



MN NEWS

SPECIAL REPORT

Leaves, Accommodations & Retaliation

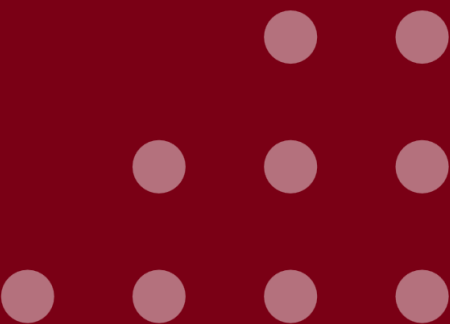
This is a fictional scenario that is entirely imagined and intended only to provide a context for discussions of current legal issues and potential workplace interactions. Any resemblance to actual persons, names, events or circumstances is entirely coincidental and not intentional. In addition, the information and related discussion is not intended as legal advice, and is for general informational and educational purposes only. While we hope it is informative, it also does not fully address the complexity of the issues or steps employers must take under applicable laws—which are also subject to change, even frequently, with or without prior notice. You should not act upon any information provided without seeking professional legal counsel tailored to your specific situation. For legal advice on these or related issues, please consult qualified legal counsel directly.

Leaves

Currently:

Concurrency under WA PFML and FMLA

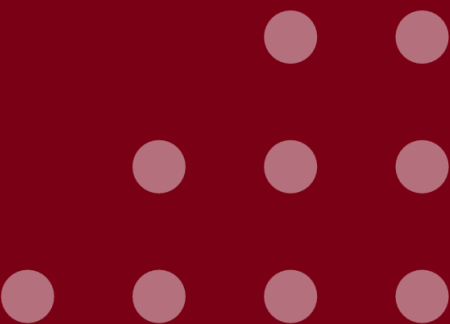
- Was HR's notice sufficient to run Paul's leave under both FMLA and Washington's Paid Family Leave Act?
- Yes, unless Paul had decided not to apply for leave under WA PFML.
 - Employers cannot require that employees apply for leave under the Washington Paid Family Leave Act, even if the reason is a qualifying one.
- This is also true in Oregon.
 - Oregon employers cannot require an employee apply for Paid Leave Oregon.



Effective January 1, 2026:

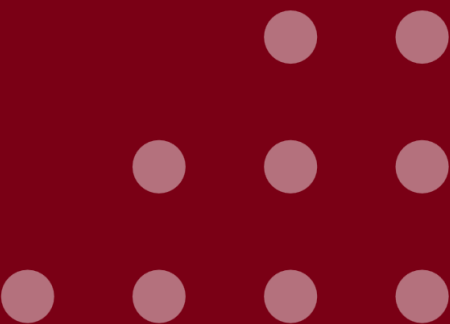
Concurrency under WA PFML and FMLA

- If an employee decides not to apply for WA PFML benefits for a reason that would otherwise qualify, House Bill 1213 expressly allows an employer to limit an employee's ability to "stack" job protection rights
- Employers must provide notice:
 - Within five days of the employee's initial request; and
 - On a monthly basis for the remainder of the year



Effective January 1, 2026: Concurrency under WA PFML and FMLA

- Required notice must state:
 - That the employee's unpaid leave is designated as FMLA leave
 - The amount of FMLA leave the employee has used and has remaining
 - The FMLA leave year start and end dates
 - The amount of FMLA leave counting toward the job protections under WA PFML
 - That the employee's eligibility for benefits under WA PFML are not impacted by the stacking of job protection rights under WA PFML and FMLA
- Washington L&I has authority to conduct periodic audits of employer files and records to ensure compliance

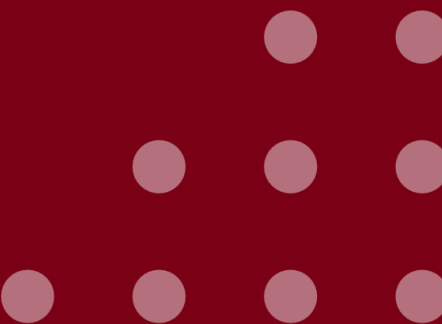


***Accommodations &
The Interactive Process***

Paul's Specific Accommodations Requests

BREAKING NEWS

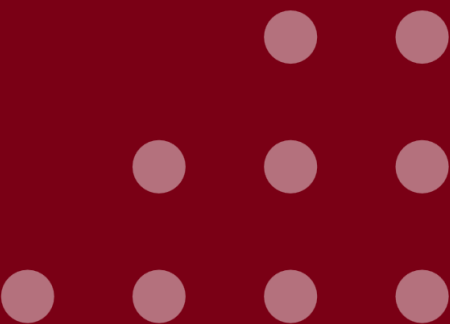
1. An adjustable desk
2. Ergonomic equipment
3. Schedule flexibility to accommodate his medical appointments, etc.
4. More frequent breaks
5. Access to special parking located just outside the sales offices
6. Approval to work remotely two days per week



QUICK REFRESHER:

TDG's Obligations under the ADA

1. Provide qualified employees with disabilities with reasonable accommodations to allow them to perform the essential functions of their positions **OR** to access any benefit or privilege of employment, unless doing so would cause undue hardship to the employer.
2. Once the employer is aware (or should be aware) that an employee may have a disability that impairs their ability to perform their job, the employer must initiate the dialogue referred to as the “interactive process” to determine whether any reasonable accommodations can be made available.



- Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy “equal employment opportunities.”
- There are three categories of “reasonable accommodations:”
 1. Modification or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
 2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 3. Modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

INTERACTIVE PROCESS REFRESHER: When Medical Certification Is Permitted

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- When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for *reasonable documentation from an appropriate medical professional about his/her disability and functional limitations.
- As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations.
- Here, TDG may not need (or be entitled to request) additional certification, depending on the information it may already have from Paul's providers.

Exploring Accommodation Options

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JAN
Job Accommodation Network

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sample of the possibilities available. Numerous other accommodation solutions may exist.

Questions to Consider:

1. What limitations is the employee experiencing?

2. How do these limitations affect the employee and the employee's job performance?

3. What specific job tasks are problematic as a result of these limitations?

4. What accommodations are available to reduce or eliminate these problems? Are all possible resources being used to determine possible accommodations?

5. Once accommodations are in place, would it be useful to meet with the employee to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?

6. Do supervisory personnel and employees need training?

Accommodation Ideas:

By Limitation

By Work-Related Function

➤ Move Items/People

▼ Parking

• Accessible Parking Space

• Flexible Schedule

• Telework, Work from Home, Working Remotely

• Wheelchairs

➡ Learn more about this work related function

➤ Work Site Access

➤ Work Station Access

About Back Impairment

Back Impairment and the Americans with Disabilities Act

Accommodating Employees with Back Impairment

Questions to Consider:

Accommodation Ideas:

Situations and Solutions:

JAN Publications & Articles Regarding Back Impairment

Events Regarding Back Impairment

Other Information Regarding Back Impairment

Employer Live Chat

Show Reader

MyJAN

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Use the Job Accommodation Network (JAN),as needed. www.askjan.org



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INTERACTIVE PROCESS REFRESHER: Selection of Specific Accommodations

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- While it is a good practice to invite the employee to suggest potential solutions that they think may be effective, under the ADA the employee is not entitled to their preferred accommodation, necessarily, if there are possibilities.
- The employer may choose the preferred option among reasonable accommodations as long as the chosen accommodation is effective.
- That means, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.

INTERACTIVE PROCESS REFRESHER: Denying Accommodations for Undue Hardship

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- Requires “an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.”
- The relevant factors that employers can consider:
 - The nature and cost of the accommodation needed
 - The employer’s overall financial resources, size, employee headcount, and type and location of facilities (if the facility that is evaluating the request is part of a larger entity)
 - The employer’s type of operations, including the geographic separateness and the administrative or fiscal relationship of the facility involved in making the accommodation
 - The impact of the accommodation on the facility’s operations

INTERACTIVE PROCESS REFRESHER: Denying Accommodations for Undue Hardship

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- The EEOC has long said that the mere existence of a strict Return to Work/In-Office Policy is likely NOT sufficient to establish an undue hardship alone, instead a more fact-specific analysis will be required.
- On the other hand, current guidance does allow employers to also consider the employee's past performance in remote or alternative work arrangements as relevant evidence regarding the feasibility of continued accommodation.
- Be prepared to get more granular. Look at the specific tasks and responsibility and consider each, rather than assuming one task that can't be done at home means it's a hardship to allow ANY work from home.

INTERACTIVE PROCESS REFRESHER: Strict Confidentiality is Required

LIVE ●

- While the ADA and applicable state disabilities laws allow employers a limited entitlement to employee's medical information for the purposes of the accommodations process, they do not permit employers to disclose that an employee is disabled and/or receiving a reasonable accommodation.

Practice Tip for Employers: Assume that an employee's coworkers may observe the accommodations and ask questions if they question what they perceive as different, or even special, treatment. **Anticipate and plan for responding appropriately.**

INTERACTIVE PROCESS REFRESHER

After the Interactive Process

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Be prepared to revise, adjust, or discontinue

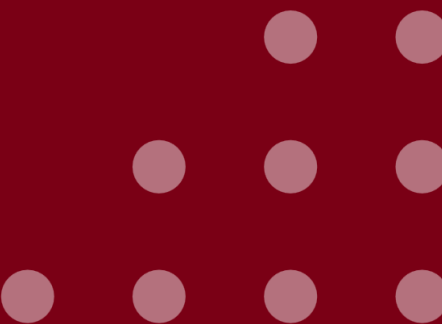
- The EEOC's guidance says employers need to remain "receptive" to requests for different or additional accommodations.
- The interactive process isn't static so should be ongoing, as needed.
- The effectiveness of a particular adjustment, or the needs of an employee, are likely to change or end.
- Consider including timelines for follow-up and/or revisiting.
- Take care not to overstep in requesting additional documentation or recertification.

Retaliation

What Constitutes Retaliation?

BREAKING NEWS

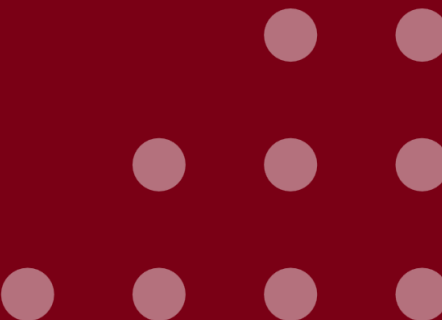
- Retaliation occurs when an employer punishes an employee for engaging in a legally protected activity.
- **Protections arise under a variety of laws**
 - Federal and State Anti-Discrimination Laws
 - Minimum Wage Acts/Statutes
 - Whistleblower Protections
 - Common Law Protections



Elements of Retaliation

BREAKING NEWS

- 1 Engagement in a protected activity
- 2 An adverse employment action
- 3 A causal connection between the two

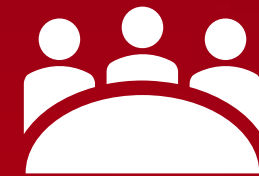


What Are Protected Activities?

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Reporting discrimination or harassment



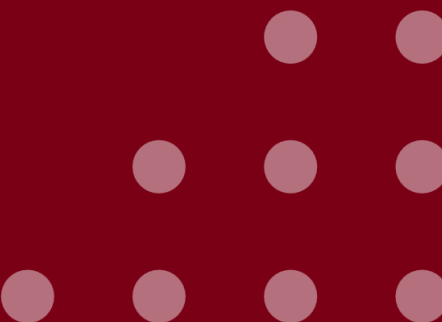
Participating in an investigation



Filing a safety complaint



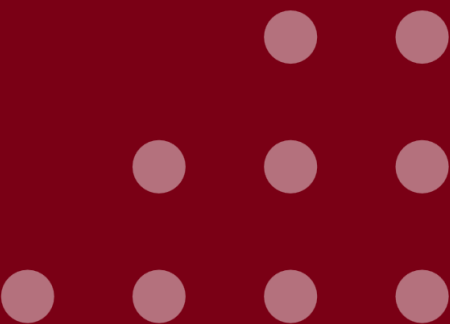
Requesting accommodations



What Are Adverse Employment Actions?

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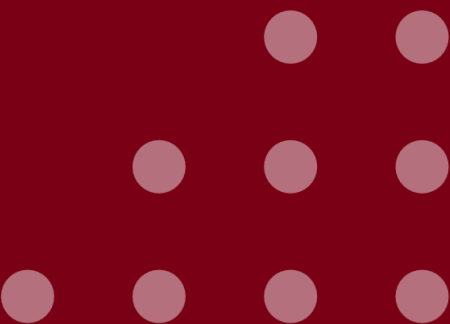
- Termination or demotion after filing a complaint
- Negative performance evaluations without justification
- Exclusions from meetings or projects
- Increased surveillance or micro managements
- Shift changes causing hardship



Legal Consequences of Retaliation

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- Civil lawsuits for damages (lost wages, emotional distress)
- Reinstatement of employment
- Attorneys fees and court costs
- Injunctive relief



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