



# ADA Untangled: Your Guide to Confident Compliance

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# Presenters



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Larkin is recognized by SHRM to offer Professional Development Credits (PDCs) for SHRM-CP or SHRM-SCP recertification activities. This program has been approved for 1.0 recertification credit by the HR Certification Institute.

# Discussion Points

- ✓ What are differences between FMLA & ADA?
- ✓ Who qualifies for reasonable accommodation under ADA?
- ✓ What is a major life activity?
- ✓ What are differences between ADA & FEHA?
- ✓ What medical conditions qualify and do not qualify for reasonable accommodation?
- ✓ Is leave of absence reasonable?
- ✓ What are reasonable alternatives?
- ✓ What to do when there are no reasonable accommodations to approve or the approved accommodations are no longer reasonable?
- ✓ Best practices
- ✓ Examples

COMPLIANCE

## Poll Question

How knowledgeable do you feel about how the FMLA and ADA interact?

**A**

Very knowledgeable

**B**

Somewhat knowledgeable

**C**

Not very familiar

Answer in the chat.

# FMLA and ADA Differences



## FMLA

- For the employee's own medical condition or to care for a family member with a medical condition
- Eligibility requirements - only applies to employees
- Serious health condition - Illness, injury, impairment, or physical condition that involves inpatient care or continuing treatment by a health care provider
- Leave of absence entitlement with job protection up to 12 weeks



## ADA

- At-work accommodations or leave as an accommodation for the individual's own medical condition; Employer is obligated to provide reasonable accommodation, engage in interactive discussion process
- No eligibility requirements - applies to applicants and all employees
- Impairment exists (or there's a history of an impairment) that significantly affects the ability to perform a major life activity
- There is no set amount of time that is considered "reasonable" There is job protection for an approved leave of absence

# Who qualifies for reasonable accommodation under the ADA?

An Individual Who:



Has a physical or mental impairment that significantly\* limits a major life activity



Has a record of such an impairment



Is regarded as having such an impairment

\*Under ADA, a major life activity must be significantly limited compared to the general population. Under FEHA, the affected major life activity must only be limited or difficult to perform



# What's a major life activity?

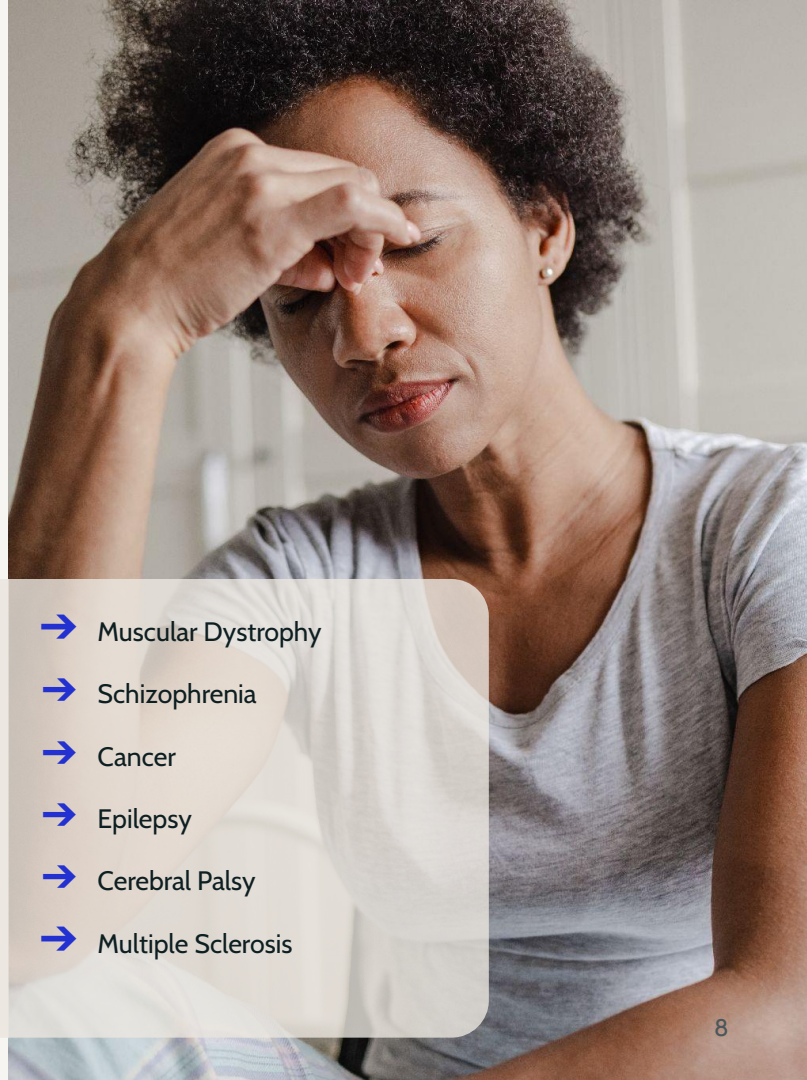
Caring for oneself	Sleeping	Breathing	Lifting	Immune System	Neurological
Performing manual tasks	Seeing	Hearing	Walking	Normal Cell Growth	Respiratory
Communicating	Bending	Eating	Thinking	Digestive	Brain
Concentrating	Standing	Learning	Speaking	Bowel	Circulatory
<b>Working**</b>	Sitting	Reading	Reproductive	Bladder	Endocrine

\*\*\*"Working" is a major life activity and under FEHA the ability to perform a specific position is effected. Under ADA, the disability must affect the person's ability to obtain a broad class of employment.



# What medical conditions qualify for reasonable accommodation under ADA? (Non-Exhaustive List)

- Autism
- Intellectual Disabilities
- Blindness
- Bipolar Disorder
- Major Depressive Disorder
- Mobility Impairments that require use of a wheelchair
- Diabetes
- Post-Traumatic Stress Disorder (PTSD)
- Obsessive-Compulsive Disorder (OCD)
- Partially or fully missing limbs
- Deafness
- Human Immunodeficiency Virus (HIV) Infection
- Muscular Dystrophy
- Schizophrenia
- Cancer
- Epilepsy
- Cerebral Palsy
- Multiple Sclerosis





# What medical conditions do not qualify for reasonable accommodation under ADA?

**Transitory or minor conditions** that are mild, which do not limit a major life activity, as determined on a case-by-case basis. These excluded conditions have little or no residual effects, such as the common cold, seasonal or common influenza, minor cuts, sprains, muscle aches, soreness, bruises, abrasions, non-migraine headaches, and minor and non-chronic gastrointestinal disorders.

Also:

- Common personality traits
- Kleptomania
- Compulsive gambling
- Psychoactive substance use disorders resulting from current illegal use of drugs
- Homosexuality & bisexuality
- Pyromania
- Sexual behavior disorders
- Physical characteristics (eye color, hair color, left-handed, etc.)
- Transexualism
- Exhibitionism
- Pedophilia
- Gender identity disorders not resulting from physical impairments

# Best Practices

## *Initiating the interactive discussion process*

- Use a questionnaire to ask the health care provider



Does the patient have a physical or mental impairment that limits their ability to perform a major life activity?



### Duration of restrictions/limitations

- Temporary and expected to last less than 6 months
- Temporary and expected to last 6 to 12 months
- Long term / Permanent with no expected changes
- Indefinite because they could change and longer than 12 months

POLL QUESTION

# Interactive Process

Do you follow an established process that includes who is responsible for tracking accommodation cases, documenting the interactive process, and providing assistance when a case isn't straightforward?

Answer in the chat.

**A**

**Yes**

Yes, we have a standard process we follow and have defined who is responsible for different parts of the interactive discussion process

**B**

**Kind of**

We have a process but there's room for improvement

**C**

**Not exactly**

We are unsure of what we're supposed to do

# Best Practices

*When Accommodation is Requested  
& Before Decision is Made*



Establish and follow a consistent process every time



Document, Document, Document



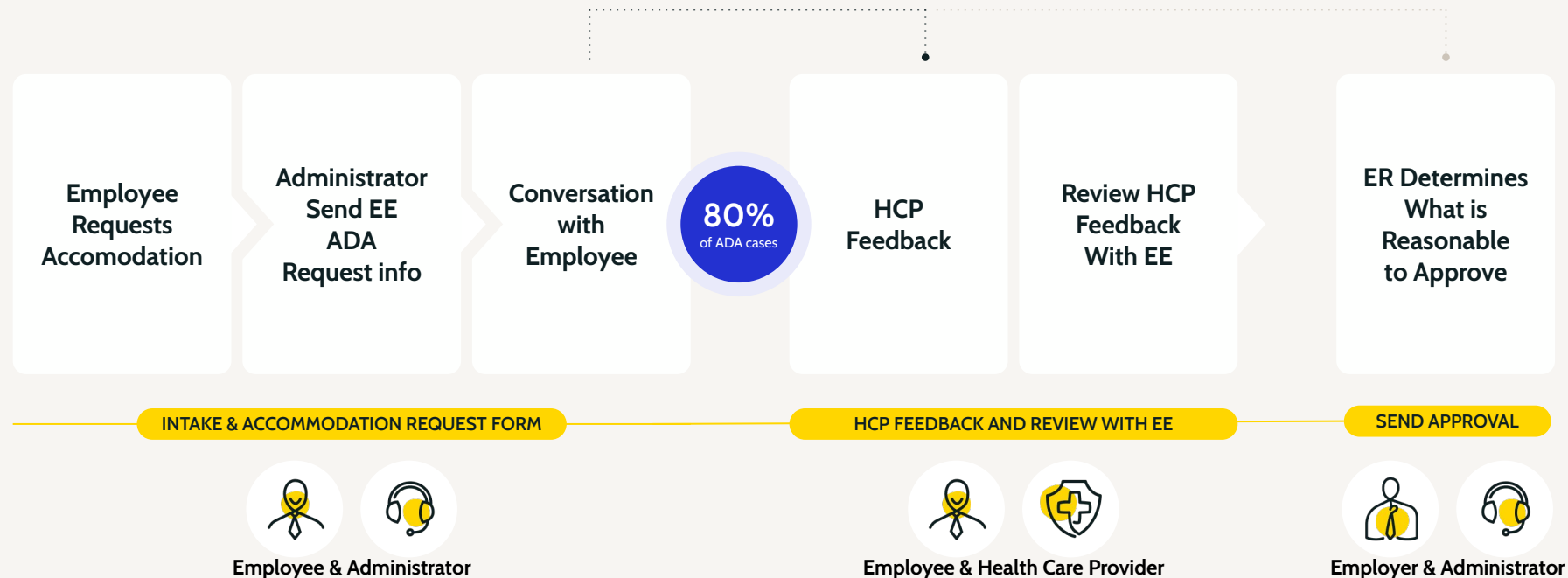
Communicate with the individual, not just their health care provider



Rely on a health care provider to determine whether the ability to perform a major life activity is limited

# General Process

About 20% of ADA cases the limitation and request are obvious and does NOT require HCP feedback



# Questions to ask when a leave is extending under ADA

## Accommodation Assessment Questionnaire

### Question

Why have earlier estimates of a return-to-work date been inaccurate?

### Question

How certain are you that your patient will be able to return and perform the essential functions of their position after this requested extension of leave?

### Question

On what date do you expect your patient to be able to return to work with or without restrictions?

### Question

What, if any other accommodations besides a leave may be effective for your patient, meet their needs, and would enable them to perform the essential functions of their job so they could return to work?

# Essential Job Functions

Form

Employee

[Name]

Job Category

Office - With Travel

Work Schedule

[From Data Feed]

[Client]

Essential Job Functions Form

Employer

Employer

Employee

Health Care Provider

Health Care Provider

Essential Job Function

Details about the function

Mark "x" if job function is affected

Explain limitation and how it affects the job function

Duration the limitation is in effect, i.e., State Date [MM/DD/YY]  
Until Date [MM/DD/YY]

Enter data into computer system

Use mouse, keyboard and monitor



# Best Practices

*Assessing what is reasonable  
to approve*



Respond expeditiously to communicate what is approved



When unsure if an accommodation is reasonable, try it



Continue trying to accommodate until all possibilities are exhausted

# Is LOA reasonable?

- FMLA is an entitlement once eligibility criteria are met
- Leave as an accommodation is not an entitlement

How long is the request for leave?

Which job duties can the employee still perform?

How long can be approved before it becomes overly burdensome on the business?

Can the essential functions of the job be performed remotely?

Can someone temporarily backfill the employee's position during the leave?

Are there alternative accommodations that if implemented, would enable the employee to return to work in some capacity?

What is the impact of the employee's absence on their coworkers? On operations?









Can the employee's position be held for the requested duration of the leave?

# Continuous Leave Considerations

## Continuous Leave Considerations

A request for a continuous leave of absence may occur when an employee either is not eligible for, or has exhausted, leave entitlements under federal or state law or company policy. When assessing if an employee's request for continuous leave is reasonable, use the following questions to help assess whether it's reasonable to approve. There may be other considerations that this non-exhaustive list does not identify.

### Questions

-  Is the requested accommodation for a leave of absence short- or long-term?
-  What is the length of time that can be reasonably approved and how much time is an undue hardship?
-  Can the individual's position be held during the employee's requested length of absence?
-  Can someone else temporarily backfill the employee's position during the leave?
-  What is the impact of the employee's absence on their coworkers and the employer's operations?
-  Which job duties can the individual still perform, if any, and which can they not?
-  Can the essential functions of the job be performed remotely?
-  Are there alternative accommodations that can be put in place to enable the employee to be released to return to work?

### Possible Solutions to Consider

Based on the assessment of the request for a continuous leave of absence, if it is not reasonable to fully approve then consider the following options individually or in combination. Again, this is a non-exhaustive list of ideas:

- Approve the requested duration of leave, if reasonable
- Approve a portion of the requested duration of leave based on what is determined to be reasonable, and reevaluate the request again near the end of the granted accommodation to determine if an extension is reasonable
- Consider alternative at-work accommodations if the individual is able to work in some capacity
- Consider temporarily restructuring the individual's job role if the employee can still perform some essential job duties, but not all
- Consider work from home as a temporary alternative to leave of absence if the essential functions of the job can be performed remotely
- Consider job reassignment as a last resort

### Note of Caution

When an individual is not eligible for leave under a federal or state law or an employer policy, an employer must consider providing unpaid leave to an employee with a disability as a temporary reasonable accommodation, absent undue hardship, if the employee requires it.

While employers are allowed to have leave policies that establish the maximum amount of leave provided or permitted, the ADA still requires employers to make exceptions to company policies when reasonable. An employer may need to grant leave beyond the maximum amount under company policy or state/federal law as a reasonable accommodation, absent undue hardship, for employees who require it due to a disability.

**EEOC's Guidance on Employer-Provided Leave and the Americans with Disabilities Act Mise à niveau pour plus de fonctionnalités**

# Best Practices

*When Employee Is On  
Continuous Leave of Absence*



## Approve length of time that is reasonable

- Assess impact of employee's absence on coworkers, specific job duties being performed timely
- Assess impact on employer's operations and ability to serve customers/clients appropriately & timely



## Return the employee to their original position



**If position cannot be held, place employee into a vacant position that is equal to the current role** and the employee is qualified to perform, with or without reasonable accommodation if the new role can be held for them



**Communicate directly with the employee what to expect in terms of their employment** if the leave extends or if they are unable to return in some capacity by a specific date



**Consult with legal counsel** before taking employment action

# Best Practices

*Accommodating Long Term  
Needs While Working*



Approve the accommodation long term if it is reasonable to do so



Set expectations



Only request new medical documentation when it is necessary to identify limitations that have changed and require reasonable accommodation. Do not reconfirm a disability impairment exists

POLL QUESTION

## Case Examples

Was the most challenging case you've dealt with a leave of absence, return to work with restrictions, or accommodations while working?

**Answer in the chat.**

**A**

**It was a leave of absence**

**B**

**It was a return to work  
with restrictions**

**C**

**The person didn't miss time  
from work and was requesting accommodations  
that allowed them to continue working**

# Questionable ability to accommodate limitations

## Outcome: Trial Period



Customer Retention Manager in California with a “lifelong illness” began LOA 12/6/2024, exhausted it and continued on LOA as accommodation through 4/13/2025, nearly 20 weeks with 6 extensions.

### ADA documentation for an indefinite period of time

- Ability to perform a major life activity is impaired
- Ongoing language deficits
- Limited ability to perform tasks requiring intellectually complex effort
- Unable to work full time due to treatment schedule, fatigue and cognitive limitations
- “There may be periods of both worsening and improvement”
- Can RTW part time, with intermittent work from

### Approved on a 60 day trial period

- RTW beginning 4 hours per day, increasing to full time work within 60 days
- Work from home as needed
- Modify start time of workday
- One day off per week to attend appointments or rest, as needed



# Ineffective LOA

**Outcome:** Document Document Document, which led to conclusion



A mid market account executive in CA requested leave for mental health reasons. The leave began 6/24/24 and was approved through 3/25/25 equaling 39 weeks and with 5 approved extensions under FMLA and then ADA.

## ADA documentation

- Confirmed impairment under ADA
- HCP repeatedly extended continuous leave for 4-6 weeks at a time
- Multiple cognitive limitations identified including “poor executive functioning, unable to manage tasks, unable to stay on task/focus”
- HCP stated they were “very confident” their patient would RTW in some capacity with each extension
- Last extension was requested through 6/14/25

## Outcome

- Each approval documented in letter form, the last approval was in December through 3/25/25
- Employer sent employee their own letter in December stating in part that they are backfilling the position, they looked for vacant positions and there were none, LOA through 3/25/25 is approved to allow employee time to search for vacant positions, and if not secured then employment would end.
- Case concluded when employee was unable to RTW. The reason was that the extended leave proved ineffective at allowing them to RTW in some capacity

# Change in Health Care Provider

## Outcome: Document Document Document



A Senior Content Designer requested leave and shared their diagnosis of Crohn's disease. Their situation began with a trip to the ER due to strong symptoms. A continuous leave began 9/16/24 and was approved for 31 weeks including 4 approved extensions under FMLA and then ADA. Then, the employee changed doctors and also threatened legal action if another leave extension was not approved.

### ADA documentation

- Confirmed impairment under ADA
- HCP repeatedly extended continuous leave because of “delay in referrals”
- Symptoms preventing employee from working were “abdominal pain, nausea, fatigue”
- HCP stated they were “certain” their patient would RTW in some capacity in less than 6 months
- LOA extended until 4/21/25 and doctor stated employee may be able to RTW with accommodations of additional bathroom breaks, reduced work schedule, additional excused absences
- Employee changed treating physicians and submitted note from new doctor dated 4/17/25 requesting continuous LOA through 6/2/25 while they evaluated their patient

### Outcome

- Approvals up to when the health care provider changed are not irrelevant
- Employer initially approved extension through 5/5/25 and provided Larkin with the reason why leave until 6/2/25 was unreasonable.
- Larkin requested clarification from new provider on previous doctor's suggested accommodations and for their own suggestions
- New doctor did not respond to the clarification request
- Employer approved leave extension through 6/1/25 and confirmed no further extensions will be granted, and invited suggestions from employee and their health care provider for suggestions that would allow employee to RTW in some capacity

# Coworker Comments Causing Embarrassment & Request to Remove Essential Job function

**Outcome:** Essential job function not removed, Alternatives provided



A Senior Associate has an essential job function of being in the office. He was approved to work from home part of the time each week to manage his long term medical condition. He must report to the office 3 days a week to complete work that cannot be done remotely. He reported that coworkers were making comments to him and causing embarrassment. Updated medical documentation states the condition has progressed and working from home is no longer effective.

## ADA documentation

- Confirmed impairment under ADA that is expected to last indefinitely
- Able to continue working with reasonable accommodation
- Advised accommodations: private restroom, access to private space to apply medication, flexible breaks as needed that are unscheduled, work from home is suggested to be able to apply medication and have privacy for frequent restroom breaks so work disruptions are minimized
- Symptoms worsening and now require “immediate and frequent access to accommodations that are not accessible in office setting,” which means employee cannot apply medication and use sitz bath.

## Outcome

- Assess each case on its own merits
- Consider how much flexibility in reporting to the office is reasonable without removing essential function from the employee's responsibilities
- Essential job function not removed
- Alternative accommodations provided to support the employee's ability to perform the essential function of reporting to the office

# Resource: Suggestions for Employee



## Keep It Brief and Neutral

“I have an approved schedule that works best for me and the team. Thanks for understanding.”



## Use Humor (if it fits their style)

“Ah, the mysteries of office life! Everyone’s got their own rhythm.”



## Redirect the Conversation

“I prefer to focus on work-related topics. Let me know if you need help with anything.”



## Firm But Respectful

“I understand there may be questions, but I’m following what’s been approved. I’d rather not get into personal details.”



## Set Boundaries Politely

“I appreciate your concern, but everything is being handled appropriately with management.”

# Resource: Suggestion for Employer

## **Subject** Fostering a Respectful and Inclusive Workplace

I want to take a moment to thank each of you for contributing to a positive, respectful, and inclusive work environment. We're all unique individuals with different strengths, work styles, responsibilities, and life experiences — and that diversity makes our team stronger.

You may notice that colleagues have different schedules, work locations, or break routines. These differences may reflect individual roles, approved accommodations, or personal needs — including those related to health, disability, caregiving, or other important factors. Respecting these differences helps ensure everyone has the opportunity to do their best work.

We also come from a wide range of cultural, political, and religious backgrounds. While we may not always share the same views, it's important that we approach our differences with kindness, professionalism, and a commitment to supporting one another.

If you ever have questions or concerns, I encourage you to bring them directly to your manager or HR. Open, respectful dialogue is key to maintaining a workplace where everyone feels valued and heard.

Thank you for all that you do. Your contributions make this a great place to work.

Warm regards,  
[Your Name]  
[Manager/HR Title]

# Extended LOA, Difficult to Obtain Medical Documentation, Released to RTW, New Medical Condition Requiring LOA

**Outcome:** Extended LOA, Communicate Future Possible Actions



A Contracts Administrator is on leave for 20 weeks for mental health reasons. They get released to return to work by working from home full time for 30 days. Employer requires in-office work 5 days a week. Before returning, new condition diagnosed and employee requests to extend continuous leave. Then, they are released to work from home again, and advised to remain on leave if WFH cannot be granted. Throughout the LOA, medical documentation has been difficult to obtain from health care provider. Also, employee has been passive at communicating with Larkin and obtaining medical documentation.

## ADA documentation

- RTW full time and WFH 5 days a week for one month, in effect for condition 1
- No medical documentation received for condition 2; medical provider combined it with condition 1

## Outcome

- Employer approved LOA extensions
- Employer sent separate letter to employee projecting what to expect if medical documentation not received by set date
- Larkin sought but did not receive medical clarification on a schedule that increased the number of days employee would be in office over the course of a month
- Doctor extended WFH 5 days a week with LOA as alternative if not granted. Employer assessing what is reasonable to approve

# Request to remove an essential job function

## Outcome: Alternative accommodations approved



A sales call center representative requested to remove making cold calls because they weren't meeting metrics. They said the stress of making cold calls was a trigger for their disability. When they were hired two years beforehand, making cold calls was not a job requirement.

### ADA documentation

- Confirmed an impairment limits the ability to perform a major life activity, and is expected to last indefinitely and longer than 12 months
- HCP supported the removal of the phone metric

### Outcome

- Employer provided details about why making calls is essential to this role, and approved alternative accommodations of providing:
  - 1:1 dedicated managerial coaching
  - Practice calls in a lower stake setting with the manager
  - Offer personal coaching sessions through an EAP program that includes 10 free coaching sessions
- Employee accepted alternative, and later reported they were not effective
- Employer tried the accommodation of last resort - job reassignment, and confirmed no vacant positions available
- Larkin's involvement ended and Employer communicated directly with employee on next steps



# Resource: Checklist to Re-acclimate Employee When Returning from Leave

Pre-Return Preparation	1st Day Welcome & Re-Onboarding	Structured Support & Integration	Clarify Role & Set Expectations	Ongoing Monitoring & Feedback
Confirm return date	Conduct welcome back meeting (HR and/or manager)	Offer a phased return or flexible schedule, if appropriate	Confirm current role responsibilities and any changes since leave	Solicit feedback from employee on transition progress
Prepare for any accommodations or restrictions	Review any company/team updates or organizational changes	Assign a workplace buddy or mentor	Discuss immediate projects or deliverables	Get manager's input on reintegration success
Notify relevant teams of return and coordinate workload transitions	Reintroduce employee to team/stakeholders	Schedule weekly check-in meetings for first 4-6 weeks	Set 30/60/90 day goals and review performance metrics	Adjust workload or schedule based on feedback/performance
Update HR/payroll systems	Provide any updated EE handbook or internal documents	Provide access to EAP, mental health, or wellness resources	Provide written expectations and success criteria	Reassess with employee their needs for support, training, or accommodations after 30 days
Prepare employee's workspace, equipment, system access	Arrange refresher or recertifications training			

# Final thoughts

## Do you have:

- An established process to collect information and make decisions?
- A tracking system for the status of every case?
- Compliant forms?
- A documentation process?
- A separate place to house accommodation information from the personnel file?
- Resources to aid in understanding, navigating and deciding on complex situations?

# Final thoughts

## Employer Positives

- ✓ Legal compliance
- ✓ Talent retention & inclusion
- ✓ Improved productivity
- ✓ Positive workplace culture
- ✓ Enhanced reputation
- ✓ Possible tax incentives

## Employee Positives

- ✓ Equal access to employment
- ✓ Increased job retention
- ✓ Enhanced job performance
- ✓ Improved well-being
- ✓ Opportunities for advancement
- ✓ Dignity and independence

**Any questions?**





# Thank you



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