EMPLOYEE FITNESS FOR DUTY CONSIDRATIONS: HOW CAN YOU FIND OUT?

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LEGAL DISCLAIMER

 Nothing in this presentation is intended to provide legal advice or apply to any specific situation. All comments and opinions are the author's own and should not be attributed to any other person or company.

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- · Applicants, pre-employment, and after an offer has been made
- Current employees-- may require a medical examination of an employee that is job-related and consistent with business necessity. An employer may make inquiries into the ability of an employee to perform job-related functions
- Drug and alcohol tests are permitted if:
- For cause
- Random
- · BUT: some states limit the right to test for pot

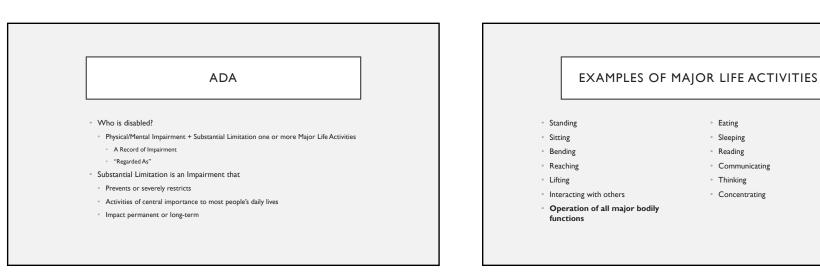
IF ADA COVERED, EMPLOYEE MUST ONLY BE FIT FOR ESSENTIAL FUNCTIONS

- "Essential":
- · job exists to perform
- limited available employees to perform
- With or Without Accommodation
- What is "Essential"?
- Employer's Judgment
- Job Description
- Time Spent
- Consequences of Non-Performance

• Can't require 100% fit for duty across the board

- Work Experience of Incumbents
- CBA

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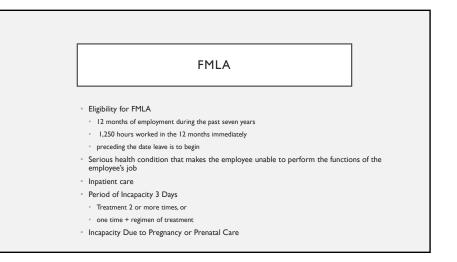
WHAT IS A REASONABLE ACCOMMODATION?

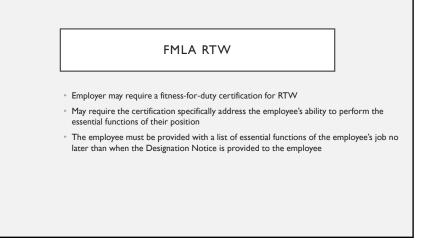
- A reasonable accommodation is any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability.
- Some things are not considered reasonable accommodations (e.g., removal of an essential job function), but reasonable accommodations can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits.
- > Determination of whether a reasonable accommodation can be made is done through the "interactive process"

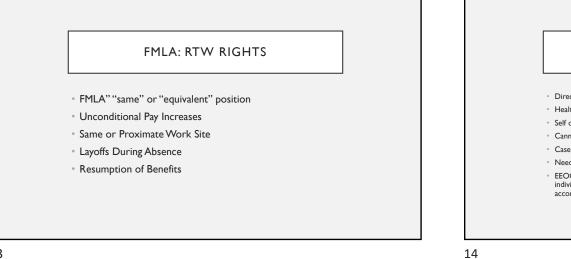
REASONABLE ACCOMMODATIONS

- modifying work schedules or supervisory methods
- granting breaks or providing leave
- altering how or when job duties are performed
- removing and/or substituting a marginal function
- moving to different office space
- making changes in workplace policies
- providing assistive technology, including information technology and communications equipment or specially designed furniture
- providing a reader or other staff assistant to enable employees to perform their job functions, where the
 accommodation cannot be provided by current staff
- · removing an architectural barrier, including reconfiguring work spaces

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- Direct Threat
- Health or Safety
- Self or Others
- Cannot be Alleviated by Reasonable Accommodation
- Case-by-Case Basis
- Need Medical Input
- EEOC: "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation"

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