

Americans with Disabilities Act and Leaves During the Pandemic

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Agenda



- Risk factors with COVID-19
- ADA and the Interactive Process Meeting for Accommodations
- Meeting with your doctor and work restrictions
- Preparing for the meeting
- Leaves

• Please hold your questions or put them in the chat box. I will not be monitoring the chat while going over this.

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Know Your Risks with COVID-19

Source: CDC as of July 17, 2020

People of any age with the following conditions are at increased risk of severe illness from COVID-19

- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Immunocompromised state (weakened immune system) from solid organ transplant
- Obesity (body mass index [BMI] of 30 or higher)
- Cancer
- Serious heart conditions, such as heart failure, coronary artery disease or cardiomyopathies
- Sickle cell disease
- Type 2 diabetes mellitus

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Know Your Risks with COVID-19

Source: CDC as of June 25, 2020

Based on what we know at this time, people with the following conditions **might be at an increased risk** for severe illness from COVID-19

- Asthma (moderate to severe)
- Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- Cystic fibrosis
- Hypertension or high blood pressure
- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids or use of other immune weakening medicines
- Neurologic conditions, such as dementia

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Know Your Risks with COVID-19

Source: CDC as of June 25, 2020

Based on what we know at this time, people with the following conditions **might be at an increased risk** for severe illness from COVID-19 (*continued*)

- Liver disease
- Pregnancy
- Pulmonary fibrosis (having damaged or scarred lung tissue)
- Smoking
- Thalassemia (a type of blood disorder)
- Type 1 diabetes mellitus

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What You Should Know About the Interactive Process

- If you are at risk, you have options:
 - Leaves
 - Accommodation
- Accommodation: Under ADA, a reasonable accommodation is a modification or adjustment to your job that will enable you to perform the essential functions of your despite having a disability.
- Employer must engage in a timely fashion and in good faith in an “interactive process” to determine if there is a reasonable accommodation.

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Qualifying Disabilities

- Qualifying Disabilities: Might be the of the previously listed risks.
- Not a Qualifying Disability (examples):
 - Age
 - Tobacco use
 - Childcare Needs
 - Living with others who are at risk or who have COVID

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Initiating Interactive Meetings

- Get a doctor's note and run it by CTA Staff or Chapter President
- Take note to HR (not your site admin or secretary)
- HR will set up an Interactive Process Meeting
- You may take your Site Rep, Chapter President and/or CTA Staff.

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Requires a Doctor's Note

Possible Doctor's Note:

To Whom it may concern,

I certify that my patient _____ has a disability based on a medical condition that is also generally recognized as a pre-existing medical condition that places him/her at a significantly higher risk for serious infection, and even death, from the COVID-19 virus. Based on this pre-existing condition and the circumstances of the current pandemic, he/she has the following work restrictions:

_____.

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During the Interactive Meeting

- HR may ask you:
 - How the disability creates a limitation
 - How the requested accommodation will effectively address the limitation
 - Whether another form of accommodation could effectively address the issue
 - How a proposed accommodation will enable you to continue performing the "essential functions" of your position (that is, the fundamental job duties)

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During the Interactive Meeting *(continued)*

- Is your request a *reasonable* accommodation?
- Does it place an *undue hardship* on the district? HR may deny a request for an accommodation. They do not have to create a position or move another employee out of a position
 - Options: Medical leave (paid), unpaid leave
 - *Be careful of accommodating yourself out of a job*
 - Don't refuse to talk about options - you must participate

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What if the District cannot accommodate you?

- If the District denies the doctor's requested accommodation (i.e., work from home) and the doctor says that you cannot work on site without danger to yourself:
 - You could be placed on leave.
 - You could be asked to go back to your doctor for additional information on your condition.
 - You could be accommodating yourself out of a job.

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Families First Coronavirus Response ACT (FFCRA)

- Up to 2 weeks (80 hours, or a part-timer's equivalent) of paid sick leave
- Leave may be used only if you are unable to work (or telework) because you:
 - (1) Are under a quarantine/isolation order related to COVID-19;
 - (2) Have been advised by a health care provider to quarantine due to COVID-19 concerns;
 - (3) Are experiencing COVID-19 symptoms and seeking a medical diagnosis;
 - (4) Are caring for an individual who is subject to a quarantine or isolation order described in (1) or (2);
 - (5) Are caring for a son or daughter whose school or place of care has been closed (or childcare provider is unavailable) due to COVID-19; or
 - (6) Are experiencing any other substantially similar condition specified by U.S. Department of Health and Human Services.

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Families First Coronavirus Response ACT (FFCRA)

FOR THE FOLLOWING:

- (1) Are under a quarantine or isolation order related to COVID-19;
- (2) Have been advised by a health care provider to quarantine due to COVID-19 concerns;
- (3) Are experiencing COVID-19 symptoms and seeking a medical diagnosis;

**YOU GET LEAVE AT FULL RATE OF PAY UP TO MAX OF \$511 PER DAY
AND \$5,110 TOTAL**

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Families First Coronavirus Response ACT (FFCRA)

FOR THE FOLLOWING:

- (4) Are caring for an individual who is subject to a quarantine or isolation order described in (1) or (2);
- (5) Are caring for a son or daughter whose school or place of care has been closed (or childcare provider is unavailable) due to COVID-19; or
- (6) Are experiencing any other substantially similar condition specified by U.S. Department of Health and Human Services.

LEAVE IS PAID AT 2/3 OF YOUR REGULAR PAY WITH A CAP OF \$200 PER DAY AND \$2,000 TOTAL. HR WILL ALLOW YOU TO MAKE UP THE DIFFERENCE WITH YOUR SICK LEAVE.

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Families First Coronavirus Response ACT (FFCRA)

- May use it prior to any other existing leave under the contract
- FFCRA for Childcare needs:
 - 12 weeks of pay
 - May be intermittent
 - Must be to take care of YOUR OWN son or daughter under age 18.
 - Must show that your place of care is closed or unavailable due to COVID-19
 - Can be unpaid childcare like family members
 - Must have been employed for at least 30 days to access this leave
 - First 10 days are unpaid, but you may elect to substitute accrued vacation, personal, or sick leave INCLUDING the FFCRA emergency paid sick leave outlined above)
 - Capped at \$200 per day or \$12,000 in the aggregate

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FMLA, CA Family Rights Act (CFRA), and CA Pregnancy Disability (PDL)

- FMLA (federal) and CFRA (state) provide up to 12 weeks of unpaid leave in a 12-month period for:
 - Your own serious health condition;
 - Family member's serious health condition; or
 - Child bonding within first year of birth; adoption, or foster care.
 - Must have worked at least 12 months and 1,000 hours in the preceding 12 months.
- CA Pregnancy Disability leave (PDL): If disabled by pregnancy, can take an additional 12-week leave. Pregnancy might cause increased risk for severe illness due to COVID-19.

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Other Leaves/Benefits for Employees

- Industrial Accident & Illness Leave
- Sick Leave
- Differential Pay Leave
- Reemployment List
- District *may* grant other leaves
- Kin Care Law
- The Standard Disability Insurance
- CalSTRS Disability

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Until we get a solution through bargaining...

- If you have personal medical questions, email Brenda.
- Don't try to figure out a solution alone. We can talk through your best options.
- Understand that no solution is likely to be 100% the best solution.