

Take It Or Leave It: Episode 41

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Josh Seidman

Hi everyone, and welcome back for the 41st episode of Take It Or Leave It, where we discuss the hottest topics in the world of workplace leaves, absence management and accommodations. I'm your host. Josh Seidman. For those of you who have tuned in to our first 40 episodes, or perhaps at least a handful of these episodes, there is a good chance you've heard me talk about, well, certainly leaves and accommodations, for sure, but also sports, especially basketball. Heading into the 2025 NBA Playoffs, my hometown team, the New York Knicks, were coming off back to back 50 win seasons and secured a very respectable three seed in the Eastern Conference. Now these playoffs have been anything but boring - tough defense, timely shot making, game winners, huge comebacks, including two by the Knicks against the now eliminated defending champions, the Boston Celtics. Sorry for the Celtics fans out there and so much more.

As of the time of today's recording, the Knicks are somewhat miraculously still alive in this year's playoffs, having just staved off elimination against one of their arch rivals, the Indiana Pacers. We'll see if the Knicks run can continue, but one thing I know is that the season has been a thrill and a joy to watch, and none of it would have been possible had it not been for the team, the players, the coaches, the support staff, the trainers and everyone else involved, being incredibly well prepared and well trained.

A similar lesson can be applied in the world of leaves and accommodations, in particular for all of the employers out there tuning into today's episode, making sure that your team is educated and coached on the key aspects of relevant leave and disability laws and how they can arise in practice during real world employee situations is vital to ensuring compliance, mitigating risk and helping your workforce take advantage of legal entitlements that can make all the difference during some of life's toughest moments. Nowhere, perhaps is training more important than in the context of managers who are on the front lines, interacting and engaging with employees day after day.

And that is why I am so very thrilled for today's Take It Or Leave It episode where we'll be exploring tips, best practices and pitfalls for managers to avoid and to help guide them through leave and disability administration. Joining us for this important, essential discussion, I am so delighted and excited to welcome Jim Jantz to the podcast. Jim is the director of compliance, absence, disability and life (ADL) at Marsh McLennan agency, and an attorney with a dedicated focus on compliance within the ADL space. In his role at MMA, Jim is responsible for keeping the practice up to date with all federal, state and local statutory disability and leave laws and regulations, while serving as the subject matter expert on all regulatory issues faced by clients, practice leaders and account teams. Jim's wealth of experience and expertise is rooted in his roles with two large and complex employers. In one position, he concentrated on compliance within the leave of absence and accommodations realm. In this role, Jim managed leave of absence, short and long term disability, PTO, vacation, and other related programs, demonstrating his versatility and managing various aspects of employee benefits. With a proven track record in navigating the complexities of ADL compliance, Jim brings a unique perspective and experience to compliance consultation. Jim, welcome to Take It Or Leave It.

Jim Jantz

Thanks for having me, Josh. What an intro. I really appreciate it. Thank you for having me. Congratulations on 40 episodes. That's a great milestone. I have to mention, I love the NBA lead in. That's great. The Knicks-Pacers series has been really fun, really some nostalgic rivalry there going back to the 90s. So it's been a lot of fun to watch on my end as well. So again, thanks for having me.

Josh Seidman

Of course. No, you know, I'll tell you. And you know this because we've chatted in the past. I'm certainly so excited to have you on today to talk about leaving disability administration tips for managers. Our main course - can't wait for that. But I know we're both big basketball fans, so I was really excited to also, you know, pick your brain, a little bit about this year's playoffs. What do you think? I mean, obviously, you heard that I am, I am a big, big Knicks fan, really excited about where the team is today, certainly some ups and downs, but that's with any playoff run. But what do you think? You think they can make a comeback against the Pacers?

Jim Jantz

So, yeah, I don't have a horse in this race. I'm a Bulls fan, and the playoffs have not been our thing for the past few years. But yeah, Knicks - Pacers has been a lot of fun. I do think the Knicks have a chance. They have played really well. The Pacers have had their share of comebacks. The Knicks have had comebacks in this series and the prior series. So if nothing else, it's going to be entertaining. But I mean, the Knicks looked great last night, so they forced the game six, so now there is a little pressure on the Pacers, which is exciting. And I hope we get a good game six, and I'm happy that we get more basketball.

Josh Seidman

Yes, exactly as much as possible, more and more. I love the fact that the TNT Inside the NBA gets another gets another day. You know that that's always very exciting. They're not sailing off into the sunset just yet. The rivalry with the Pacers, you know, that's what I grew up watching as a Knicks fan, so the fact that it's been rekindled in such a powerful way during this year's playoffs has been really exciting to watch. I forget what the number is, I know that it's only 13 teams have come back from a 3-1 deficit in NBA history against like 280 some odd, you know, losing series. But I got a chance. There's always, always a chance. I had forgotten a bit, but I heard it during one of the recent Knicks games that Coach Thibodeau his last time in the Eastern Conference Finals is when he was the Bulls coach, back in 2011 or 12, something like that, with the Derrick Rose led Bulls team, which I remembered, and was really astounded at how awesome Rose was to watch and jump over people and Joakim Noah's hair flowing everywhere. That was. That was a really fun team.

Jim Jantz -

Yeah. I mean, you're hitting, obviously, I grew up with the Jordan Pippin bowl. So that's, that's where my fandom started. But that Rose and Joakim Noah group was, was one of my favorite Bulls teams in the post Jordan era. So yeah, I miss it. It was a sad kind of end, although, you know, everyone kind of moved on and had success. I think Noah and Rose both played for the Knicks at some point after their Bulls run. So there are some tie ins there, but, but I agree. I think it's, it's been a lot of fun to sort of see that rekindled rivalry from the 90s. I love the old Pacers - Knicks games. I think these are more fun. Those games used to be 81, to 80, you know. And now that's...

Josh Seidman

Going in the trenches.

Jim Jantz

Yeah, that's now the score after the third quarter in most of these games. So it's more fun to see a little bit more scoring. And I think you're right, they have a chance, right? We've seen a lot of these comebacks from these two teams and from other teams, and a lot of those 3-1 comebacks, not that there have been very many, but have been in the last few years. So yeah, the variation with the three point shot and sort of chaos that it brings leads to comebacks in more games and more series.

Josh Seidman

I'm crossing all my fingers and toes. So let's, let's see what happens. I'll, I'll definitely be tuning in, and we'll report back for one of our later episodes on how the team does. That was so much fun, Jim, let's maybe put the bounding and astounding aside for a few minutes. Start swishing and dishing out some tips for managers, if that's cool with you,

Jim Jantz

For sure.

Josh Seidman

Yeah, shout out to Clyde. So big picture when we're thinking about leaves and accommodations, why is it important for employers to make sure that their managers understand the basics of how to spot and handle leaves and accommodations? You know, understand what the proper protocols and communications are, know when to escalate and so forth?

Jim Jantz

Yeah, I think you nailed it in the question, Josh, focus on the basics, right? It's important, because managers don't need to be leave of absence experts. We have leave administrators, whether that's internal or a TPA - those folks are the experts on leave of absence. So managers need to know and understand the basics. When you're thinking about training managers, you don't need to train them. That the FMLA was passed in 1993. That's sort of irrelevant to a manager here in 2025. But what we do want to train managers about is recognizing the basics. What are the covered reasons, like an employee's own condition, or when they're caring for a family member? So those are the types of things managers need to know and understand so that they can recognize a request and help the employee get started in their leave process on the right foot. You know, if the manager mishandles it right at the start, that's going to set the whole leave experience up for failure. But if the manager understands the request, knows how to direct the employee at the outset, then the employee is going to be set up for a much better leave experience across the board.

Josh Seidman

Yeah, that's wonderful. And I agree. I think those are really great, helpful points right from the get go here. Managers like you said, they don't need to know the age of the FMLA. They need to know how to help their employees get going with their FMLA leave and or potential FMLA leave. I think that's a really

important takeaway, just right from the get go and leads us into a few minutes where we'll focus on the FMLA, given its importance. It is still, despite its age, a law that a lot of companies and their teams, including their frontline managerial teams, tend to struggle with. So let's spend a little bit of time here. For starters, what are some of the most common compliance issues? Issues that employers, from your experience, tend to face in the FMLA context, and then what are the risks if a company mismanages their FMLA compliance?

Jim Jantz

Sure, there are plenty of challenges employers face. It's a complex, employee friendly law, but we just talked about what I think is one of the biggest challenges, and it's failing to recognize the request. There are no magic words. The employee doesn't have to say, I need FMLA. They might just come forward and say, "I'm going to be out next week because my mom's having surgery," and that should set off the alarm for the manager that the employee, even though they didn't say they need a leave of absence, they didn't mention FMLA - the employee needs a leave of absence, they're going to miss work to care for a family member. So recognizing the need and avoiding the I guess, discipline for absences that should be protected, right? We often have managers saying, No, you need to work next week, or that absence is going to result in an attendance point or attendance issue, and that's where we get into trouble, because those absences could and should be protected under the FMLA. So I think recognizing requests and again, starting the leave process is critical, and one of the biggest compliance risks faced by employers

Notice deadlines is another one. Once the employee gives us notice, we have to respond in a timely manner as an employer, right? So the employer has five days to tell the employee if they're eligible and meet all of those other notice requirements, but that means we have to start the process when we receive notice of the need for leave. So again, it's that recognizing the claim at the outset will help the overall process be timely and avoid any of those notice or timing issues. And then finally, the DOL says there are compliance challenges for employers, and one of them, they say, is failing to train managers. So I think that's why we're talking about it here. It's a known risk that managers can sort of get you in trouble. Now, failing to meet those deadlines can be a problem, right? It's an employee friendly law, so there are risks of the employee filing a claim for FMLA interference or retaliation, and at some point, and generally, we hope to avoid this, but, but managers can be held individually liable if they are individually responsible for causing issues. So it is a company issue. We want to be compliant. We want to do the right thing for our employees, but we also don't want files charged against us or complaints or escalations about the leave process, and we especially don't want our managers to get in trouble on their own, rather than just the company.

Josh Seidman

Yeah, all really solid points and great tips for folks that maybe haven't done a training for their managerial team in recent years. You know, even if a company did do a training, maybe in the last, you know, three to five years, managers change, right? New folks come on. The company's practices or protocols might have changed. So the point you made about the DOL broadcasting that it is a known risk that the managers can get the company in trouble in the FMLA space, I think, screams volumes and speaks volumes to the risk that an improperly trained managerial team can create for the company. So thank you for raising that. It's really important. Let's stick with the FMLA for another few minutes, what tools, tips are available for managers in terms of recognizing an employee request for FMLA

leave, or at least the potential qualifying FMLA leave. I know we, we've talked about, you know, there are no magic words, but what are some kind of things that managers can look out for?

Jim Jantz

Yeah, I think this is another area that can be a challenge, and you said it right? Managers can change if you have turnover. This new manager might not have been trained. But also, we think a lot about manager trainings in terms of annual training and checking the box. And that doesn't necessarily always work when we're talking about leaves. If you train all of your managers in January and the manager doesn't have a big team and doesn't see a leave request until May or July or even October, they've long forgotten about that training back in January. So I think assessing what your managers know and understanding how often they're seeing these leaves can affect the tools that you need to give them. There are many training options. You can do a big, robust FMLA training. You can do an annual refresher, or you can do smaller bite size trainings that are maybe more digestible for managers and help them better understand what they need to know at the specific time. So we can call it just in time training, or at the point of need, but that can often be training, and we can think about training in a variety of ways, like I said those, those in person trainings, video trainings, checklists, tool guides, Whatever method you're using, I think understanding also when to deliver that. So I have, back in my days on the employer side, implemented some training options that were checklists for shorter, bite sized videos, maybe a minute or two minutes long, and we included those in the notification to managers, the notification that they get when their employee requests leave. So yes, we had an annual training, and the manager received the big, robust FMLA training every January, but they also, when their employee requested leave, would get that checklist, or would get that one minute video in that notification, so the manager could then get a little refresher when they need it, and help the employee that way.

Josh Seidman

I think the tips there, Jim, as far as takeaways for the managers, assuming for the employers that are listening to today's episode are really well organized and, I think, presented because it isn't a one size fits all for how a company can train their managers and keep them up to speed with compliance in this space. It might be a checklist or an FAQ or a back of the house guide. It might be a longer recording. I love the idea of the bite sized videos that can be sort of sent along with the employee request. It is all really wonderful. Our leave team here at Seyfarth does a whole bunch of that for our clients who have needs in this space. And I think you kind of mentioned this point, and I want to echo it a little bit more - when the company is exploring the FMLA needs of their managers and how to train them, it isn't just about checking a box, right? It can be much more about let's figure out what our team needs and doesn't need. What do they know and don't they know? Let's actually do some of the legwork and explore what are the most common issues that our team is facing, and let's prepare the training directed at those issues and resolving those issues rather than just checking the box, like you said. So I think that's great. One of the thorniest topics, speaking of like common kind of FMLA issue that a lot of businesses tend to face, one of the thorniest issues in the FMLA world, and I suppose leave world more generally, is intermittent leave. Can you talk for just a few minutes about best practices when managing intermittent leaves, including things like the recertification process and how it works and what managers should be paying attention to when a member of their team has an approved intermittent FMLA leave.

Jim Jantz

Intermittent leave - always a hot topic. You know, this is one that I think managers struggle with, because it's a direct challenge to managers having a leave of absence that's scheduled and known and a continuous block of time, they can work with that because it's a known issue, but when it's intermittent absences, and specifically those unscheduled unknown absences, it affects the manager's ability to set the schedule. It affects their productivity within their division. So yes, this is a red flag for managers. They generally just don't like it. But again, we have to recognize this is an employee friendly law, and employees have the right to take leave intermittently. So again, when we're talking about manager training, setting that up, setting expectations with managers that, yes, we do face intermittent leave challenges, but it's a part of our environment. It's a part of the day to day work, so we just have to be ready for it. I think that can help managers, but again, they're still going to maybe get frustrated when they are faced with the actual absences.

So I think the next step is helping managers understand what to do in the face of intermittent absences. Often, managers want to give the attendance point or potentially terminate an employee when they exceed their frequency and duration that has been certified by the healthcare provider, but explaining to managers that the healthcare provider is giving an estimate of the absences, so it's not set in stone. It's an estimate, and the employee is generally going to fall within that frequency, the number of absences and the duration of the length of each absence can help managers get over that mental hurdle of, why is this employee calling out so much? But when the employee exceeds that absence, or the frequency and duration they're allowed within their absence, we have to also inform managers that recertification is the next step, and it's maybe not the greatest tool we have. It is the only tool provided to us by the FMLA regulations. But the end result of a recertification is often just that the healthcare provider certifies more absences.

So yes, we put the employee on notice that there may be taking too many leaves, or that we're noticing a pattern, or something like that. But also, if they just get certified for more absences, then we just have to allow those additional absences going forward. So yes, recertification is a tool that we have, and it's the correct tool. We're not supposed to issue an attendance point or terminate an employee when they've exceeded their frequency and duration. We do go to recertification, but we also only want to use recertification when the absences show that the circumstances have changed significantly. If an employee is approved for three absences a month and they take a fourth absence, that's probably not enough. Certainly, it's enough to frustrate a manager, but it's not enough to trigger that recertification process. So there's a lot that goes into this. I think when we're talking about what managers need to know, it's that, yes, we are watching for patterns or excessive usage, and if they also feel that there's patterns or excessive usage, they can flag it to us, but it doesn't necessarily mean it's going to be a recertification or whatever steps would follow from that.

Josh Seidman

Thanks, Jim. I agree. I absolutely agree. I think those practical tips were spot on. I love the line that you mentioned, the direct challenge to managers - that I thought is a really important takeaway, and can help companies, the HR teams, the legal departments and so forth, get into the head of their managerial staff. Because intermittent leave is hard for the entire entity, for the organization, for all folks involved, it has legal risk. It creates practical challenges. But from the perspective of the manager, I thought you hit the nail on the head the effects to their ability to set the schedule, to their productivity markers and so forth. I think that was spot on. So really great call out.

I want to circle back to a topic that you hit upon a little bit during one of your earlier responses, still in the FMLA context about notice, deadlines, timely responding. What can happen if the managers don't get off to the right on the right foot when dealing with an employee's potential FMLA leave. So I saw you present on this topic a few weeks back, and I wanted to make sure we discussed it today. So can you walk our listeners through the FMLA approval process, when the employee knows they're going to have a need for a qualifying FMLA absence, and what the different timelines could be, best case scenario, if the manager does all the right things on the front end, kind of worst case scenario, and, and what does that sort of look like in terms of the timing for the final decision on the leave requests to come through.

Jim Jantz

Yeah. Speaking of things that can be frustrating for managers right timeline and employees being out on an absence that's not yet approved, so if it's still in the pending status, managers often struggle, why is this employee out? Why can't I discipline this employee? Their leave is not even approved. But I think that gets back to the idea that you mentioned that the timelines right? An employee typically has to provide the notice of their need for leave to the employer, but how far before that leave of absence they have to provide notice depends on whether it's foreseeable or unforeseeable.

But when we're talking about best and worst case scenarios, best case is the employee says, "Hey, I'm having surgery in a couple weeks. Here's my medical certification." And they take care of all that in one step. We can review the medical certification, we can approve the leave a week before the employee even goes out, and there's no real issues. We knew the employee needed leave, the process was completed, and they go out on leave. Compare that with a worst case scenario where the employee doesn't provide sufficient advance notice because it's an unforeseeable leave. So the employee notifies us today, Friday morning, that they need to go out on leave beginning Monday. And now the employee - we have to send them a notice that that we've received their request for leave - that can take five days.

So now the employee's already out on leave starting next week, before they even get the request for the medical certification. They get that request, they have 15 days to submit the medical certification. Maybe it's an incomplete certification, and we have to notify them of that, and they get another seven days to cure the insufficiency. Then we have five days to approve. So now that employee started a two week leave two weeks ago, and we're still dealing with gathering the medical and approving the leave. In some cases, that timeline, the 5 days plus 15 plus 7 plus 5, can work out to about 35 or 37 days. So this employee might have taken a two week leave that ended three weeks ago by the time we actually get everything reviewed and approved. So the timelines can be frustrating from the for the leave administrator, but also from a manager's perspective, where they don't know the status of this employees leave until weeks later.

Josh Seidman

Yeah, I'm chuckling to myself, and I was like, Wow. I mean to add one week, two weeks, maybe even two and a half weeks, to that to that timeline, to that process, and add in, bake in, the uncertainty that's involved. From the manager's perspective, it really hits home the importance of being able to get your ducks in a row right from the beginning of this process. So thank you for that. I remember seeing the timelines and my eyes kind of bugging out of my head. I was like, wow, when you put it into a graphic, or when you hear it described the way you just did, it really impresses upon folks the importance of

getting this right at the beginning. So thanks for that, Jim. Last FMLA question for you, I promise, what are some of the key areas and topics on which managers should be trained, what are some of the pitfalls they should avoid? Sort of a catch all wrap up question for our FMLA focused listeners for today's episode.

Jim Jantz

Well, I've said it a couple times, and I think it's worth repeating that managers need to be trained to have a general understanding of the leave, not in the weeds, not the details, but a general understanding so that they can recognize a request for leave. That's the most critical thing. Now, what that looks like is helping managers understand, you know, not necessarily, the details of who is eligible for leave. We don't want managers making that decision or conveying that information. You're not eligible, don't bother applying, is not the kind of thing we want a manager responding to a leave request with right? We want managers to hear a leave request from an employee and respond by pointing the employee in the right direction, whether they're going to be approved, whether they're ineligible or eligible. We want them pointed in the right direction and following the leave process. You know, to go back to the NBA trust the process right?

So we want managers kind of knowing enough to recognize a request, and that can generally be the leave reasons, like an employee's own condition, caring for a family member, those types of things. We don't need to know which specific family members - again, we want the manager directing the employee through the leave process, not deciding when or how the employee might be approved for leave. So I would say the other thing managers should be trained on is asking open ended questions. We certainly don't want them asking for medical information or anything like that. When an employee says, "I'm struggling with" or "I might need to take some time off because of this," How can I help you? What do you need? Are great open ended questions the manager can ask the employee, just to get enough information to say, okay, great. Now I understand your situation. You need to go into the leave of absence process for our company. So I think that's critical.

And the other thing is avoid anything that might delay or interfere with the leave, right? Managers need to know this is an employee friendly law. Employees are going to request leave and probably be approved for leave, so don't do anything to interfere with it. Delay it at the start of a leave, get the employee to the right place, and again, let them go through the leave process.

Josh Seidman

Thanks, Jim, I agree. I especially appreciate the call out of asking open ended questions. That's something that when we're into the weeds on these conversations here at Seyfarth with certain clients, that can be a really useful arrow in the quiver of the frontline managers or the local, regional HR teams. Don't get too far into the details in the weeds, but asking open ended questions to help you figure out where to push that particular employee to next, where to elevate them to, who to refer them to, I think that's a great call out. So I said that was the end of our FMLA turn, and it is.

So let's spin and win our way away from the FMLA and now focus our attention on the accommodation space. I've got maybe one or two more Walt Clyde Frazier sayings throughout the rest of this episode. So if folks aren't into that, I'll let you know when they're coming. You can, you know, earmuffs or something for the last couple that are coming. So I am talking specifically about the ADA and the PWFA, the two very important accommodations laws at the federal level. We've discussed both laws quite a bit on Take It Or Leave It over the years, but to level set things for our listeners, I'm curious, Jim,

can you just give folks a brief, quick overview of these two federal laws and highlight specifically some of the ways there are quite a handful of them, but some of the kind of key ways that they differ from one another?

Jim Jantz

Sure, happy to do that. So the ADA, I think we're all generally familiar with, and it has a lot of familiar phrases and ideas, right? The ADA protects individuals with disabilities. It requires employers to provide reasonable accommodation, as long as there is no undue hardship. So those phrases, reasonable accommodation, undue hardship - things we've heard for a long time in the realm of ADA, and we know that when an employee notifies us of their restrictions and limitations related to a disability, we have to do that individual case by case analysis to see what type of reasonable accommodation an employer can provide to the employee.

The PWFA is full of similar concepts. It also uses the idea of reasonable accommodation and undue hardship, but it does vary quite a bit from the ADA in a few areas. One the PWFA only, it does not require the condition to rise to the level of a disability. Instead, it requires employers to accommodate an employee with known limitations related to pregnancy, so a little bit lower of a bar that, again, sort of expands the ideas of the ADA and protects sort of another class of individuals, a class that doesn't necessarily have a disability, but instead is just has those known limitations related to pregnancy.

I think the PWFA differs from the ADA in a few important ways. One is more general, I'll say. It appears that the PWFA and the way it's being enforced is a bit more focused on the timeliness of implementing accommodations. Yes, both require an interactive process, but I recommend to employers, if you're if you're talking PWFA, try to move through that interactive process a bit quicker. And then a couple ways that I think it varies more in substance from the ADA is that there are certain circumstances that the employer cannot require medical certification. So if it's a specific accommodation request related to pregnancy, no medical certification allowed.

And then the other one, and this is the big one. I don't know how it's going to apply in practice across all organizations, or all job types, but in some cases, under the PWFA, employers do have to temporarily remove essential functions. So under the ADA, we've always talked about, the employee must be able to do the essential functions. We don't have to change or remove essential functions. And now the PWFA twists that concept a little bit and says in certain limited circumstances you do have to remove essential functions.

Josh Seidman

Thanks, Jim. Great level set, all useful tips, and I want to continue on the accommodations train for a bit longer. In terms of managers, what are some tips for managers to recognize an employee's accommodation request, similar to what we were talking about a little bit ago in the FMLA context, what should they be listening and watching out for?

Jim Jantz

I said it under the FMLA category earlier, and I think it's worth repeating here. There are no magic words under the ADA. The employee does not have to say 'disability' or 'accommodation' or anything like that. They just have to inform their employer that they're having trouble because of a medical condition or a disability. So managers need to be listening for those informal requests. When the employee says, 'Oh, I'm having trouble doing this part of my job because of my back injury,' or 'I'm

having trouble lifting because I was golfing this week, and then I hurt my shoulder.' None of that sounds like an accommodation request if you're looking for a specific type of request or a specific format of the request, but really, the employee has done everything they need to do in terms of an ADA accommodation request. They put their employer on notice that they have this condition and they have restrictions that are affecting their job. So again, no magic words. Be very aware of the potential for informal requests.

And I think we talked about it under FMLA, but here it's also worth mentioning that asking those open ended questions can get the information that we need. So when the employee says, 'I'm having trouble doing this,' oh, what's going on? How can I help you? What do you need? That's going to lead the employee to say, 'oh, it'd be great if I had extra support when I have to lift' or something like that. So that's when it's going to sound like a more formal accommodation request. And the manager hasn't done anything to solicit medical information or anything that like that, they've just asked that open ended question, and they've understood more about what the employee is asking for and needs. And then I think the other thing that's worth piling on here is PWFA, again, covers any known limitations related to pregnancy. So once an employee informs you that they're pregnant, I think you need to have a little bit extra listening when you're talking about that we know the employee is pregnant and over the next couple weeks, months, or whatever it might be, if they inform you of limitations that you have to put those two things together and recognize that it might be a request under PWFA.

Josh Seidman

Absolutely, Jim, great stuff. To the extent managers for a particular company play a role in the interactive process. Can you provide some insights on how the manager, the company should handle that process, in terms of communications with the worker, certification and documentation, conducting individualized assessments and so forth?

Jim Jantz

Sure, so the interactive process can look very different at different employers, it can be handled in source, co-source, outsource, whatever the case might be. So trying to generalize the interactive process can be a challenge, but I think at most companies, you don't necessarily view the manager as being involved in the interactive process. They are involved at that critical juncture at the start, but then generally it's going to be processed by HR or the accommodations administration group, whatever that might look like. So it is a critical first step. Managers are involved, even if they're not officially involved in your interactive process.

But I think regardless of the underlying details the interactive process is perfectly named. That name tells you exactly what it should be. It's an interactive process, a conversation, a back and forth between the employee and whoever it is at the company, but you're trying to gather information, whether it's verbal, emails, back and forth, medical certification. It's this exchange of information back and forth that the employee initiates, and then the employer wants to continue to engage with. It's an ongoing interactive process, again, that the name sort of nails it in this scenario. I think one thing we want to know from a manager perspective is - initiate the process, and sometimes the employee is going to hand their note from their doctor or something to their manager, so knowing what to do or knowing who to get that to is also important.

Yes, they're involved at the initial part of the interactive process, but they might be pulled in when that those other kind of issues come up with a medical certification, or sometimes after we've had the

interactive, some of the interactive dialog with the employee to get the information, can we accommodate? The manager might be involved in that decision, because they're hands on, working with the employee and knowing what they do on a day to day basis. So I think that's kind of the overall thing is, is making sure that employers understand that it is an ongoing process, and it's not necessarily defined as you've talked to your manager, now we're having the interactive process, and then the third step is implementing the accommodation. All of that collectively is the interactive process.

Josh Seidman

Spot on, Jim and great tips, right again, across the board, I think even that practical, that last point you mentioned, where a lot of organizations might not have the manager formally, officially involved in the interactive process, but they might still be involved at the beginning, at the onset, and also knowing what to do if they do get that medical certification or doctor's note. I think that's all really good tips. What about leave as an accommodation? It's another important topic, especially now that the PWFA is just about two years old, and we're comparing and contrasting it to what companies and managers know about the ADA. Are there any tips, takeaways, pitfalls for managers when considering about providing a leave of absence to an individual seeking an accommodation?

Jim Jantz

There sure are, right. Again, I think managers have an important part in this process. I always have to stop here and say, because the laws and DOL and EEOC tell us this, that that leave shouldn't be the default accommodation in general, ADA and PWFA - the point of those is to remove barriers to allow the employee to stay at work. That's not always the case, and so it does lead to this leave as an accommodation issue. In a lot of cases, when the employee is not eligible or has exhausted their statutory leaves, then we can have leave as an accommodation under either the ADA or PWFA. But we also need to apply the same concepts to leave as an accommodation that we would apply to a workplace accommodation. So that's going to be an individual case by case assessment. In most circumstances, we can provide some additional leave, but how much leave do we provide after the employee has exhausted their 12 weeks of FMLA? Can we provide an additional two weeks, four weeks, six weeks? That's the part we need to assess, to determine, is it reasonable to provide that amount of leave, and that's going to vary by the position the employee is in.

There are some jobs where an employer could easily accommodate someone on two or four or six weeks of leave, but there are other jobs where having this critical employee out for two weeks might be unreasonable, and the longer that leave request gets, the more we have to assess whether or not it's reasonable. So I think employers just need to consider the specific impact of that employee missing the time? Can the work be distributed to others, or can we backfill temporarily with a contract worker, or something like that? And the timing can matter, where sometimes we can allow an employee to miss extra time during our slow season in the summer, but it might be more of a challenge to have that same employee out for the same amount of time during peak season in winter. So I think we have to consider that, we have to make sure it's an individualized assessment.

And then as far as managers being involved, I would just say we don't want managers making or attempting to make that assessment. 'Oh, we can't have you out this these next two weeks,' right? We don't want managers responding to a leave request in that sort of 'nope, not going to work for our company' kind of way. We want managers to ask the employee get the process started. And now I'm feeling a little redundant with what I've been saying, but managers just need to recognize the request

and then get it to the right place, whether that's the leave team, the accommodations team, or some combination, when it's leave as an accommodation.

Josh Seidman

No, that's great, Jim. And I wouldn't say redundancy, not at all. I think the importance of all of this is understanding and underscoring the preparedness that it takes, right, going through this process and driving home these core points and how they intersect with one another, both in the leave context and the accommodation context, so that companies can mitigate the risk that could be presented from their managerial staff. I think this is great. It's so helpful, and I want to give you one final kind of wrap up question, if you can just share a few final thoughts, notes on the challenges that managers face in this leaves and accommodation space so employers, when they're listening to this episode, they can now proactively think about and make sure that their frontline folks are getting the support they need or getting the training that they need.

Jim Jantz

Sure. So I think the biggest struggle here is that this, for us as leave professionals, is always top of mind. But for many managers, it's not. Like I said, they might receive their training in January and not have one of their employees request to leave until 8, 9, 10 months later, and leave of absence is not the first thing on their mind, the way it would be for us when an employee says they need time off. So understanding how much your managers know about leave or how frequently they are faced with leave requests or accommodation requests can really matter. So think of training your managers through that lens, what do they need to know? What parts of the process actually matter to our managers, and when does it matter to our managers? So I think again, in short, when we're focusing on helping managers recognize the requests, and whether that's a monthly or a quarterly refresher or the annual training is sufficient - it is up to you, based on what your managers know at your company.

And then the next critical thing managers need to know is how to direct the employee to the next step. So whether that's an accommodation or a leave, recognize the request and help the employee navigate to the right place, I think is the two critical parts. And yes, there are layers and complexities to that, but if you think about that when you're designing your manager training, it will help you focus in on what's important to your managers. And then for managers specifically, we know - I've said it enough, what we need to train managers on, but I think we also want to help managers understand not to overstep at the start of the process. Ask those open ended questions and get the employee to the right place. They need to be informed and somewhat knowledgeable. Again, not subject matter experts on the details, but knowledgeable about what these laws provide to employees and allow employees to do and then don't try to solve everything as soon as you see the request. Recognize the request, get the employee to the right place and start the process.

Josh Seidman

Yeah, that's perfect, Jim. Thank you so, so much for joining us today, for moving and grooving, hustling and bustling as we talk through some of these great insights, these great tips, best practices, pitfalls to avoid for managers and guide them through the leave and disability administrative process. So thank you so, so much.

Jim Jantz

Thanks for having me. This has been a lot of fun.

Josh Seidman

Oh, absolutely. And I can't wait to have you back for our next episode, where - to give folks a sneak peek - we will be examining the equally interesting and important topic of how lawmakers and employers are expanding their leave requirements and offerings to provide more inclusive benefits and meet the needs of today's workforce. So looking forward to that, very much, Jim and thank you to our listeners for tuning in for today's episode. We will see you next time.