



# Absence Management

## Continuing Education

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**JUNE 16, 2022**



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  - During the allotted class time, there cannot be conversations linking the course materials to any company marketing or recruiting efforts. If there are questions related to either our company or any of our products, you must wait to discuss with the instructor at the conclusion of the class.
- 4. Participation is required.**
  - In order to receive credit for the call today you must complete the three unannounced polls during our presentation.



# Agenda

## 1. FMLA Overview

- Employer requirements
- Employee requirements

## 2. Key components of FMLA

- Eligible employee
- Leave reasons
- Employee entitlement
- Intermittent leave


## 3. Interaction with Other Leave Types

- State and company leaves
- Short-term disability

## 4. ADA & ADAAA

# Family Medical Leave Act Overview

# FMLA and Leave Management

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- FMLA
  - Short-term disability
  - Company leaves
  - State leaves
  - ADA/ADAAA
  - Workers' Compensation

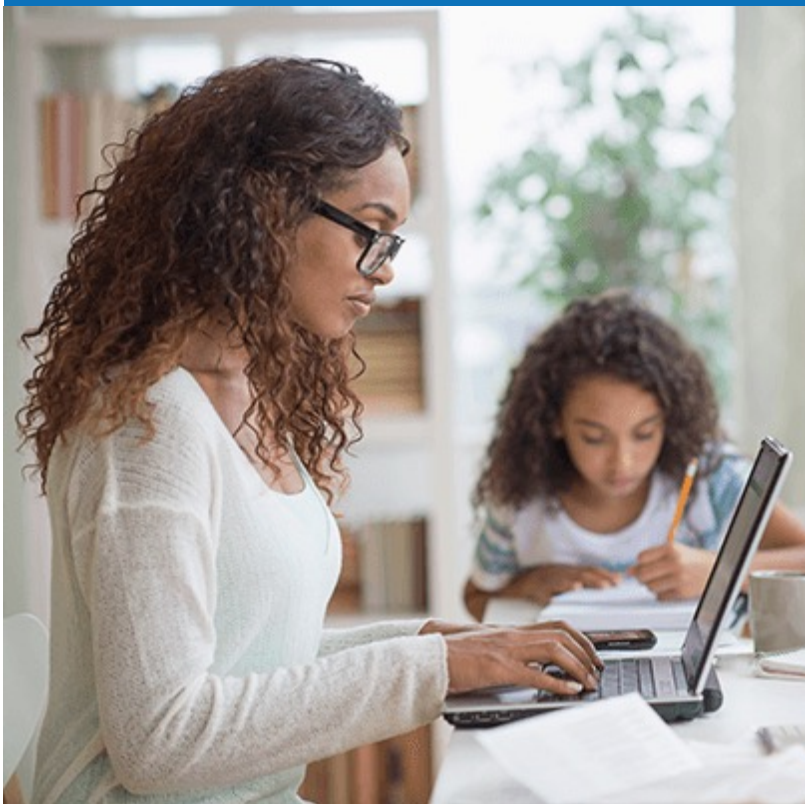
Leave Administration

Stay at Work

Return to Work

# What is the Family Medical Leave Act?

The federal Family and Medical Leave Act (FMLA) was originally passed in 1993 in order to provide employees with unpaid and job-protected leave for certain family or medical leave reasons. The act has been expanded several times



- FMLA provides up to 12 work weeks of leave during a 12-month period.
- Health benefits must be continued and, upon return, the employee must be restored to his/her same or equivalent position.
- In some cases (to care for an injured service member) the leave may extend up to 26 weeks.

# Employers Covered Under FMLA

Covered employers include



**Private-sector employer**, with 50 or more employees in 20 or more work weeks in the current or prior calendar year;



**Public agency**, including a local, state, or federal government agency, regardless of the number of employees it employs; or



**Public or private elementary or secondary school**, regardless of the number of employees it employs.



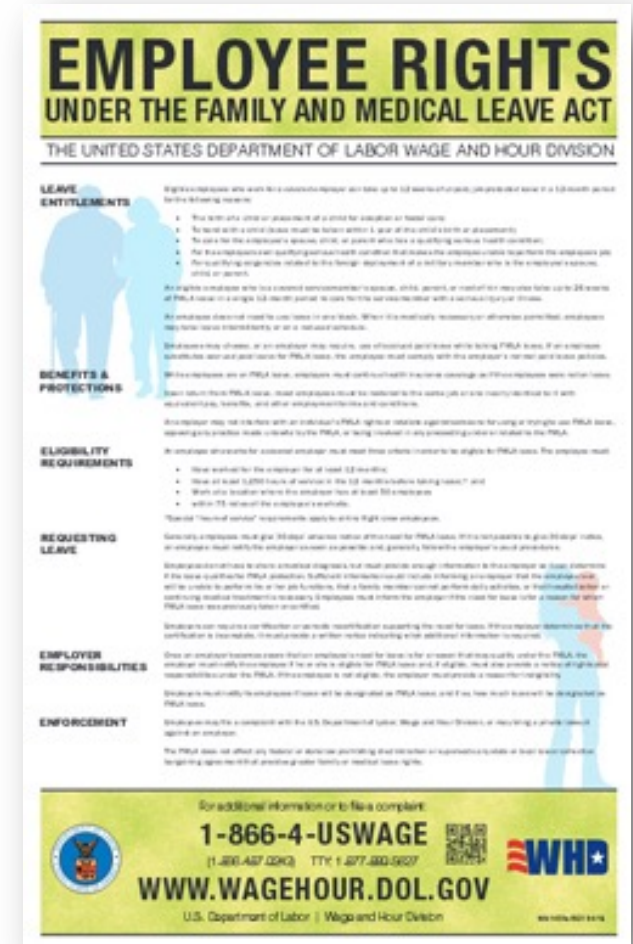
# Review



# FMLA Employer Responsibilities

# Provide general notice

- Employers must inform employees of their FMLA rights:
  - Post a general notice at worksite locations; and
  - Provide general notice in an employee handbook or, if no handbook, distribute to new employees upon hire
- Electronic posting and distribution permitted
- Languages other than English required where a significant portion of the workforce is not literate in English





# Provide notice of eligibility

Within five business days of leave request (or knowledge that leave may be FMLA-qualifying)



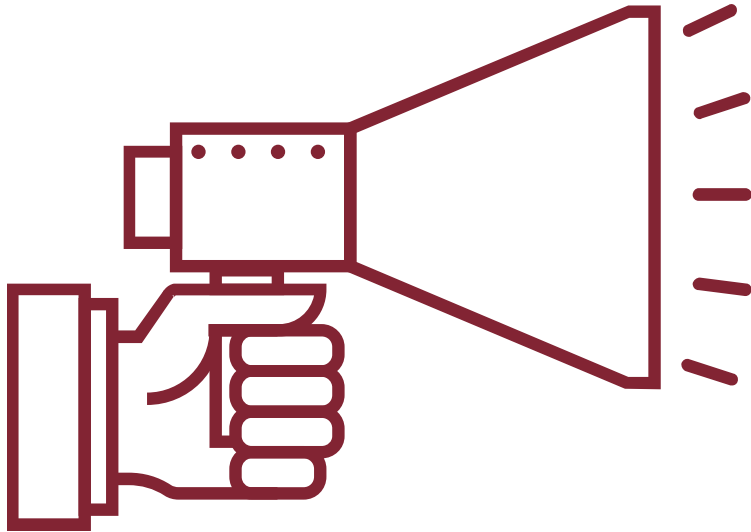
**Provide employee's eligibility determination**

**If employee is not eligible, provide at least one of the reasons why employee is not eligible**

**Eligibility determined on first instance of leave for qualifying reason in applicable 12-month leave year**



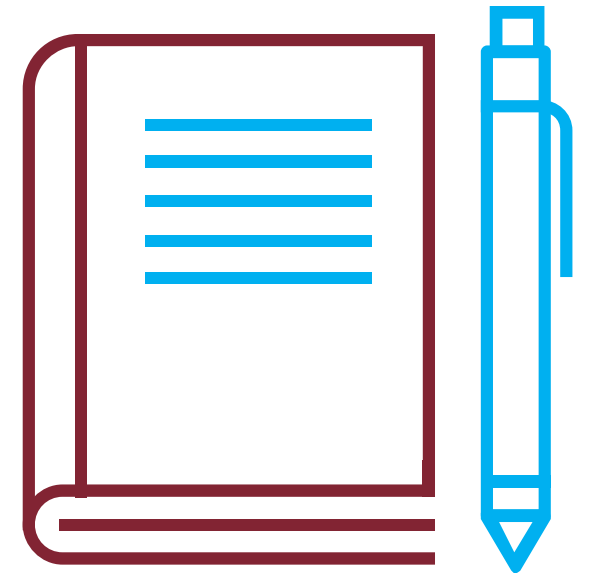
# “Rights and Responsibilities” notice



- Provided when eligibility notice is required
- Must be in writing
- Notice must include:
  - Statement that leave may be counted as FMLA
  - Applicable 12-month period for entitlement
  - Certification requirements
  - Paid-leave substitution requirements
  - Arrangements for premium payments (and potential employee liability)
  - Status as “key” employee, if applicable
  - Job restoration and maintenance of benefits rights

# Notice of designation/determination

- Within five business days of having enough information to determine leave is FMLA-qualifying
- Once for each FMLA-qualifying reason per applicable 12-month period (additional notice if any changes in notice information)
- Must be in writing
- If leave is determined not to be FMLA-qualifying, notice may be a simple written statement



# Maintain group health

- Group health plan benefits must be maintained throughout the leave period
- Same terms and conditions as if employee were continuously employed
- Employee must pay his/her share of the premium
  - *Even if employee chooses not to retain coverage during leave, employer is obligated to restore same coverage upon reinstatement*
  - *In some circumstances, employee may be required to repay employer's share of premium if employee does not return to work after leave*



# Job restoration



- Same or equivalent job
  - equivalent pay
  - equivalent benefits
  - equivalent terms and conditions
- Employee has no greater right to reinstatement than had the employee continued to work
- Bonuses predicated on specified goal may be denied if goal not met
- “Key employee” exception



# FMLA Employee Requirements

# Provide notice



- Provide sufficient and timely notice of the need for leave
  - Can be given verbally or in writing
  - Does not need to mention “FMLA”
- If the need is foreseeable, it should be reported at least 30 days prior to the start of the leave.
- If not foreseeable, the employee must provide notice “as soon as is practicable.”



# Scheduling treatment

Employee must consult with an employer for planned medical treatment and attempt to plan scheduled treatment so as not to unduly disrupt the employer's operations.



If no attempt is made, employer may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to approval of the employee's health care provider.



# Additional information, by request

## If requested by the employer:

- Provide certification to support the need for leave
- Provide periodic status reports
- Provide fitness-for-duty certification



# Review



# FMLA Key Components

# FMLA eligibility requirements

To be eligible for FMLA leave, an employee must work for a covered employer and meet the following requirements:

**1**

**Worked for their employer for a minimum of 12 months (need not be consecutive)**

**2**

**Worked for their employer for at least 1,250 hours in the 12 months immediately preceding the start of the leave**

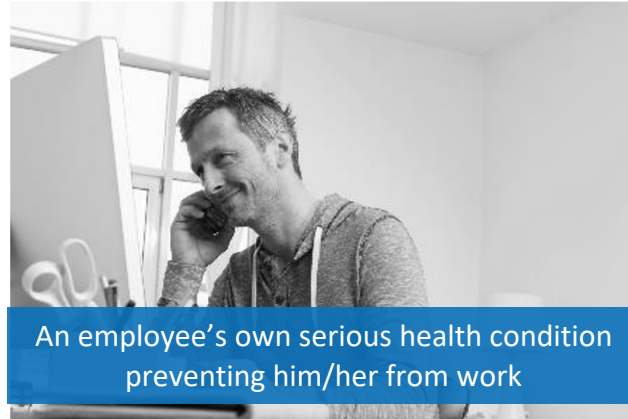
**3**

**Works at a location where at least 50 employees are employed within 75 miles**

# FMLA qualified leave reasons



For the birth or care of a newborn child within the first year of the child's birth



An employee's own serious health condition preventing him/her from work



Care for an injured service member



Placement of a child for adoption or foster care



Care for a family member with a serious health condition (spouse/child/parent)



Qualifying exigency for employee's parent/child/spouse called to active duty



# Who are qualifying family members?

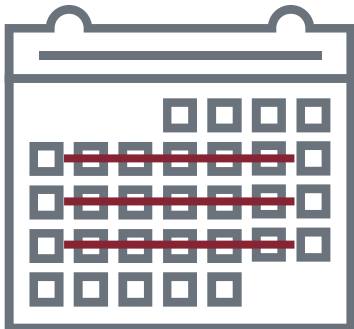
- Parent
  - A biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the employee when the employee was a son or daughter. Parent for FMLA purposes does not include in-laws.
- Spouse
  - Spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a same-sex marriage or common law marriage. It also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.
- Son or daughter
  - A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age, or 18 or older and incapable of self care because of a mental or physical disability.

# Leave schedules

## Continuous

Employee is out for a “continuous” period of time of more than three consecutive days.

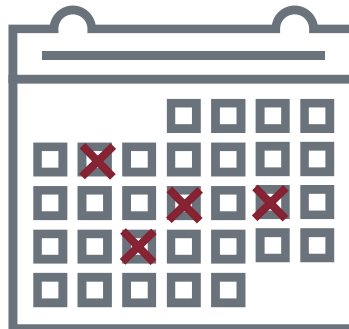
For example, an employee may be out from May 1 through July 12.



## Intermittent

Employee takes leave on an unscheduled ‘intermittent’ basis.

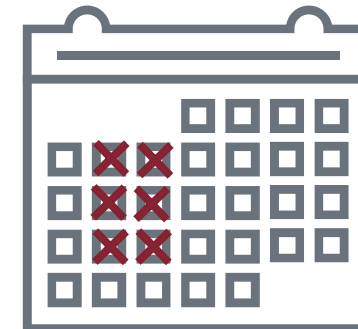
For example, an employee who has an illness causing incapacitation may require an leave on June 4 but not again until September 2.



## Reduced schedule

Employee works a ‘reduced’ schedule, which is predictable.

For example, an employee may work part time, four days per week, or four hours per day, requiring a predictable leave pattern.



# Amount of leave available [Entitlement]

**Employees can take up to 12 work weeks in a 12-month period**

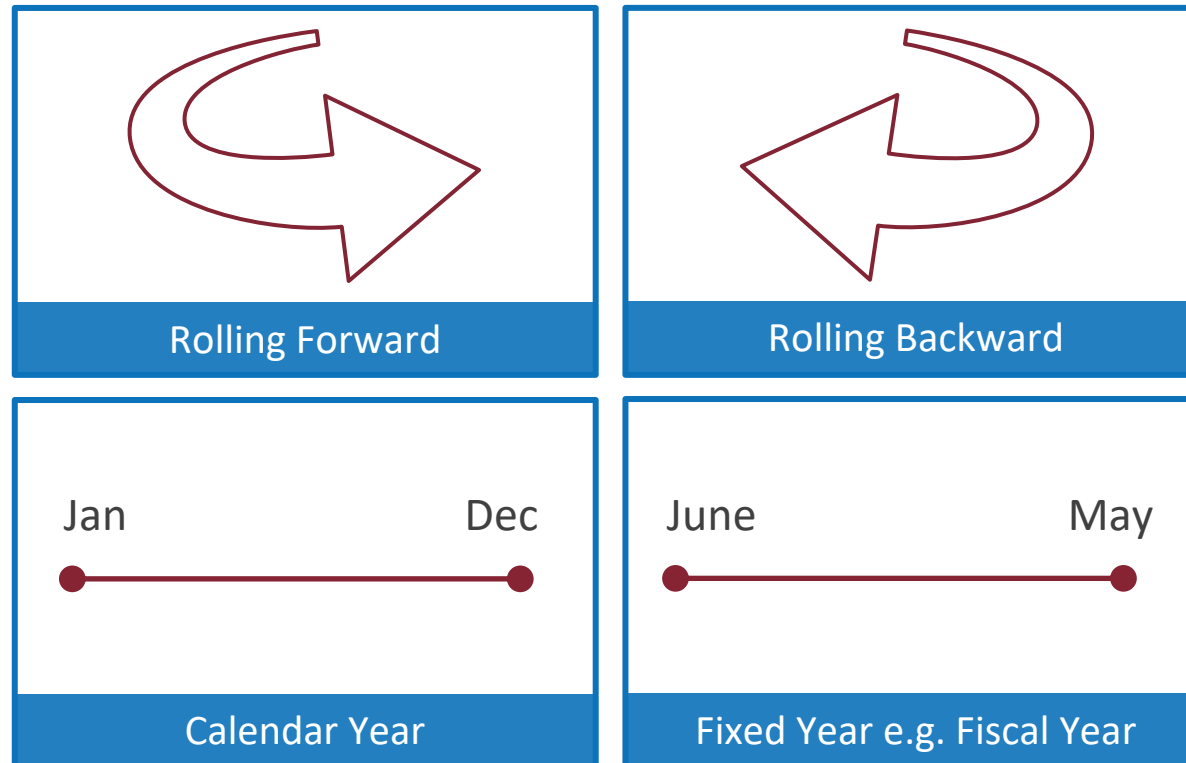
- 12 Weeks...
- Continuous, intermittent or reduced schedule leave
- Care for an injured service member—up to 26 weeks of leave
- Entitlement is based on employee's normal weekly schedule  
(e.g., 12 weeks × 37.5 hr/wk schedule = 450 total hours)



# Amount of leave available [Entitlement]

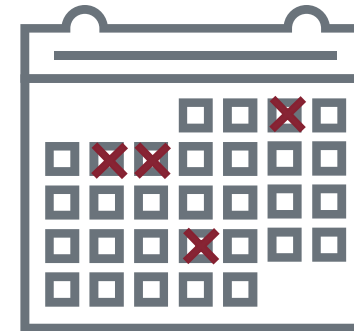
Employees can take up to 12 work weeks in a 12-month period

- In a 12-month period...
- Employers should use one of four methods to define the 12-month period:



# Intermittent leave

- Employee is entitled to take intermittent or reduced schedule leave for:
  - Their own or qualifying family member's serious health condition
  - To care for a covered service member's serious injury or illness
  - A qualifying military exigency arising out of a family member's call to active duty
- Employers have the option, but are not obligated, to extend intermittent or reduced scheduled leave to:
  - Bond with a child after birth or placement



# Intermittent leave

Intermittent FMLA leave is difficult to:





# How often is FMLA being used?

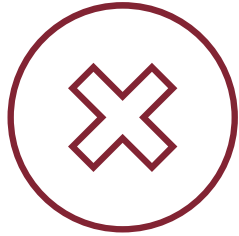
According to the Department of Labor:<sup>1</sup>

- 59% of employees were eligible for FML in the past 12 months
- 13% of employees took FML in the past 12 months
- Average leave duration was 28 days

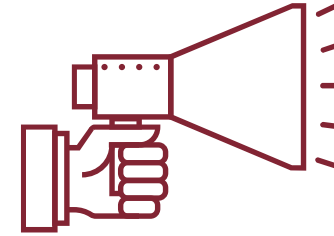


<sup>1</sup> "Family and Medical Leave in 2012: Technical Report," Abt Associates for U.S. Department of Labor.

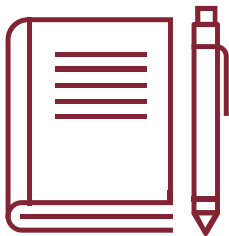
# Common FMLA violations



Improper denial



Improper employee notification



Improper employment practices



Improper medical certification

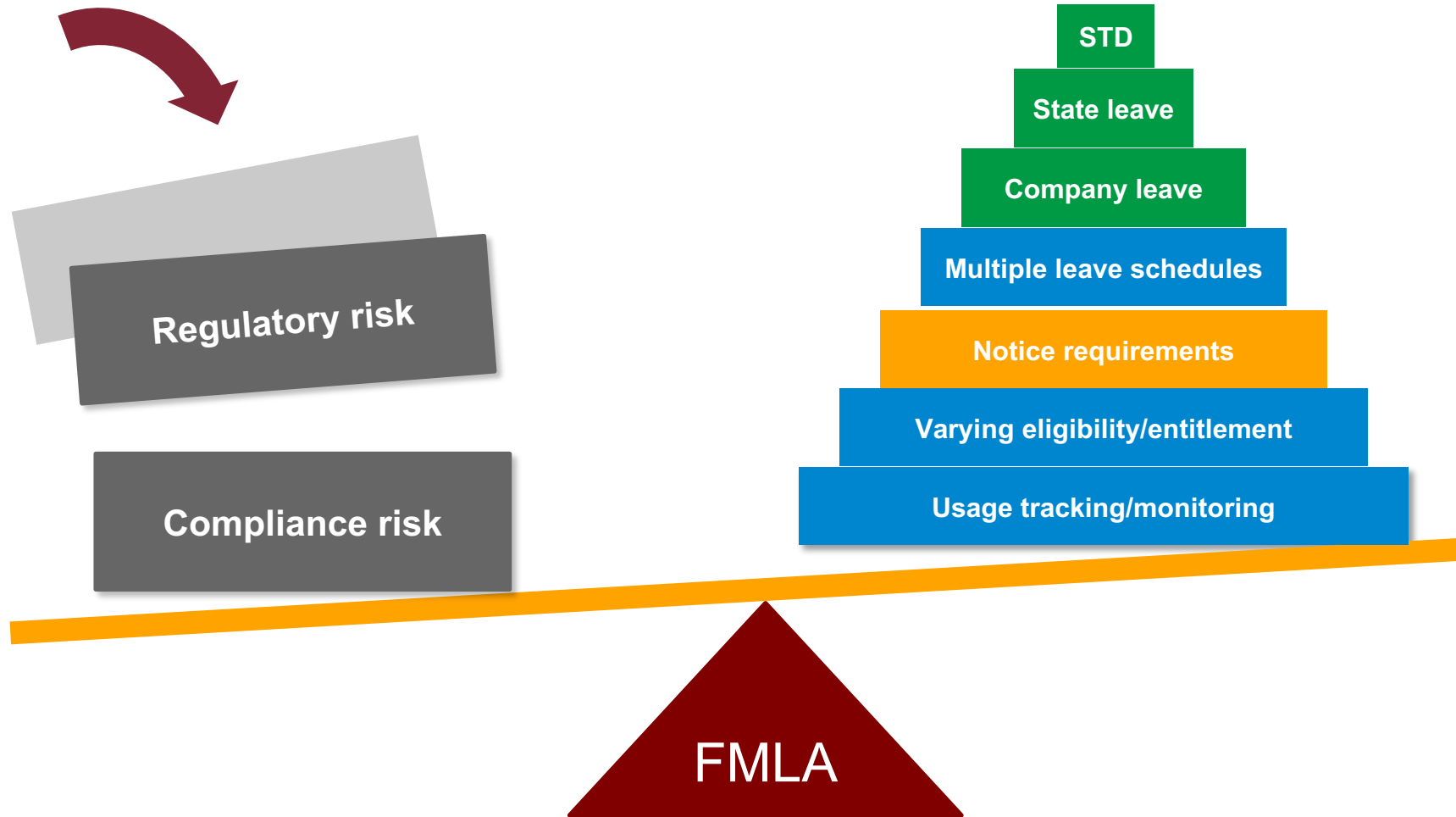


# Review

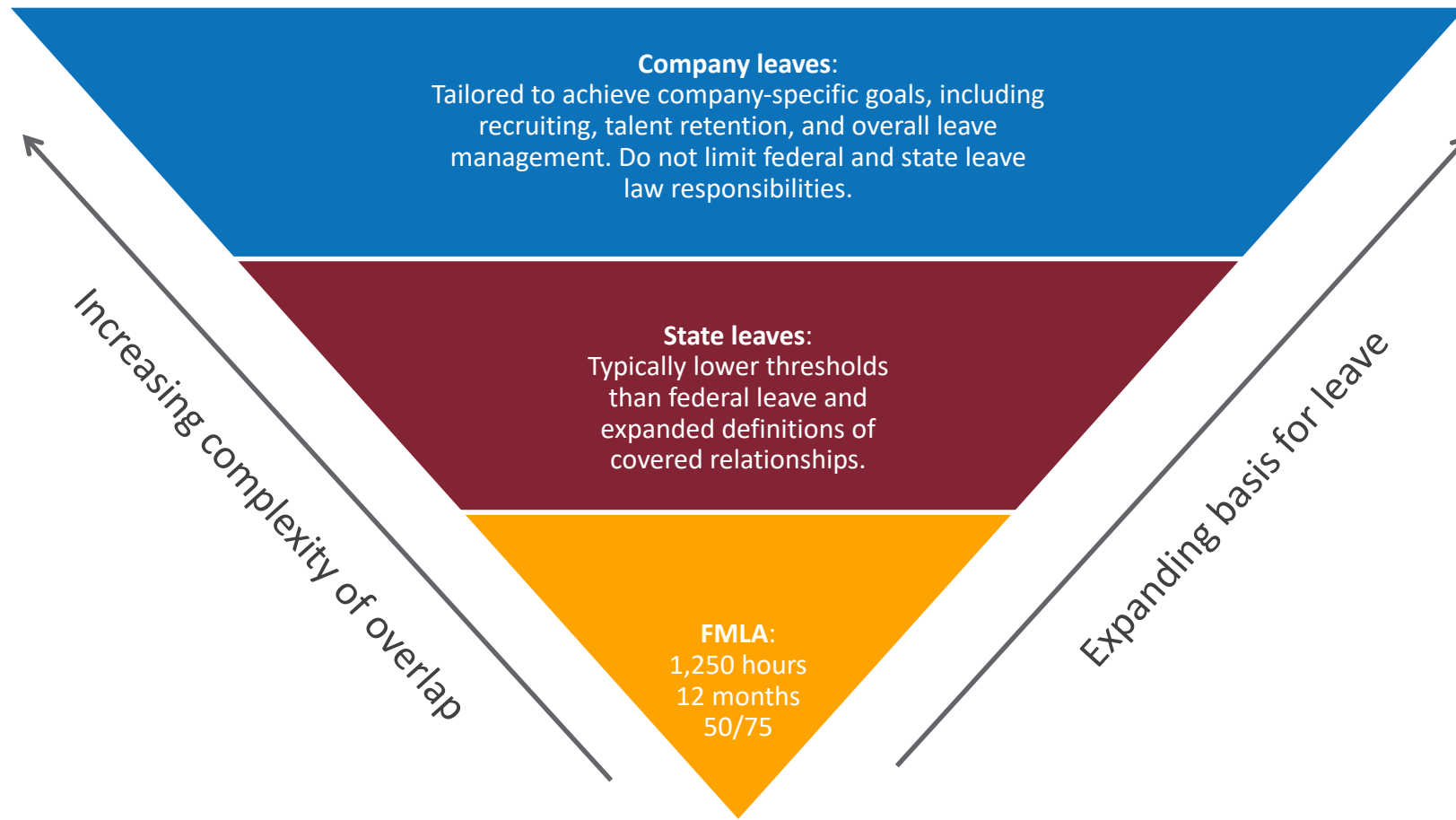


# Interaction with Other Leave Types

# Navigating a complex landscape

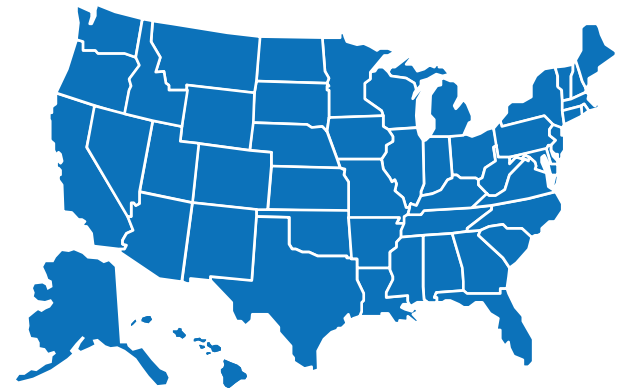


# Layering federal, state, and company



# State leaves

- Most states have at least one state leave law and many have multiple laws for various types of leave entitlements.
- Some states have enacted laws similar to the federal FMLA.
  - State leaves vary in eligibility requirements and entitlement, and at times are more generous than the federal FMLA.
- Common state leave reasons include:
  - Employee serious health condition
  - Family member serious health condition
  - Care for an injured service member
  - Bonding (newborn, adoption)
  - Pregnancy disability
  - Crime victims
  - Organ, tissue, blood donation
  - School activities





# Company leave integration

- According to the DOL survey:

**29%** of employers find it very/somewhat difficult to coordinate other leave policies with FMLA<sup>1</sup>

**38%** of the largest employers (10,000+) integrate FMLA with company leave of absence<sup>2</sup>

- The rate of FML outsourcing has increased from 35% in 2016 to 52% in 2018
  - The most significant increase was seen for companies with 50-999 employees
- 52% of Integrators responding to the 2018 Spring survey indicated they provide a Paid Parental Leave to their employees

<sup>1</sup>Family and Medical Leave in 2012: Technical Report; Abt Associates for U.S. Department of Labor.

<sup>2</sup>2018 Employer Survey of Integrated Disability, Absence and Health Management Trends; Spring Consulting Group, LLC.

# Common company leave types



Non-FML medical



Parental



Personal



Sabbatical



Jury duty



Military



Bereavement



Union



Education

# Interaction with short-term disability

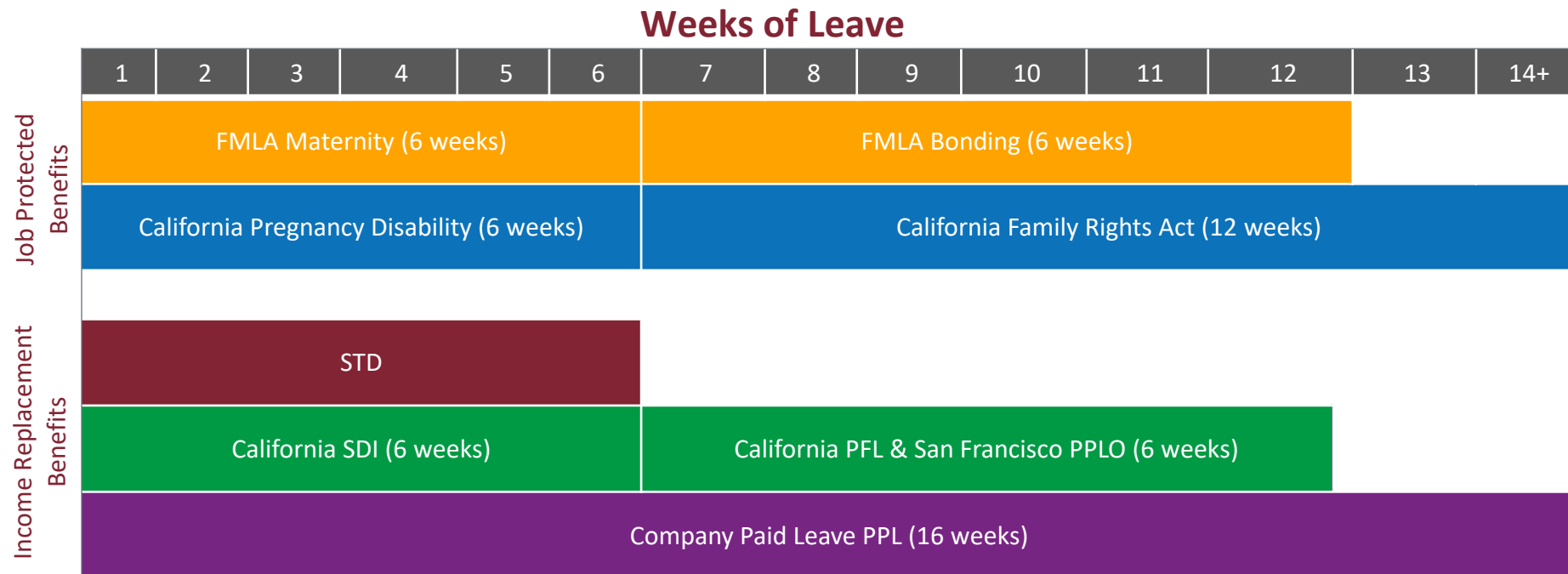
FMLA	Short-term disability
Federally mandated to be provided by employers	Voluntary benefit, typically offered through employers
Job protection	Income protection
12 weeks (and up to 26 weeks in some cases)	Varies by plan design
Employee or covered relationship condition	Employee condition only

- FML and STD typically run concurrently, although continuous FML time tends to exhaust prior to STD.
- The completed medical documentation provided to support STD can, in some cases, also be used to support FML.



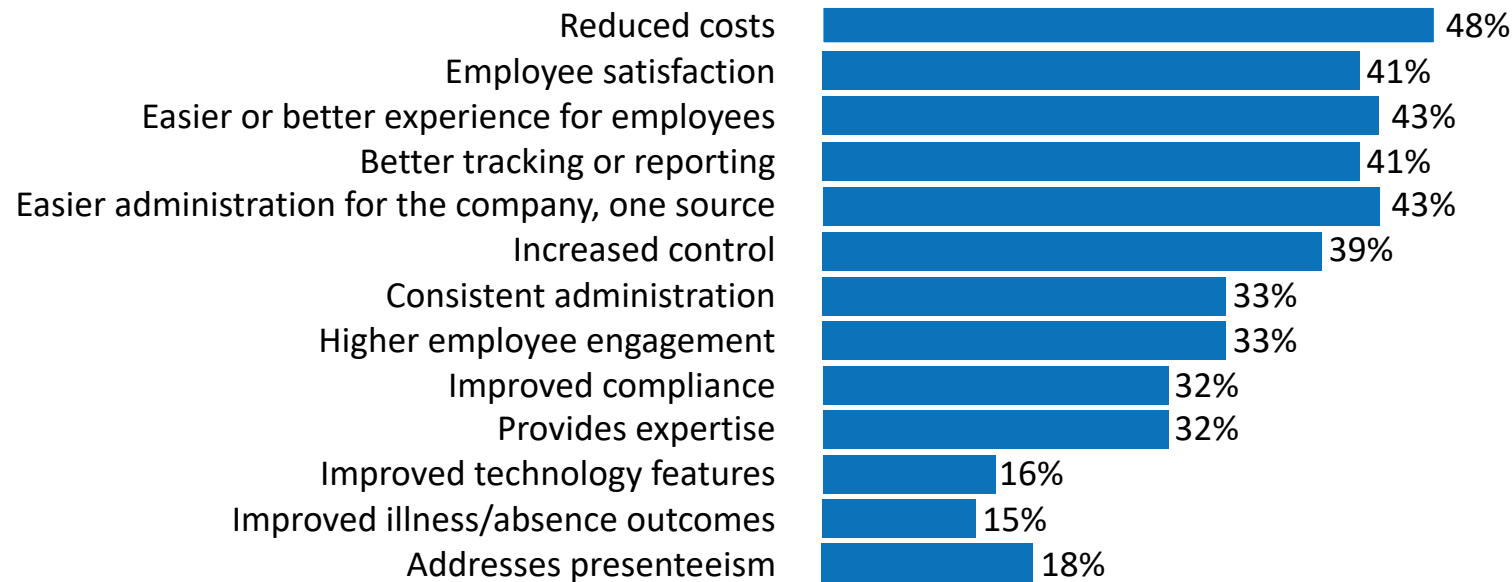
# Example of leave type overlap

A maternity leave for a California employee could trigger 8 separate paid and unpaid benefits and looks like this...



# Advantages to outsourcing

**Outsourcing leave administration continues to increase for a variety of reasons**



\*2018 Employer Survey of Integrated Disability, Absence and Health Management Trends; Spring Consulting Group, LLC

# Americans with Disabilities Act (ADA)

# What is the ADA?

## The Americans with Disabilities Act (ADA) was enacted on July 26, 1990

- Covers employers with 15 or more employees, including state and local governments
- Prevents employers from discriminating against qualified individuals with disabilities in employment and accessibility
- Requires reasonable accommodation be provided in order to perform essential functions of a job, absent undue hardship
- Enforced by the U.S. Equal Employment Opportunity Commission (EEOC)



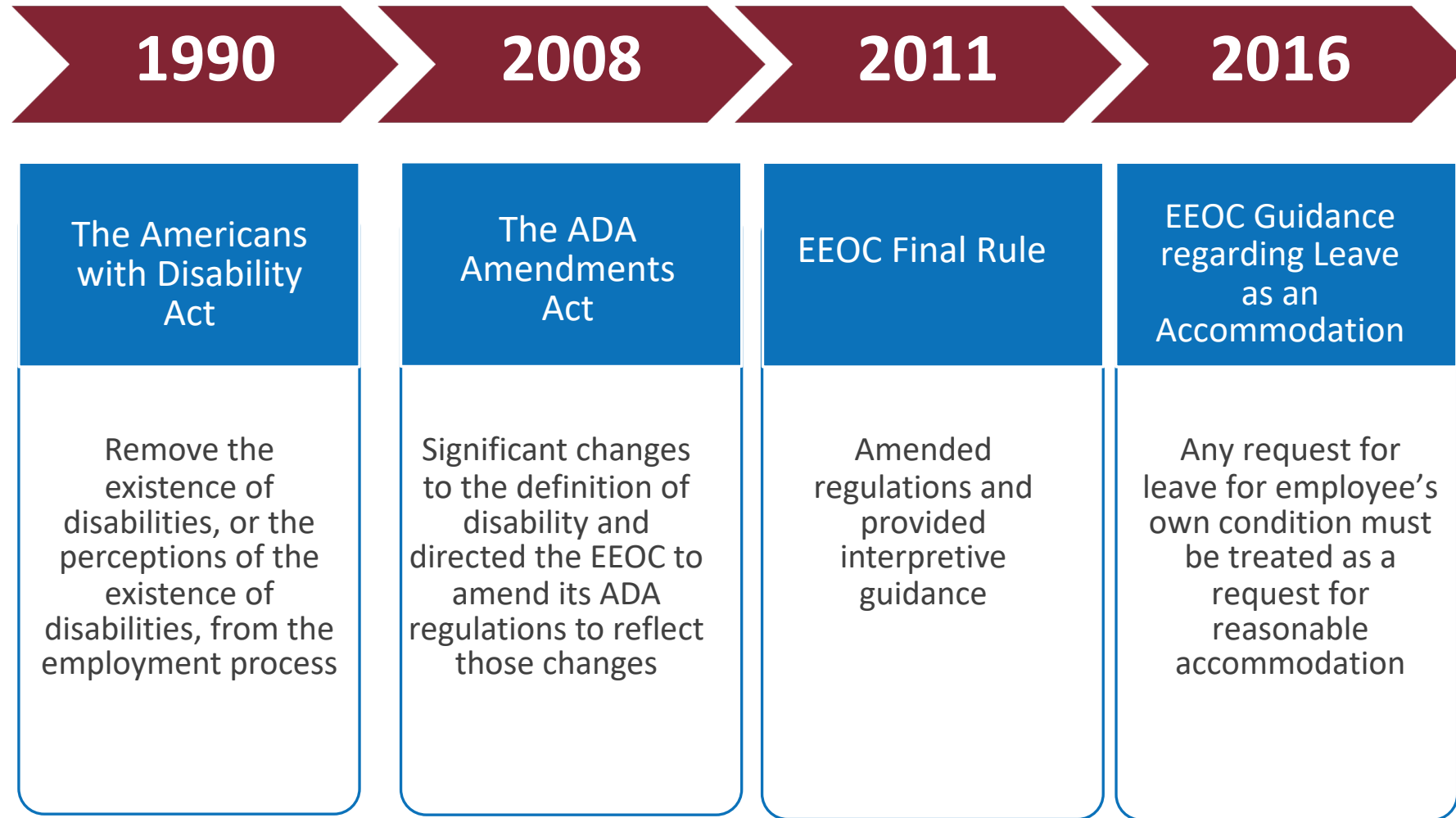
# What is the ADAAA?



## **The Americans with Disabilities Act Amendments Act (ADAAA) was passed on September 25, 2008, and went into effect January 1, 2009**

- Its purpose is to ‘restore’ the ADA’s original mandate for the elimination of discrimination against individuals with disabilities and provide a broad scope of available protection
- The ADAAA defines “disability” as:
  - A physical or mental impairment that substantially limits one or more major life activities; or
  - A record (or past history) of such an impairment; or
  - Being regarded as having such an impairment

# ADA & ADAAA timeline



# ADA interactive process



**1**

The ADA mandates that all employers must engage in an interactive process to determine if a reasonable accommodation of the employee's disability can be made.

**2**

The EEOC defines it as an “informal, interactive process to identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.”

**3**

The process involves a collaborative effort between the employer and employee (typically with one or more face-to-face meetings) to determine if an employee can work or resume work after an occupational or non-occupational injury, disease or disorder.

# What constitutes an undue hardship?

- In general, the term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of certain factors.
- In determining whether an accommodation would impose an undue hardship on a covered entity, the employer must consider several factors.





# Examples of employer accommodations

- Providing leave of absence
  - If no other job-protected leave is available, employees may request additional leave time to recover. This request should be considered to remain compliant with the ADAAA.
- Adjusting work schedules
- Providing light/modified duty
- Providing or altering workspace equipment (e.g. special phone, desk, screen, chair, etc.)
- Reassignment to a vacant position
- Work-from-home arrangements
- Providing or altering break and break times

Accommodations should be made on a case-by-case basis, depending on the employee and employer's circumstances.

# Q & A



