



Coffee Break Series Starting Soon:

ADA ISSUES IN THE TIME OF COVID-19

TODAY'S PANELISTS

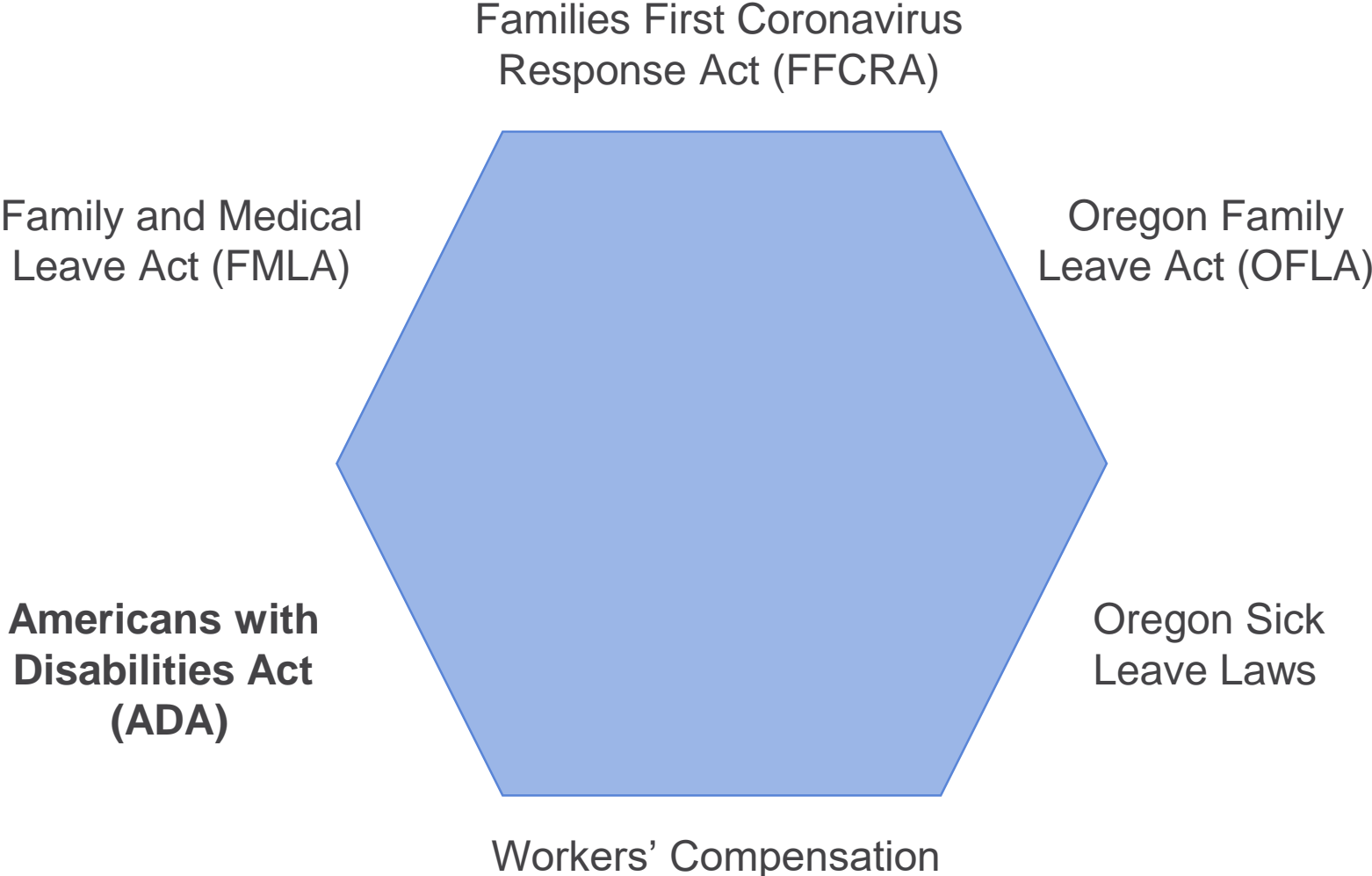


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MANAGING COVID-19 LEAVE ISSUES



FIRST, SOME REVIEW

- FFCRA
- FMLA
- OFLA
- Oregon sick leave

FFCRA: TWO NEW TYPES OF PAID LEAVE

- **Emergency Paid Sick Leave (EPSL)**: Up to two weeks of paid sick leave for isolation, illness, care of others, or childcare responsibilities due to COVID-19
- **Expanded Family Medical Leave (EFML)**: Up to 12 weeks of leave to care for child who cannot go to school or daycare because of COVID-19
- Effective April 1, 2020 – December 31, 2020

FEDERAL FMLA PROTECTIONS

Family and Medical Leave Act

- Up to 12 weeks of unpaid leave
- Employee has worked for the employer for at least 12 months, with at least 1,250 hours of service
- Serious health condition for self or family; birth or adoption; some military-related reasons

OREGON'S PROTECTIONS

- **Oregon Family Leave Act (OFLA)**

- Employed 180 days, worked average of 25 hours a week during the 180 days before leave begins
- Reasons: similar to FMLA
- BOLI's Temporary Rule: employees may use OFLA to care for children during official school closures

- **Oregon Sick Leave Act**

- Sick leave applies to school and child care closures, and employees feeling uncomfortable going to work

ADA – THE BASICS

Americans With Disabilities Act

- Prohibits discrimination against individuals with disabilities
- Employers must provide reasonable accommodation to qualified individuals with a disability, unless undue hardship
 - Qualified: can perform the essential functions of the job, with or without accommodation
 - Disability: “a physical or mental impairment that substantially limits one or more major life activities”
 - Undue hardship: significant difficulty or expense

REASONABLE ACCOMMODATION

- Adjustments to the work environment, process, or manner of performing a job, such as:
 - Making facilities accessible
 - Modified work schedules
 - Modified work equipment
 - Extra breaks or time to complete tasks
- Must be able to perform essential functions of the job
- Reasonable is not the same as “employee’s choice”

REASONABLE ACCOMMODATION

Examples:

- Employee has a spinal issue, and needs a standing desk at work
- Employee has cancer, and needs time off work for treatment
- Employee is ordered on bedrest during pregnancy, and needs to work from home
- Employee has PTSD, and needs to take additional short breaks during the workday

INTERACTIVE PROCESS

- Interactive discussion with employee
- Can require substantiation (doctor's note) for non-obvious conditions
- Medical tests ok if “job related and consistent with business necessity”

INTERACTIVE PROCESS

Caution: perceived as disabled

- Example: employee is obese with presumed high blood pressure. Makes no request for accommodation. Employer perceives that some job tasks are unsafe or too taxing on employee, and won't allow them to perform those tasks
- Separate cause of action for perceiving them as disabled, and changing the terms/conditions of the job as a result

ADA AND COVID-19

What it is **not** . . .

- School closures
- Caretaking obligations
- Government stay home orders
- Teleworking
- Social distancing

Maybe: COVID-19 itself

ADA AND COVID-19

- Disability-related inquiries or medical exams:
 - Prior to job offer: prohibited
 - After conditional offer: ok, if applies to *all* in job category
 - During employment: ok, if job-related and consistent with business necessity
- Keeping the workplace safe
 - Inquiring as to wellness vs COVID-19 symptoms
 - Taking temperatures
 - Medical tests
 - Vaccines

ADA AND COVID-19

Other ADA-related issues

- Mental health issues
- Leaves of absence
- Work from home
- Fear of coming to work

QUESTIONS?



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