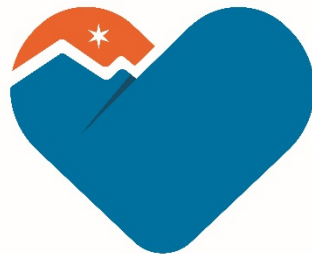




HE HALL & EVANS^{LLC}
ATTORNEYS AT LAW



**DENVER
HEALTH**TM

— est. 1860 —

FOR LIFE'S JOURNEY



Colorado
Self-Insurer's
Association

March 13, 2018

Integrated Disability Planning:

Caught Up in the Maze

Denver Health & Hospital Authority

- Level 1 Trauma Center
- 555 beds
- 14 Community Health Centers
- 17 School based Health Clinics
- Public Health
- Mental Health & Addiction Treatment
- Correctional Care
- Call Centers (Enrollment, Appts, RMPCC, Nurse Line)
- Denver Health Medical Plan



HR LOA Center Workload Average

- 186 Continuous Leaves (90 STD)
 - FML, Personal, Military, ADA Non-FML
 - 1.3% FML hours to hours worked
- 320 Intermittent FML
- 90 STD Cases Self Funded/Self Administered
- Transitional Work w/ WC Employees
- 75 ADA cases
- 7 LTD cases annually



Purpose of Applicable Laws

ADA prohibits discrimination - “qualified individuals with a disability”

FMLA sets minimum leave standards

- Birth/newborn care; placement for adoption or foster care
- Employee/immediate family member with “serious health condition”
- Military family leave

Workers’ Compensation laws provide for payment of compensation and rehabilitation for workplace injuries



Example Denver Health Employee

Elizabeth, a nurse, has called in sick for three days citing extreme back pain from lifting a heavy patient. She has been with Denver Health, a company with over 7200 employees, for seven years, working full-time with very few absences. When Elizabeth calls in sick for the fourth day, she states she was examined by her doctor who took x-rays and said she needs complete bed rest and possibly back surgery and will be unable to work for an extended period of time. She states her doctor thinks the condition is caused by the incident and that the injury is work-related.



Employee Eligibility - ADA

Employee (or applicant) must be qualified for the position and able to perform the essential functions of the position with or without a reasonable accommodation.



ADA Accommodations

Reasonable

- Modifying a work schedule
- Acquiring or modifying equipment
- Time off for medical appointments
- Fresh air or anxiety breaks
- Telecommuting arrangements
- Use of recorder to record directions
- Relocate work area to quieter space
- Extra training when necessary
- Creating scent-free policies

Unreasonable

- Creating new job that does not exist
 - Modified Duty is NOT a Modified Position
- Removing essential job duties
 - NOTE: updated job descriptions
 - Disabilities may not be “physical”
- An indefinite leave of absence
- Providing personal use items such as eyeglasses or hearing aids
- Accommodations that pose direct threat to health or safety of others
- Accommodations may not be retaliatory



What accommodations
could be made for Elizabeth?



Employee Eligibility Workers' Compensation

- Injury arising out of or in the course of employment with state law exceptions possible for willful misconduct or intentional self-inflicted injuries, willful disregard of safety rules, or intoxication.
- Does Elizabeth qualify?




Employee Eligibility - FMLA

- Employee worked at least 12 months and 1250 hours prior to start of leave and who works at worksite with 50 or more employees within a 75-mile radius.
 - All public agencies & schools
- Does Elizabeth qualify?



Length of Leave

- ADA – No specific limit for amount of leave provided as reasonable accommodation that does not create undue hardship on employer.
- FMLA – 12 weeks in 12 month period (defined by employer)
- Workers' Comp – No specific limit
 - Special Rules for Schools §825.600-604



How long should Elizabeth be given leave in response to her request?

What if she ultimately needs the surgery and is out for four months?



Medical Documentation

ADA – Only medical exams/inquiries regarding disability.

Must be:

- 1) job-related and
- 2) limited to determining ability to perform job and whether accommodation would be needed and effective.

FMLA – Medical certification of the need for the leave not to exceed what is requested in the Department of Labor Medical Certification Form. (**EXPIRES 5/31/18**)

Workers' Compensation – Medical information that pertains to the employee's on-the-job injury.



**What medical
documentation**

**may be
requested of**

Elizabeth?



Modified Duty

ADA – Required if reas. accommodation that does not create undue hardship

- No requirement to “create” a light duty position, unless the “heavy duty” portions of the employees job are marginal job functions.

FMLA – Cannot be required

- Employee may decline offer, but if so, may lose workers’ comp payments; would be entitled to remain on FMLA leave until exhausted.

Workers’ Comp – Ought to be offered if available as it may eliminate entitlement to wage replacement benefit



Modified Duty

Elizabeth's supervisor offers her a light duty nursing position which does not require any lifting of patients.

Is she required to accept it?



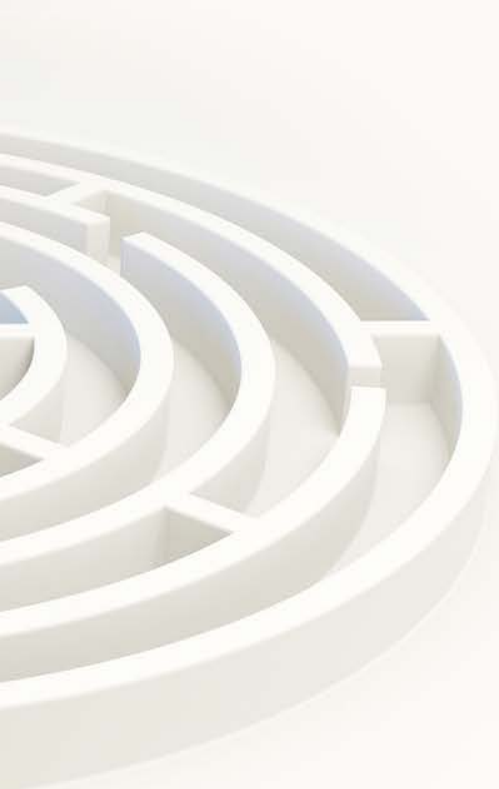
Disability Insurance

Colorado does not require paid leave or temporary/short-term disability insurance for workers with (non-work related) disabilities



Reinstatement

- ADA – Required to previous job unless undue hardship
- FMLA – Required to the same or equivalent job
(NO due hardship exception)
- Workers' Comp – No reinstatement right



Elizabeth treats with her doctor and is cleared to return to work after 8 weeks. What is Denver Health's obligation for her reinstatement?

- Full duty
- Restricted to 8 hour days, although her position is 12 hours.



Questions?
Comments?

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