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A Look Back in 2016 at Human Resource Changes Which Could Impact Your Practice

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Look Back in 2016 at Human Resource Changes Which Could Impact Your Practice

Presented by Pam Joslin, MM, CMC, CMIS, CMOM Practice Management Institute®

Overview

• Department of Labor
  – Salary Threshold Changes
  – Highly Compensated Employee Exemption
  – Rules on over-time
  – Policies on Same Sex Marriages

• Equal Employment Opportunity Commission (EEOC)
  – Antidiscrimination for transgender/sexual orientation
  – ADA and accommodating pregnant employees
  – 2017 Wellness Plans Update

• Generation Gap – Baby Boomers to Millennials

• How to Improve Employee Engagement

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Salary Threshold Changes

- On May 18, 2016, President Obama and Secretary Perez announced the publication of the Department of Labor’s final rule updating the overtime regulations, which will automatically extend overtime pay protections to over 4 million workers within the first year of implementation.
- This long-awaited update will result in a meaningful boost to many workers’ wallets, and will go a long way toward realizing President Obama’s commitment to ensuring every worker is compensated fairly for their hard work.
• In 2014, President Obama signed a Presidential Memorandum directing the Department to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards.

• Consistent with the President's goal of ensuring workers are paid a fair day's pay for a hard day's work, the memorandum instructed the Department to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented.

• The Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on July 6, 2015 (80 FR 38515) and invited interested parties to submit written comments on the proposed rule at www.regulations.gov by September 4, 2015.

• The Department received over 270,000 comments in response to the NPRM from a variety of interested stakeholders. The feedback the Department received helped shape the Final Rule.
Highly Compensated Employee Exemption

Key Provisions of the Final Rule

• The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, the Final Rule:
  • Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South ($913 per week; $47,476 annually for a full-year worker);

Highly Compensated Employee Exemption

• Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally ($134,004); and
  • Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.
  • Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.
• The effective date of the final rule was December 1, 2016*. The initial increases to the standard salary level (from $455 to $913 per week) and HCE total annual compensation requirement (from $100,000 to $134,004 per year) will be effective on that date.

• Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

*NOTE - implementation of this final rule is currently on hold pending a decision by the U.S. Circuit Court of Appeals.

• The policy is meant to help workers in low-paid managerial positions, such as managers at fast-food restaurants, who are not eligible for overtime but are still expected to work long hours.
• The rule would make all workers who make between $23,660 and $47,476 eligible for overtime pay regardless of their duties.
• More than 12 million workers fall into that category, and of those about 4 million have managerial duties that currently make them exempt from overtime pay, according to Ross Eisenbrey, vice president of the liberal Economic Policy Institute.

• Advocates of the rule say it will provide more money or more free time for affected workers:
  – They would either start getting overtime pay or a raise to put their salary above the new threshold.
  – Or employers won't let them work any more than 40 hours a week so they don't incur overtime costs.
• But business groups opposing the rule say it wouldn't help workers in terms of pay or benefits and would raise costs and regulatory burdens on employers.


• Many employers had been preparing for the scheduled implementation of the new overtime rule.
• Some had already communicated the coming changes to their workers and begun training those who would be affected to use a new timekeeping system.
• Others had already implemented worker pay raises.
As a result of the indefinite delay, there is no requirement that they uphold those changes.

But as a practical matter, and from an employee morale perspective, "it's very challenging to take it back," said Thomas Linthorst, an employer-side attorney at the law firm Morgan Lewis.

Temporary Injunction

On November 22, 2016, U.S. District Court Judge Amos Mazzant granted an Emergency Motion for Preliminary Injunction and thereby enjoined the Department of Labor from implementing and enforcing the Overtime Final Rule on December 1, 2016.

The case was heard in the United States District Court, Eastern District of Texas, Sherman Division (State of Nevada ET AL v. United States Department of Labor ET AL No: 4:16-CV-00731). The rule updated the standard salary level and provided a method to keep the salary level current to better effectuate Congress's intent to exempt bona fide white collar workers from overtime protections.
On December 1, 2016, the Department of Justice on behalf of the Department of Labor filed a notice to appeal the preliminary injunction to the U.S. Circuit Court of Appeals for the Fifth Circuit. The Department has moved to expedite the appeal.

Since 1940, the Department's regulations have generally required each of three tests to be met for the FLSA's executive, administrative, and professional (EAP) exemption to apply:

1. the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed ("salary basis test");
2. the amount of salary paid must meet a minimum specified amount ("salary level test"); and
3. the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations ("duties test"). The Department has always recognized that the salary level test works in tandem with the duties tests to identify bona fide EAP employees. The Department has updated the salary level requirements seven times since 1938.

The Department strongly disagrees with the decision by the court. The Department’s Overtime Final Rule is the result of a comprehensive, inclusive rule-making process, and we remain confident in the legality of all aspects of the rule.

For the latest news and updates on the Overtime Final Rule, subscribe to US Dept. of Labor mailing list:


Source: https://www.dol.gov/WHD/overtime/final2016/
Equal Employment Opportunity Commission (EEOC)

FMLA policies on same sex marriages

• The U.S. Office of Personnel Management (OPM) is revising the definition of *spouse* in its regulations on the Family and Medical Leave Act (FMLA) as a result of the decision by the United States Supreme Court holding section 3 of the Defense of Marriage Act (DOMA) unconstitutional.

• The new definition replaces the existing definition, which contains language from DOMA that refers to “a legal union between one man and one woman.” The new definition permits Federal employees with same-sex spouses to use FMLA leave in the same manner as Federal employees with opposite-sex spouses.
DATES:
• This final rule was effective on May 9, 2016.
• Start Further Info FOR FURTHER INFORMATION CONTACT:
  • Kurt Springmann by email at pay-leave-policy@opm.gov or by telephone at (202) 606-2858.
  • End Further Info End Preamble Start Supplemental Information

SUPPLEMENTARY INFORMATION:
• The U.S. Office of Personnel Management is issuing a final regulation that revises the definition of spouse under 5 CFR 630.1202 for purposes of the Family and Medical Leave Act. This change stems from the June 26, 2013, decision of the U.S. Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), invalidating Section 3 (1 U.S.C. 7) of the Defense of Marriage Act (Public Law 104-199, 110 Stat. 2419 (1996)). The revised definition establishes in regulation that Federal employees who are in legal marriages with same-sex spouses can use their leave entitlement under FMLA in the same manner as Federal employees who are in legal marriages with opposite-sex spouses.

Background

• Two Federal agencies administer regulations governing FMLA. The Department of Labor (DOL) issues regulations for title I of FMLA, which covers non-Federal employees and certain Federal employees not covered under title II.
• OPM issues regulations for title II of FMLA, which covers most Federal employees. Title II of FMLA directs OPM to prescribe regulations that are consistent, to the extent appropriate, with regulations prescribed by the Secretary of Labor to carry out title I of FMLA. (See 5 U.S.C. 6387.) DOL published its final regulations on the definition of spouse under title I of FMLA on February 25, 2015, at 80 FR 9989.
• On June 26, 2013, the U.S. Supreme Court ruled in *Windsor*

• Section 3 states in part: “In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word `marriage' means only a legal union between one man and one woman as husband and wife, and the word `spouse' refers only to a person of the opposite sex who is a husband or a wife.”

Transgender Employees

• Title VII of the Civil Rights Act of 1964 applies to all governmental and private employers with 15 or more employees. Title VII prohibits employment discrimination on the basis of race, color, national origin, religion and sex.
• Sex includes pregnancy and discrimination based on expectations or stereotypes of how someone of a certain gender should look or act.
• This means that discrimination based on gender identity, sexual orientation, or transgender status, while not specifically prohibited, may still violate the prohibition on sex discrimination.

Transgender Employees

• According to the EEOC, an employer cannot:
  – Deny an employee equal access to a common restroom corresponding to the employee’s gender identity;
  – Condition this right on the employee undergoing or providing proof of surgery or any other medical procedure; or
  – Restrict a transgender employee to a single-user restroom.
• The OPM (Office of Personnel Management) also suggests that employers evaluate and eliminate gender-specific dress and appearance rules.
• Managers and coworkers should use the name and pronoun appropriate to the gender the employee is now presenting at work both to the employee as well as in communications with other regarding the employee.

• An employer also can not hide behind state law in contrary to Title VII. South Carolina does not have a law restricting bathroom use, though bills on this matter continue to be introduced to legislation.
• Employees should not be asked to provide any medical or legal documentation of their gender identity to have access to gender-appropriate bathrooms.
• Additionally, under OSHA, employees generally cannot be limited to using a bathroom that is unreasonably far from the employee’s worksite.

• Educational institutions, covered by Title IX rather than Title VII, are required to give transgender students restroom and locker access consistent with their gender identity.

• The Office of Personnel Management is the federal agency that sets policy on government-wide hiring procedures and develops, tests and implements new policies that relate to personnel issues for federal government employers.

• The OPM has made broad suggestions for federal government agencies to decrease gender identity discrimination in the workplace.

• The OPM suggests that employers review their anti-discrimination policies to make sure the policies protect employees regardless of their gender identity or gender non-conformity.
• Your workplace needs to be free of discrimination, including discrimination on the basis of gender identification.

Final Rule on Employer Wellness Programs and Title I of the Americans with Disabilities Act

On May 17, 2016, the Equal Employment Opportunity Commission (EEOC or the Commission) issued a final rule to amend the Regulations and the accompanying Interpretive Guidance (also known as the Appendix) implementing Title I of the Americans with Disabilities Act (ADA) as they relate to employer wellness programs.

A notice of proposed rulemaking was previously issued on April 20, 2015. The final rule says employers may provide limited financial and other incentives in exchange for an employee answering disability-related questions or taking medical examinations as part of a wellness program, whether or not the program is part of a health plan.

What is a Wellness Program?

The term "wellness program" generally refers to health promotion and disease prevention programs and activities offered to employees as part of an employer-sponsored group health plan or separately as a benefit of employment. Many of these programs ask employees to answer questions on a health risk assessment (HRA) and/or undergo biometric screenings for risk factors (such as high blood pressure or cholesterol).

Other wellness programs provide educational health-related information or programs that may include nutrition classes, weight loss and smoking cessation programs, onsite exercise facilities, and/or coaching to help employees meet health goals.

What is the ADA and how does it apply to wellness programs?

Title I of the ADA is a federal civil rights law that prohibits employers from discriminating against individuals on the basis of disability. It also generally restricts employers from obtaining medical information from applicants and employees but allows them to make inquiries about employees' health or do medical examinations that are part of a voluntary employee health program. Employee health programs include many workplace wellness programs.

Additionally, Title I of the ADA prohibits employers from denying employees access to wellness programs on the basis of disability, and requires employers to provide reasonable accommodations (adjustments or modifications) that allow employees with disabilities to participate in wellness programs and to keep any medical information gathered as part of the wellness program confidential.
Why did EEOC issue this Final Rule?

Before this final rule was issued, EEOC’s ADA regulations stated that employers may make inquiries and conduct medical examinations that are part of a voluntary health program but did not define the term "voluntary" or explain what constitutes a "health program." The regulations also did not say whether the ADA allows employers to offer incentives to encourage employees to participate in such programs.

EEOC issued this rule to provide guidance on the extent to which employers may offer incentives to employees to participate in wellness programs that ask them to answer disability-related questions or undergo medical examinations.

The rule also explains the differences between the ADA's requirements for voluntary health programs and other federal laws, such as the Health Insurance Portability and Accountability Act (HIPAA), as amended by the Patient Protection and Affordable Care Act (Affordable Care Act), which governs wellness programs that are part of a group health plan.

How does this rule relate to the wellness program rules under HIPAA and the Affordable Care Act?

In issuing this final rule, EEOC sought to provide consistency with HIPAA and the Affordable Care Act rules on wellness program incentives, while also ensuring that incentives would not be so high as to become coercive and render participation in the program involuntary. The ADA also regulates certain aspects of wellness programs that HIPAA and the Affordable Care Act do not. Consequently, there are some differences between this rule and the wellness program rules under HIPAA and the Affordable Care Act.

HIPAA and the Affordable Care Act allow wellness programs that are part of an employer-sponsored group health plan to offer incentives for "health-contingent" wellness programs. These programs offer rewards to employees who perform activities (such as walk 10,000 steps a day) or achieve certain health outcomes (such as lowering their blood pressure), or impose penalties if they do not perform an activity or fail to achieve a particular outcome.
How does this rule relate to the wellness program rules under HIPAA and the Affordable Care Act?

• Unlike HIPAA and the Affordable Care Act, the ADA places limits on disability-related inquiries and medical examinations related to wellness programs, regardless of how the information obtained is ultimately used.
• Therefore, EEOC's final rule makes clear that the limit on incentives applies to any wellness program that requires employees to answer disability-related questions or undergo medical examinations (whether it is participatory or health contingent). Like HIPAA and the Affordable Care Act, this rule also makes clear that the term "incentives" includes both financial and in-kind incentives (such as reductions in insurance premiums, cash, time-off awards, prizes, and other items of value -- including "trinket" gifts).

ADA “Safe Harbor” Applicable to Insurance

• The ADA's safe harbor provision allows insurers and plan sponsors (including employers) to use information, including actuarial data, about risks posed by certain health conditions to make decisions about insurability and about the cost of insurance.
• Such practices have to be consistent with laws governing insurance and cannot be a subterfuge to evade compliance with the ADA. Without the safe harbor, these practices would violate the ADA by treating some individuals with disabilities less favorably than individuals without those disabilities.
ADA “Safe Harbor” Applicable to Insurance

- Many of the insurance practices the safe harbor permitted at the time of the enactment of the ADA, such as denying health coverage for individuals with pre-existing conditions or charging some individuals in group health plans more than others because of their health conditions, are now unlawful under the Affordable Care Act.
- The safe harbor provision does not apply to employer wellness programs, since employers are not collecting or using information to determine whether employees with certain health conditions are insurable or to set insurance premiums. The final rule adds a new provision explicitly stating that the safe harbor provision does not apply to wellness programs even if they are part of an employer's health plan.

Examples of Wellness Programs that Meet the “Reasonably Designed”

- A wellness program that asks employees to answer questions about their health conditions or have a biometric screening or other medical examination for the purpose of alerting them to health risks (such as having high cholesterol or elevated blood pressure) is reasonably designed to promote health or prevent disease.
- Collecting and using aggregate information from employee HRAs to design and offer programs aimed at specific conditions prevalent in the workplace (such as diabetes or hypertension) also would meet this standard.
Examples of Wellness Programs that Meet the “Reasonably Designed”

• However, asking employees to provide medical information on a HRA without providing any feedback about risk factors or without using aggregate information to design programs or treat any specific conditions would not be reasonably designed to promote health or prevent disease.

• A wellness program also is not reasonably designed to promote health or prevent disease if it exists merely to shift costs from the employer to employees based on their health or is used by the employer only to predict its future health costs.

When is an Employee’s Participation in a Wellness Program Considered “Voluntary?”

Like the proposed rule, the final rule lists several requirements that must be met in order for an employee's participation in a wellness program that includes disability-related inquiries or medical examinations to be considered voluntary. Specifically, an employer:

• may not require any employee to participate;

• may not deny any employee who does not participate in a wellness program access to health coverage or prohibit any employee from choosing a particular plan; and

• may not take any other adverse action or retaliate against, interfere with, coerce, intimidate, or threaten any employee who chooses not to participate in a wellness program or fails to achieve certain health outcomes.

Additionally, in order to ensure that an employee's participation is voluntary, an employer must provide a notice that clearly explains what medical information will be obtained, how it will be used, who will receive it, and the restrictions on disclosure.
Does this Rule Apply to all Wellness Programs that Offer Incentives Based on Health Outcomes?

No. This rule applies only to wellness programs that require employees to answer disability-related questions or to undergo medical examinations in order to earn a reward or avoid a penalty. It would not apply, for example, to a wellness program that simply requires employees to engage in a certain activity (such as attending a nutrition or weight loss class or to walk a certain amount every week) in order to earn an incentive.

However, the ADA requires employers to provide reasonable accommodations that allow employees with disabilities to participate in such programs.

For example, an employer would have to provide a sign language interpreter for an employee who is deaf and wants to attend a smoking cessation class, materials in an accessible format (such as in Braille or large print) for an employee who is blind, or an alternative to a program that requires a certain amount of walking for an employee who uses a wheelchair.

How much of an incentive may an employer offer to encourage employees to participate in a wellness program or to achieve certain health outcomes when a wellness program is offered as part of a particular health plan?

If a wellness program is open only to employees enrolled in a particular plan, then the maximum allowable incentive an employer can offer is 30 percent of the total cost for self-only coverage of the plan in which the employee is enrolled.

- For example, if the total cost for self-only coverage for the plan in which the employee is enrolled is $6,000 annually, the employer can reward the employee up to $1,800 for participating in the wellness program and/or for achieving certain health outcomes (or penalize the employee up to the same amount for not participating and/or failing to meet health outcomes). The employer also could offer the same level of incentive if it offered only one group health plan but allowed any employee to participate in the wellness program regardless of whether he or she is enrolled in the health plan.
How does an employer calculate incentive limits when an employer has more than one group health plan but offers a wellness program that does not require employees to participate in a particular plan?

When an employer offers more than one group health plan but participation in a wellness program is open to all employees regardless of whether they are enrolled in a plan, the employer may offer a maximum incentive of 30 percent of the lowest cost major medical self-only plan it offers.

For example, if an employer offers three different major medical group health plans ranging in cost for self-only coverage from $5,000 to $8,000 and wants to offer an incentive to employees for participating in a wellness program and completing a HRA, the employer could offer a maximum incentive of $1,500 (30 percent of its lowest cost plan).

May an employer offer an incentive to employees to participate in a wellness program if it does not offer health insurance?

Yes. If an employer does not offer health insurance but wants to offer an incentive for employees to complete a HRA or to have annual tests that check their glucose and cholesterol levels, the employer could offer an incentive up to 30 percent of the cost that a 40-year-old non-smoker would pay for self-only coverage under the second lowest cost Silver Plan on the state or federal health care Exchange in the location that the employer identifies as its principal place of business.

If such a plan would cost an employee $4,000, the employer could offer a maximum incentive of $1,200.
Are the incentive limits related to smoking cessation programs the same as for all other wellness programs?

Like the proposed rule, the final rule makes a distinction between smoking cessation programs that require employees to be tested for nicotine use and programs that merely ask employees if they smoke. A wellness program that merely asks employees whether or not they use tobacco (or whether they ceased using tobacco by the end of the program) is not a wellness program that asks disability-related questions.

Therefore, the rule’s 30 percent incentive limit does not apply and, an employer can offer an incentive up to 50 percent of the cost of self-only coverage, consistent with HIPAA, as amended by the Affordable Care Act. However, where an employer requires any biometric screening or other medical procedure that tests for the presence of nicotine or tobacco, the rule’s 30 percent incentive limit applies.

Confidentiality Requirements

- The final rule does not change language concerning confidentiality (including any exceptions to confidentiality) that was already part of EEOC’s existing ADA regulations, but adds two new requirements.
  - First, a covered entity only may receive information collected by a wellness program in aggregate form that does not disclose, and is not reasonably likely to disclose, the identity of specific individuals except as is necessary to administer a health plan.
  - Second, an employer may not require an employee to agree to the sale, exchange, sharing, transfer, or other disclosure of medical information, or to waive confidentiality protections under the ADA as a condition for participating in a wellness program or receiving an incentive for participating, except to the extent permitted by the ADA to carry out specific activities related to the wellness program.
Are there any other federal laws that protect the confidentiality of medical information obtained through a wellness program?

Yes. For example, where a wellness program is part of a group health plan, HIPAA's privacy, security, and breach notification rules protect information collected from or created about participants that can be used to identify them (such as their address or birth date) and that relates to any past or present health condition and sets limits on the uses and disclosures that may be made of such information.

An employer that sponsors a group health plan may receive this information but must certify to the plan that it will safeguard and not improperly use or share it. Generally, wellness programs can comply with EEOC's final rule by complying with their obligations under the HIPAA Privacy Rule, and employers can comply with their obligations by certifying that they will not use any personally identifiable information for employment purposes and abiding by that certification.

Applicability Date

When do employer wellness programs have to comply with this rule?

The new provisions of the final rule concerning the requirement to provide a notice that clearly explains to employees what medical information will be obtained and how it will be used and the limits on incentives apply only prospectively to wellness programs as of the first day of the first plan year that begins on or after January 1, 2017, for the health plan used to determine the level of incentives permitted under this rule.

For example, if the health plan that is used to calculate the permissible incentive limit begins on January 1, 2017, that is the date on which the rules on incentives and the notice requirements apply to the wellness program. If the plan used to calculate the level of incentives begins on March 1, 2017, the provisions on incentives and notice requirements will apply to the wellness program as of that date. The rest of the provisions of the rule, which simply clarify existing obligations, apply both before and after publication of the final rule.
Overview of Federal Sector EEOC Complaint Process

- If you are a federal employee or job applicant, the law protects you from discrimination because of your race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.
- The law also protects you from retaliation if you oppose employment discrimination, file a complaint of discrimination, or participate in the EEO complaint process (even if the complaint is not yours.)

ADA and accommodating pregnant employees

- The PDA requires that a covered employer treat women affected by pregnancy, childbirth, or related medical conditions in the same manner as other applicants or employees who are similar in their ability or inability to work.
- The PDA covers all aspects of employment, including firing, hiring, promotions, and fringe benefits (such as leave and health insurance benefits). Pregnant workers are protected from discrimination based on current pregnancy, past pregnancy, and potential pregnancy.
• Under the PDA, an employer cannot fire, refuse to hire, demote, or take any other adverse action against a woman if pregnancy, childbirth, or a related medical condition was a motivating factor in the adverse employment action. **This is true even if the employer believes it is acting in the employee's best interest.**

• **Past Pregnancy.** An employer may not discriminate against an employee or applicant based on a past pregnancy or pregnancy-related medical condition or childbirth. For example, an employer may not fire a woman because of pregnancy during or at the end of her maternity leave.

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**Current Pregnancy**

• Under the PDA, an employer cannot fire, refuse to hire, demote, or take any other adverse action against a woman if pregnancy, childbirth, or a related medical condition was a motivating factor in the adverse employment action. **This is true even if the employer believes it is acting in the employee's best interest.**

**Past Pregnancy**

• An employer may not discriminate against an employee or applicant based on a past pregnancy or pregnancy-related medical condition or childbirth. For example, an employer may not fire a woman because of pregnancy during or at the end of her maternity leave.
Potential Pregnancy

- An employer may not discriminate based on an employee’s intention or potential to become pregnant.
- For example, an employer may not exclude a woman from a job involving processing certain chemicals out of concern that exposure would be harmful to a fetus if the employee became pregnant. Concerns about risks to a pregnant employee or her fetus will rarely, if ever, justify sex-specific job restrictions for a woman of childbearing capacity.

Medical Condition Related to Pregnancy or Childbirth

- An employer may not discriminate against an employee because of a medical condition related to pregnancy and must treat the employee the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions.
- For example, under the PDA, since lactation is a medical condition related to pregnancy, an employer may not discriminate against an employee because of her breastfeeding schedule. (For information about a provision of the Patient Protection and Affordable Care Act that provides additional protections for breastfeeding employees, see the section on "Other Federal Laws Protecting Pregnant Workers").
Harassment

• It is unlawful to harass a woman because of pregnancy, childbirth, or a related medical condition.
• Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive environment, or when it results in an adverse employment decision (such as the victim being fired or demoted).

Workers with Caregiving Responsibilities

• Discrimination against a worker with caregiving responsibilities violates Title VII if it is based on sex, and violates the ADA if it is based on a family member's disability.
• For example, an employer violates Title VII by treating a female employee with young children less favorably than a male employee with young children when deciding on work opportunities.
• In addition, an employer violates the ADA where it takes an adverse action, such as refusing to hire or denying promotion, against a mother of a newborn with a disability over concerns that she would take off a lot of time for the child's care or that the child's medical condition would impose high health care costs.
Benefits of Employment

• An employer must provide the same benefits of employment to women affected by pregnancy, childbirth, or related medical conditions that it provides to other persons who are similar in their ability or inability to work.

Light Duty Policies

• An employer has to treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees who are similar in their ability or inability to work with respect to light duty, alternative assignments, disability leave, or unpaid leave.
  – An employer that provides light duty to other employees cannot justify denying it to a pregnant worker just because it would be more expensive or less convenient to do so.
  – Even if a light duty policy does not specifically exclude pregnant workers, it may still violate the PDA if it imposes significant burdens on pregnant employees for which there is not a sufficiently strong justification. For example, providing light duty to a large percentage of non-pregnant employees with limitations while denying light duty to a large percentage of pregnant employees may be difficult to justify.
Leave

• While an employer may not compel an employee to take leave because she is pregnant as long as she is able to perform her job, **it must allow** women with physical limitations resulting from pregnancy to take leave on the same terms and conditions (e.g., provide them with the same amount of leave) as others who are **similar in their ability or inability to work**.
  
  – An employer:
    • may not single out an employee’s pregnancy-related condition for medical clearance procedures that are not required of **employees** who are similar in their ability or inability to work,
    • may not remove a pregnant employee from her job because of pregnancy as long as she is able to perform her job, and
    • **must allow her to return to work following recovery** from a pregnancy-related condition to the same extent that employees on sick and disability leave for other reasons are allowed to return.

• If the pregnant employee used leave under the **Family and Medical Leave Act**, the employer must restore the employee to the employee's original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. (For information about the Family and Medical Leave Act, see the section on "Other Federal Laws Protecting Pregnant Workers").

• **Title I of the ADA** may require an employer to provide leave **beyond that which it usually allows its employees to take**, as a reasonable accommodation for an employee with a pregnancy-related impairment that is a disability.
Medical Benefits

• The PDA requires employers who offer health insurance to include coverage of pregnancy, childbirth, and related medical conditions.

• An employer must provide the same terms and conditions for pregnancy-related benefits as it provides for benefits relating to other medical conditions.

The Americans with Disabilities Act

• Although pregnancy itself is not a disability, pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA. Amendments to the ADA made in 2008 make it much easier than it used to be to show that an impairment is a disability.

• A number of pregnancy-related impairments are likely to be disabilities, even though they are temporary, such as pregnancy-related carpal tunnel syndrome, gestational diabetes, pregnancy-related sciatica, and preeclampsia.

• An employer may not discriminate against an individual whose pregnancy-related impairment is a disability under the ADA and must provide an individual with a reasonable accommodation if needed because of a pregnancy-related disability, unless the accommodation would result in significant difficulty or expense ("undue hardship").
Examples of reasonable accommodations that may be necessary for a pregnancy-related disability include:

- Redistributing marginal or nonessential functions (for example, occasional lifting) that a pregnant worker cannot perform, or altering how an essential or marginal function is performed;
- Modifying workplace policies by allowing a pregnant worker more frequent breaks or allowing her to keep a water bottle at a workstation even though the employer generally prohibits employees from keeping drinks at their workstations;
- Modifying a work schedule so that someone who experiences severe morning sickness can arrive later than her usual start time and leave later to make up the time;
- Allowing a pregnant worker placed on bed rest to telework where feasible;
- Granting leave in addition to what an employer would normally provide under a sick leave policy;
- Purchasing or modifying equipment, such as a stool for a pregnant employee who needs to sit while performing job tasks typically performed while standing; and
- Temporarily reassigning an employee to a light duty
Other Federal Laws Affecting Pregnant Workers

• The Family and Medical Leave Act (FMLA) allows eligible employees of employers with 50 or more employees to take up to 12 workweeks of leave for, among other things, the birth and care of the employee's newborn child and for the employee's own serious health condition. The Department of Labor enforces the FMLA.

For more information about the FMLA see http://www.dol.gov/whd.

• Section 4207 of the Patient Protection and Affordable Care Act amended the Fair Labor Standards Act to require employers to provide "reasonable break time" for hourly employees to express breast milk until the child's first birthday. Employers are required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

• Employers with fewer than 50 employees are not subject to this requirement if it "would impose an undue hardship by causing significant difficulty or expense when considered in relation to the size, nature, or structure of the employer's business."

• DOL has published a Fact Sheet providing general information on the break time requirement for nursing mothers.

The Fact Sheet can be found at http://www.dol.gov/whd/regs/compliance/whdfs73.htm.
Generation Gap – Silent Generation to Millennials

Silent Generation (Traditionalists)

- Born before 1945
- 10% of workforce
- “Company loyalty”

How to Engage

- Create mentorship opportunities
- Leverage relationships
Baby Boomer

- Born 1946 – 1964
- 44% of workforce
- “Live to work”

How to Engage
- Help with work life balance so they stay in workforce as long as possible
- Be smart with succession planning – their retirement will cause a huge “brain drain”

Gen X

- Born 1965 – 1980
- 34% of workforce
- “Work to live”

How to engage
- Foster leadership – these are the best-educated employees in history
- Compensate
- Provide clear career path
- Coach and guide
Millennials (Gen Y)

- 12% of workforce, increasing rapidly
- “Work my way”

**How to Engage**

- Empower to figure out things on their own
- Do not micro-manage
- Self-service is mandatory
- Demonstrate that you’re as comfortable with technology as they are

**How to Improve Employee Engagement**
How to Build and Maintain Employee Engagement

• Review staff performance regularly. Have one-on-one meetings.
• Encourage continuing education
• Empower your staff. Give your staff a voice.
• Promote a positive mental attitude.
• Recognize achievement.
• Show your staff that you care.

• Catch your staff doing things right. Don’t skimp on gratitude or praise.
• Designate project heads.
• Involve your employees in decision making.
• Celebrate successes and inspire pride.
Questions?

• Thank you for your attendance!

• Get your questions answered on PMI’s Discussion Forum:
  http://www.pmimd.com/pmiForums/rules.asp