

# Disability Leave Interaction/ Mitigating Employer Liability



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Don't be & Let it Go\*

\*with respect and admiration to Disney

# State/Federal Disability Laws



## FMLA/CFRA

- (leave laws)

## PDL

- (female employees only)

## ADAAA/FEHA

- (accommodation)

# FMLA – Federal

## CFRA – State



- ◆ Purpose of Leave
  - Care for self
  - Family Member
- ◆ Criteria for coverage
  - Employment (12 months/prior years/temp or reg count)
  - Hours worked (1250 prior 12 months/consecutive)
- ◆ Leave benefit
  - 12 weeks, 480 hours
  - Unpaid  
(Employer requirements may differ)
- ◆ Employee protection
  - Same/comparable position
  - No disciplinary action
- ◆ Health care coverage

### Quiz #1

Name one change in the law that now aligns CFRA/FMLA?



# California Pregnancy Disability Leave (PDL)

- ◆ No employment criteria
  - Employment protection
  - Health Coverage
- Combined with FMLA/CFRA
  - may be off 7 continuous months
  - must be *disabled* by pregnancy
    - 17  $\frac{3}{4}$  weeks PDL +
    - 12 weeks CFRA
- Can now request Certification
  - (like FMLA/CFRA)



# Quiz



◆ How long do I provide health coverage?

◆ What medical conditions may qualify as PDL?



# CASE STUDY



- ◆ Applies for FMLA/CFRA on 7/1/14:
  - Starts leave on 9/1/14
  - Off work through 10/31/14
  - Off again 12/1/14 (same condition)
  - Extends leave to 2/1/15
  - Extends leave to 3/1/15
  - Extends leave to 9/1/15
- ◆ Address:
  - health coverage
  - protected leave
  - Employment status
- ◆ Parties involved and why?



# ...what's new?

- ◆ FMLA (implied?)
- ◆ Sick Leave (CA)
- ◆ PERB Decision  
No. 2409-C





# FEHA – State\*

- ◆ Physical/Mental Condition
  - Limits a life function
- ◆ Record of disability
- ◆ Regarded as disabled
- ◆ Mitigating measures
- ◆ “Appears” to be permanent

# ADAAA – Federal

- ◆ Physical/Mental Impairment
  - Substantially limits a major life function
- ◆ Record of disability
- ◆ Regarded as disabled
- ◆ Mitigating measures
- ◆ Permanent condition

\* CCR 7293.6, Definitions: disability perceived/actual



# Transitional or Permanent Work

## ◆ Stay at work/ Transitional

- 90 days max
- Same dept/job
- Employer-wide

## ◆ Permanent

- Same dept/job
- Same dept/different job
- Employer-wide

## ◆ Legal Interaction

- FEHA – Interactive Process
- ADAAA – Federal Law
- FMLA – Leave entitlement



# Your Fortress



# Interactive Process

## Operations & Employee

- Review Restrictions
- Essential Functions

**THEN**

- Implement Accommodation
- Monitor and Adjust
- If no RTW - RTP Productivity
- Retirement?
- Other options?



# Buddies/Partners

- Return to Work
- Workers' Compensation Claims
- Non-industrial Claims
- STD/LTD
- Payroll
- Labor/Employee Relations
- Civil Service
- Other





# You The Change Agent (in disguise)



**IDAM**

# Q & A

