or illness is work-related.
- Provide a guaranteed period of time off work for an employee and job reinstatement.
- Comply with the provision most advantageous to the employee.

# General Leave Tips

- Employers should maintain all employee leave records for three years.
- Never forget that your employee handbook or other policies may give more leave than the law requires.
- If leave is covered under state law but not under the FMLA then do not count the state-law-covered leave against the FMLA leave total.
- If employees are covered by multiple laws, (OFLA, FMLA, Workers Compensation) run all leaves concurrently except OFLA cannot run concurrently with workers' compensation leave.

# What Laws Am I Covered By?

- **All Employers**

- Family Medical Leave Act (FMLA): 50 or more employees during 20 or more weeks in the current or preceding calendar year.
- Americans with Disabilities Act (ADA): 15 or more employees.
- State workers' compensation laws.

- **Oregon Employers**

- Oregon Family Leave Act (OFLA): 25 or more full or part-time employees as of the first day of the leave.
- Oregon "Little ADA": six or more employees.

# Which Employees Are Eligible?

- **FMLA:** Worked for employer at least 12 months with a total of 1,250 hours in the previous 12 months. Exception: if there are fewer than 50 employees within a radius of 75 miles – no eligibility.
- **ADA/Federal and State (Oregon “Little ADA”):** All employees.
- **Oregon:** OFLA – for medically related leave, have to have worked for employer for at least 180 days for 25 or more hours per week. For “new child leave,” the employee must have worked at least 180 days, but the 25 hours or more per week requirement does not apply.

# What Reasons for Leave Are Covered By Which Law?

- Employee's own serious health condition
- Care for a "family member" with a "serious health condition"
- Care for a non-seriously sick child
- Care for a new child
- Pregnancy-related disability
- On-the-job injury
- Non-Serious Employee Injury/Illness/Disability
- ADA may apply if qualified disability

# How Much Notice Must the Employee Give?

- FMLA: 30 days advance notice or as soon as possible.
- ADA: No specific requirement.
- OFLA: 15 days advance written notice whenever possible or within three days of the leave's commencement if no advance notice was possible.

# What Kind of Medical Certification Can I Ask For?

# What Kind of Benefits Do Employees On Leave Get?

# Are Employees on Leave Entitled to Job Reinstatement?

# What Kind of Posting Requirements Are There?

# Disability Law Basics

- Hiring Disabled Workers
  - Applicants
  - Post-Offer/Pre-Employment
  - Employment

# Reasonable Accommodations

- Basics of Reasonable Accommodation
- Who Is Entitled to a Reasonable Accommodation?
- Who is a “Qualified Individual With a Disability”?
- How is the Duty to Accommodate Triggered?
- Employee Has the Duty To Ask For Accommodation
- Employee May Ask for Accommodation In Many Ways

# What Do I Do Once I Receive a Request For An Accommodation?

- Begin the Interactive Process
  - Analyze the job.
  - Identify the barriers.
  - Identify a range of possible accommodations.
  - Assess the effectiveness of each accommodation.
  - Ask the preference of the individual to be accommodated.
  - Determine whether the accommodation will pose an undue hardship upon the employer.
- Always Act In Good Faith
- Document Everything

# What Are Some Accommodations I Should Consider?

- Job Restructuring
- Modification Of Attendance Policy
- Unpaid Leave
- Creation Of A Temporary New Position
- Providing Employee With An Assistant
- Permitting An Employee To Work At Home
- Modification of Work Schedule

# Can I Reassign As a Reasonable Accommodation?

- Reassignment is an accommodation of last resort
- The employee must be qualified for the proposed position
- Only vacant positions need be considered
- No bumping is required

# Can I Reassign As a Reasonable Accommodation? (cont.)

- Seniority provisions/collective bargaining agreements generally have priority
- Look for jobs of equivalent pay first
- Promotions are not required
- The employee has the right to the job, not just to compete for it

# What Accommodations Can I Refuse?

- Odor or irritant free workplace
- Stress-free environment
- Creation of permanent new position
- New supervisor
- Medical marijuana

# What Is “Undue Hardship?”

- How “Undue Hardship” Is Determined
- Effect of Collective Bargaining Agreements on Undue Hardship

# If I Let This Employee Keep Working, They'll Hurt Someone!

- Employees may be taken off a job if they are a “direct threat” to others
- Employees may be taken off a job if there is a “direct threat” to them
- Direct threat defined
- Factors in assessing direct threat
- Consider whether a reasonable accommodation might remove the threat

# Do I Have to Put Up With Misconduct?

- Criminal conduct is “never” protected
- Other conduct may be protected

# What About Alcohol Users?

- Alcoholism is protected
- Do not bend the rules for an alcoholic
- Alcoholism may mean that they are not qualified for the job
- Alcoholics are not allowed to be intoxicated while on duty
- Intoxication while off duty may be cause for firing

# What About Drug Users?

- Current illegal drug users are not entitled to protection
- Rehabilitated drug users that need help are protected
- How Current Is “Current”?

# WELLNESS INITIATIVES



# Benefits of Having a Wellness Program

- Wellness programs lower healthcare costs in the long run
- Wellness programs reduce employee sick days
- Wellness programs increase productivity
- Wellness programs boost employee morale
- The Department of Health and Human Services encourages prevention programs through regulation and funding

# Common Wellness Programs and Components

1. Health Education
2. Supportive Social and Physical Environment
3. Integration of the Worksite Program
4. Linkage to Related Programs
5. Worksite Screening Programs
6. Follow-up Intervention & Ongoing Monitoring
7. Evaluation & Improvement Process

# Low Cost Options

- Affordable wellness communication
  - In-house/subscribing to wellness newsletters; adding a wellness column to existing newsletters
  - Wellness messages at the end of employee meetings
  - Free health info pamphlets
  - Low-cost software on health risk appraisals, nutrition and fitness monitoring
  - Health-lending library
  - Health posters on employee bulletin boards

# Affordable options for employee testing and health risk appraisal

- Employer-paid fitness assessments on-site
- Employee health fairs using community health agencies
- Voluntary fitness challenges with donated sports equipment and door prize drawings
- Promotion of community-based health and fitness programs (*e.g.*, marathons, walks)
- Wellness picnics

# Affordable group wellness activities

- Workshops sponsored by community agency or health plan (*e.g.*, smoking cessation and weight management)
- Brown bag sessions with local health professionals
- Employer-paid wellness workshops
- Promote an employer-sponsored recreation or sports team
- Sponsor an employee walking event or club
- Lunch hour video presentations on health and fitness
- Employer-paid aerobics/yoga
- Encourage employee participation in support groups (*e.g.*, smoking cessation support groups)

# Low cost environmental changes

- Healthier options at the vending machines
- Ask employees to donate unused home exercise equipment for the employee break room
- Post nutritional info in the corporate cafeteria
- Provide fresh fruit for meeting breaks
- Require employees use seatbelts in company vehicles
- Distribute a list of suggested break time walks (and their mileage/calories burned) to employees
- Make corporate shower facilities available for employees who exercise
- Negotiate corporate discounts for fitness and health club membership

# Thank You!