

LEAVES AND RETURNS – WORKING THROUGH THE MAZE

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Legal Leave Requirements

State and Federal Law, as well as employer policies, establish required leave provisions for employers and employees



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Legal Leave Requirements

Iowa Law examples:

- Ch. 216 – if you have 4 or more employees, the Iowa Civil Rights Act identifies unfair employment practices
- 216.6(2)- pregnancy treated like other disabilities – (e) up to 8 weeks leave
- Leave may be a required accommodation for disabilities



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Legal Leave Requirements

Iowa Law examples:

- Ch. 85 – Worker’s compensation – for physical and mental injuries
- Is there a statute covering you as a public employer?



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Legal Leave Requirements

Federal Law examples:

- FMLA – 50 or more employees – up to 12 weeks – same job upon return from leave – intermittent leave may be required
- ADAAA - Leave may be a required accommodation for disabilities
- Pregnancy Discrimination Act – Title VII – treated the same as other temporary disability



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Legal Leave Requirements

Employer Policies, Handbooks:

- PTO – or separate sick leave, pregnancy leave, personal leave policies

Collective Bargaining Agreements

- What is in your union/employee organization contract?



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I. Defining Job Qualifications

- What tasks?
- What skills (physical and intellectual)?
- What temperament/ability to work with others/handle stress?
- Where will task be performed?
- What equipment used?
- What hours/times of day?



I. Defining Job Qualifications

Tips for Job Descriptions

1. Date the Description: The job description should be kept up to date. Check the descriptions when hiring someone new for the job, at performance appraisal time, or when adding new technology to determine whether the descriptions need updating.



2. Job Status: Salaried or hourly? Full-time, part-time, or occasional? Who does the employee report to?
3. Position Title: Make sure your position titles are reasonable and accurately reflect the actual title of the job.



4. **Job Summary:** This section should contain a brief summary of the job. A summary shouldn't be more than a few sentences long and should explain the main purposes and functions of the job.

5. **Detailed Duties and Responsibilities:** This is a more detailed description of the duties involved and separates the essential functions of the job from the incidental job functions for purposes of the ADA.



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6. **Skills Required To Perform The Job:** This can include factors such as education, experience, abilities and temperament.

7. **Importance Of Job Duties And Tasks:** While it can be imperative for ADA defense that you know what an employee spends most of his/her time doing, it can also trap you into a morass if the job description is inaccurate or out of date. Know what the employee actually does and build in some wiggle room by stating "job duties may be altered based upon the needs of this company".



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8. **Job Environment:** Is the work done off-premises? Are there hazards, noises, physical proximity to other employees, and opportunities to communicate with other employees?

9. **Catch All:** Never forget "and any other tasks as assigned".



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After an Employee Returns

Does the employee need an accommodation?

How do you know?

- What have you observed?
- What has employee said?
- Is there a direct request? (Hint: not always!)
- Is there a doctor's note? Is it current?



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What is "reasonable"?

1. Allowing the employee to use accrued paid leave or additional unpaid leave for recovery or treatment of a disability;
2. Adjusting an employee's regular work hours or schedule, including intermittent leave;
3. Physical changes in the workplace, such as soundproofing or visual barriers;



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What is "reasonable"?

4. Modification of workplace policies;
5. Adjusting supervisory methods, such as the level of supervision or structure;
6. Providing a job coach or allowing a job coach to accompany the employee to work, or
7. Employee reassignment.



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Are there problems after return?

In assessing what to do, consider:

- 1. Objectivity – be calm and play fair with the employee when you assess the situation.
- 2. Job description – analyze performance with the description. Make sure that the employee continues to do the unaltered job unless you make specific accommodations.



Are there problems after return?

- 3. Direct Notice and Documentation – use consistent application of evaluation and disciplinary policies. Tell the employee the specifics of any complaint or deficiency.
- 4. Concrete examples – be specific and get specifics if someone complains.



Are there problems after return?

- 5. Consistency – in documentation and treatment.
- 6. Witnesses – names, times, dates, behaviors, other witnesses, etc. Write these down and verify the information with the witnesses.



Are there problems after return?

- 7. Zero Tolerance Policies – is there a poor attitude? Insulting or aggressive behavior? Do you have a policy against physical contact, threats or violence?
- 8. Initiate Accommodation – do not wait for the employee to realize what to ask if you see a problem.



Are there problems after return?

- 9. EAP – use it if you have it!
- 10. Take it seriously – if the employee complains about treatment or others complain about the employee.



Thank you

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