

**UCSF**  
University of California  
San Francisco




## Implementation of the ABA Leave Policy

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1

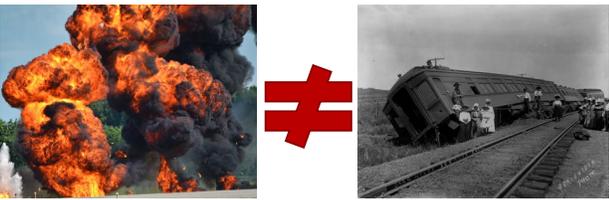
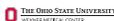
## Disclosures

- We have no disclosures



2

## Our Interpretation

3

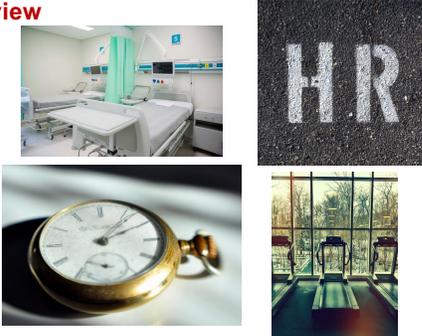
## Guiding Principles

- All residents are held to the same baseline standard and must demonstrate sufficient competence to enter practice without direct supervision
- The milestone language helps to identify areas for improvement
- In general, the program will advocate for time away to be approved as long as the resident is on track to achieving the designated anesthesiology milestones



4

## Overview




5

## Indications




6

## FMLA: Introduction

The Family and Medical Leave Act (FMLA) was passed in 1993 and revised January 16, 2009, and March 8, 2013, with some provisions retroactive to February 5, 2012.

Of all federal employment laws, the FMLA is one of the most popular and beneficial to employees. Most employees are aware of the basic requirements of the law, but they may not realize the law provides employers with various options on how to administer FMLA leave.

7

## FMLA: Employers Covered

A covered employer is one of the following:

- Private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer.
- Public agency, including a local, state or federal government agency, regardless of the number of workers it employs.
- Public or private elementary or secondary school, regardless of the number of workers it employs.

8

## FMLA: Employees Eligible for Leave

An eligible employee meets the following criteria:

- Works for a *covered* employer.
- Has worked for the employer for at least 12 months.
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave.
- Works at a location where the employer has at least 50 employees within 75 miles.

9

## FMLA: Basic Provisions

Qualifying reasons for FMLA leave:

1. For the birth of a child and to care for the newborn child.
2. For placement with the employee of a child for adoption or foster care.
3. To care for the employee's spouse, child or parent with a serious health condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.
5. Because of any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status).
6. To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the covered service member.

10

## FMLA: Basic Provisions

FMLA 12-month period:

An employer is permitted to choose one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement occurs:

- The calendar year.
- Any fixed 12-month leave year, such as a fiscal year.
- The 12-month period measured forward from the date an employee's first FMLA leave begins.
- A rolling 12-month period measured backward from the date an employee uses any FMLA leave.

11

## FMLA: Basic Provisions

FMLA does *not* require paid leave.

The law allows employers to require employees to use any paid leave that they may have as part of their FMLA leave.

12

### FMLA: Basic Provisions

FMLA allows employers to require employees to submit certification of the need for FMLA leave.

Certification may be required for:

- An employee's serious health condition.
- A family member's serious health condition.
- The qualifying exigency for military family leave.
- The serious injury or illness of a covered service member for military family leave.

13

### ADA: Introduction

The Americans with Disabilities Act (ADA) of 1990 was the first comprehensive civil rights law in this country that addressed the needs of people with disabilities. The law was amended by the ADA Amendments Act (ADAAA) of 2008. It applies to employers with 15 or more employees.

The ADA as amended prohibits discrimination in employment, public services and accommodations, and telecommunications. It also requires employers to make a reasonable accommodation to an applicant or employee if needed to perform the essential functions of a job.

14

### ADA: Covered Individuals

Employment discrimination is prohibited against qualified individuals with disabilities. Covered individuals include applicants for employment and employees.

Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.

A qualified individual with a disability is 1) an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and 2) an individual who, with or without reasonable accommodation, can perform the essential functions of such position.

15

### ADA: Covered Individuals

An individual is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

The term "**substantially limits**" means:

An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting.

16

### ADA: Covered Individuals

"**Physical or mental impairment**" means:

Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

17

### ADA: Covered Individuals

"**Major life activities**," as defined by the ADA, include:

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

18

**ADA: Covered Individuals**

Whether an impairment is substantially limiting is made *without regard* to “ameliorative effects” of mitigating measures.

Mitigating measures may include:

- Medication.
- Medical supplies, equipment or appliances.
- Low-vision devices (not including ordinary eyeglasses or contact lenses).
- Prosthetics.
- Hearing aids and other hearing devices.
- Mobility devices.
- Other types of medical assistance or therapy.

19

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- Other types of medical assistance or therapy.

20

**ADA: Covered Individuals**

The ADA specifically states certain conditions that can quite easily be determined to be a covered disability under the law. These include an individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, cancer, post-traumatic stress disorder (PTSD), obsessive-compulsive disorder (OCD), multiple sclerosis (MS), muscular dystrophy, major depressive disorder, bipolar disorder, schizophrenia, autism, intellectual impairment, mobility impairments requiring use of a wheelchair and partial or missing limbs.

21

**ADA: Substance Abuse**

**Alcohol**

A person who currently uses alcohol is not automatically denied protection simply because of alcohol use.

An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if he or she is qualified to perform the essential functions of a job.

However, an employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that he or she is not qualified.

22

**ADA: Substance Abuse**

**Drugs**

A drug addict is protected as having a disability only if he or she *is receiving recovery treatment* and is not a current user.

Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.

23

**ADA: Reasonable Accommodations**

Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable the qualified individual with a disability to participate in the application process or to perform essential job functions (the fundamental duties of the job).

Reasonable accommodation also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

24

### ADA: Reasonable Accommodations

A job function may be considered essential for any of several reasons, such as:

- The job exists to perform that function.
- The function requires specialized skills or expertise, and the person is hired for that expertise.
- Only a limited number of employees are to perform the function.

Examples of essential job function accommodations include:

- Providing a special phone for a receptionist who has a hearing impairment.
- Providing frequent stretching breaks for an employee with a muscular/joint/vascular disorder whose job requires long periods of sitting or standing.

25

### ADA: Reasonable Accommodations

Tolerating poor performance unrelated to a disability is not an accommodation.

Accommodations must be reasonable and not create an undue hardship on the employer. These criteria are very high standards and cannot be easily demonstrated.

26

### Indications



- Serious medical illness
- Birth, adoption, foster of child
- Health care of qualifying family member
- Exigency out immediate family member's active military duty

27 | <https://www.knowyourrights.org/>

27

"The adoption of this policy does not supersede program support of resident wellness. Self-care is an important component professionalism and will be nurtured in our program. Residents will be given opportunities to attend medical, mental health, and dental care appointments including those scheduled during work hours with reasonable communication and planning.. "

28 | <https://www.knowyourrights.org/>, <https://www.knowyourrights.org/>, <https://www.knowyourrights.org/>, <https://www.knowyourrights.org/>, <https://www.knowyourrights.org/>

28

### Human Resources



- How do your residents get paid when they are away?
  - Parental Leave?
  - Sick Leave
- A Union you say?

29 | <https://www.knowyourrights.org/>

29

### Other Considerations

- Days missed including sick days, fellowship interviews, bereavement, personal leave or other cause will be tracked
- Above a threshold of 10 days (over 3 years), the total will be taken into consideration when the CCC determines the amount of days away granted
- Amount of call is considered and potentially required to be made up by the resident

30 | <https://www.knowyourrights.org/>

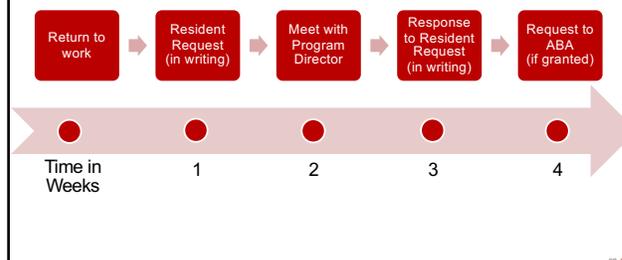
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## Human Resources



31

## Timing



32

## Scheduled Resident Leave\*

- A formal "additional days away request" is submitted prior to the leave by the resident to the CCC; advisor is informed
- A self-assessment study is submitted with the request:
  - ACGME Anesthesiology milestone progress
  - SMART goals to be utilized upon return
  - CCC will conduct a thorough review preferably before the resident begins the LOA

\*emergent leaves do not require a formal submission prior to LOA; submission of self-assessment will occur upon return

33

## Factors used in CCC review

- Overall clinical performance compared to peers based on evaluations and assessments (multimodal)
- Rate of progression in achieving all ACGME Anesthesiology milestones
- Number of required clinical rotations completed (required rotations as defined in the ACGME Anesthesiology Program Requirements)
- Percent completion of required cases (index cases as defined in the ACGME Anesthesiology Program Requirements)
- Performance on ABA In-Training-Exam and BASIC exam

34

## Ensuring Adequate Training

- Required Rotations
- Case Counts
- Evaluations
- Examination Performance

35

## Training

Eligibility for graduation to unsupervised clinical practice is determined by the Clinical Competency Committee after review of evaluations, feedback from clinical observation, milestone evaluations, event reporting, reviews of professionalism, completion of administrative tasks, and testing scores. Trainees approved by the ABA for additional time away from training must also successfully demonstrate that they meet these standards in order to successfully graduate according to their original training schedule. At the discretion of the program director, trainees who fail to meet those standards may require additional time in training in order to reach minimum competency and be required to extend their training despite ABA approval of additional days away from training.

36

## Ongoing CCC Review

- If the resident falls below the target level expected by the program the CCC may judge that extension of training is necessary; the resident will be notified in writing of the decision to extend training; any NOC will likely lead to extension
- Our GME policies govern extensions of training and appeals processes that must be followed

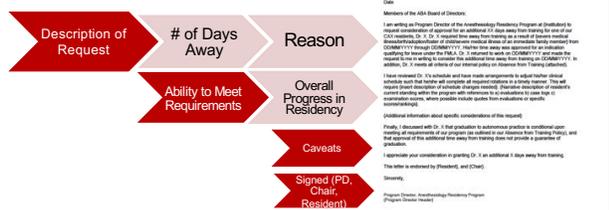
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## Special Tracks

- Research Track
- Critical Care Track

38

### Example



39

### Examples

- UCSF Policy
- OSU Policy
- Example Letter



<https://go.osu.edu/ucsfpolicy>



<https://go.osu.edu/osumcawspolicy>



<https://m.msu.edu/illnessandletter>

40

## Special Thanks

- California Society of Anesthesiologists for sponsoring an annual CSA Program Director's Meeting
- Wisdom and guidance of the California Program Directors
- OSU Program Coordinator: Sarah Robertson
- Our OSU Education Leadership, Clinical Competency Committee & Program Evaluation Committee

41

## Questions?

Thank You

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42

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