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# IASPA
# Accommodations and Telework

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# COVID-19 ISSUES

- Return to In-Person Instruction/Learning
- Exclusions:

  https://www.isbe.net/Documents/IDPH-COVID19-Exclusion-Decison-Tree.pdf
- Leaves Available
- Accommodations Available


# ABC's of Leaves

# Pre-FFCRA/Post-FFCRA

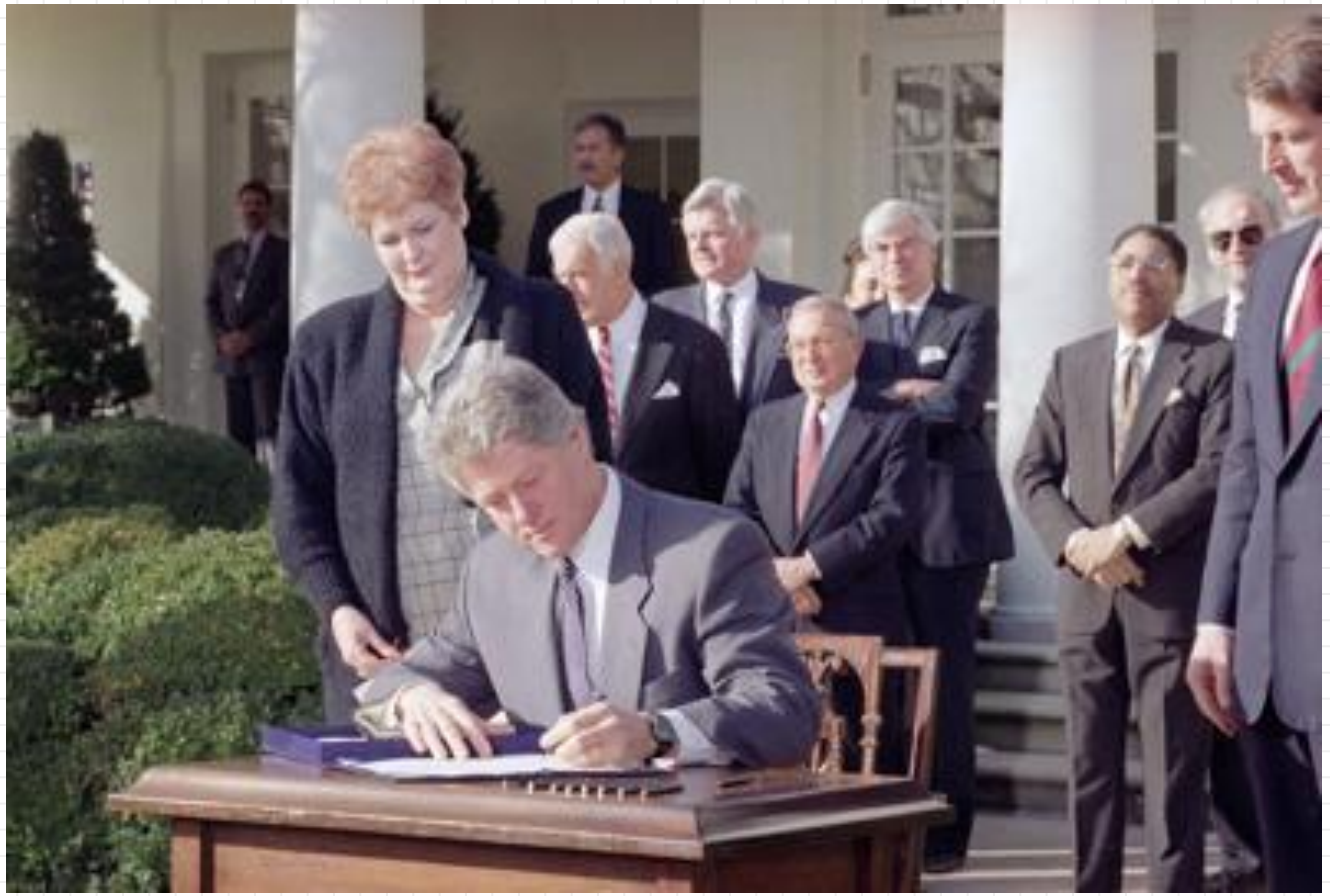
- Sick Leave under the School Code
  - ✗ All employees receive 10 days
  - ✗ Can be used for personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption

- Family Medical Leave Act Leave
  - ✗ 12 weeks of unpaid leave for serious illness of employee or someone in the employee's family
  - ✗ Does not include leave for quarantine
  - ✗ Benefits cannot be interrupted during 12 weeks

- Paid or unpaid leave pursuant to a collective bargaining agreement or board policy
  - ✗ Leaves and reasons for leaves vary from District to District

# Family Medical Leave Act (FMLA)



# The Basics

- 12 weeks of unpaid job-protected leave for a covered employee's own serious health condition, to care for a sick family member, or for the birth or adoption of a child.
- Requirements
  - ❑ employee has worked for the employer for at least 12 months;
  - ❑ employee has worked at least 1,250 hours during the 12 months prior to the start of FMLA leave.
- Serious Health Condition
- Medical Certification
- Notice
  - ✗ 30 days if practicable
  - ✗ Employee must comply with employer policy re: notice and procedure
- Employer Notice
- Employer may require employee to use paid leave to cover FMLA leave.
- Intermittent or reduced schedule leave

# Serious Health Condition

1. any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility; or
2. a period of incapacity requiring absence of more than three calendar days from work that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. any period of incapacity due to pregnancy, or for prenatal care; or
4. any period of incapacity (or treatment therefore) due to a chronic serious health condition; or
5. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (*e.g.*, Alzheimer's, stroke, terminal diseases, etc.); or
6. any absences to receive multiple treatments by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated.

# Medical Certification


"Sorry, but your dog having puppies does not entitle you to FMLA."

- Employer may require medical certification within 15 days of the leave request
- Employer can require recertification every 30 days in connection with absence unless duration of absence is longer than 30 days
- Recertification less than 30 days
  - ✗ an extension of leave has been requested,
  - ✗ circumstances stated in the previous certification have changed significantly, or
  - ✗ the employer receives information casting doubt on the continuing validity of the certification.
- Recertification for Intermittent and Reduced Schedule Leave = every 6 months

# Family Medical Leave Act (FMLA) Decision Tree

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**Is the employee eligible for FMLA leave?**

1) Has the employee worked for the District for 12 months AND worked 1250 hours in the prior year? AND
2) Does the employee work within 75 miles of the 50 employees of the District?

Yes

No → Not eligible, consider other possible leaves

**Does the employee's requested leave involve:**

1) The birth of a child, or care of a newborn within one year of birth? OR
2) Placement of a child for adoption or foster care within one year of placement? OR
3) Care for the employee's spouse, child, or parent with a serious health condition? OR
4) The employee's own serious health condition that makes the employee unable to perform the essential functions of his/her job?
5) Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on covered activity duty (or notified of impending call or order)?

Yes

Has employee taken FLMA leave during the District's last 12-month period?

Yes

Subtract amount of FLMA leave taken in last 12 months from 12-week allotment to determine remaining eligibility

No

Employee is eligible for up to 12 weeks of absence under FMLA either all at once or intermittently.

No

Not eligible, consider other possible leaves

**Notes about FMLA and School Districts:**

- If an instructional employee takes leave at the end of the school year and continues the next semester, this is consecutive leave even though there is a break in the school year.
- If an instructional employee takes leave near the end of an academic term, how the District addresses the leave may depend on how close the leave will fall to the end of the term:
  - **More than 5 weeks prior to the end of term:** The employer may require the employee to continue taking leaving until the end of the term if: 1) the leave is for at least 3 weeks; and 2) the employee's return would occur during the 3-week period before the end of the term.
  - **Less than 5 weeks prior to the end of term:** The employee may be required to continue taking leave until the end of the term if: 1) the leave is more than 2 weeks; and the employee's return would occur during the 2-week period before the end of the term.
  - **Less than 3 weeks prior to the end of the term:** If the employee begins leave with less than 3 weeks of the end of the academic term and the leave is for more than 5 working days, a district may require the employee to continue to take leave until the end of the term.
- **Intermittent Leaves:** If an instructional employee will be on leave for more than 20% of the total number of days over the period of leave (i.e., leave for 2 days/ week in typical 5 day work week), the District may require the employee to choose either to: "take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring period of leave than does the employee's regular position."

# COVID-19 Laws

 

# Families First Coronavirus Response Act (FFCRA)

## Emergency Paid Sick Leave Act (EPSLA)

- Paid sick leave for all employees regardless of tenure at full rate of pay
- Employer required to provide leave if employee unable to work or telework:
  - ❖ Is subject to a federal, state, or local quarantine or isolation order;
  - ❖ Has been advised by a health care provider to self-quarantine;
  - ❖ Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
  - ❖ Is caring for an individual subject (or advised) to quarantine or isolation;
  - ❖ Is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
  - ❖ Is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

## Emergency Family and Medical Leave Expansion Act (EFMLEA)

- 12 weeks of leave, 10 weeks paid for all employees who have been employed for 30 days
- Only applies to those caring for children that do not have child care available

 

(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
(2) has been advised by a health care provider to self-quarantine related to COVID-19;
(3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
(4) is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
(5) is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
(6) is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

| TYPE OF LEAVE AVAILABLE | QUALIFYING CONDITIONS | RATE OF PAY | MAXIMUM PAY |
|---|---|---|---|
| 2 weeks paid sick leave to all employees | 1, 2, 3 | Full Rate of Pay | $511 per day<br>$5110 in the aggregate |
| 2 weeks paid sick leave to all employees | 4, 5 above | ⅔ rate of pay | $200 per day<br>$2,000 in the aggregate |
| 12 weeks of leave, 10 of which are paid, to employees who have worked at least 30 days | 5 | ⅔ rate of pay | $200 per day<br>$10,000 in the aggregate |

# Employment Leave Decision Tree

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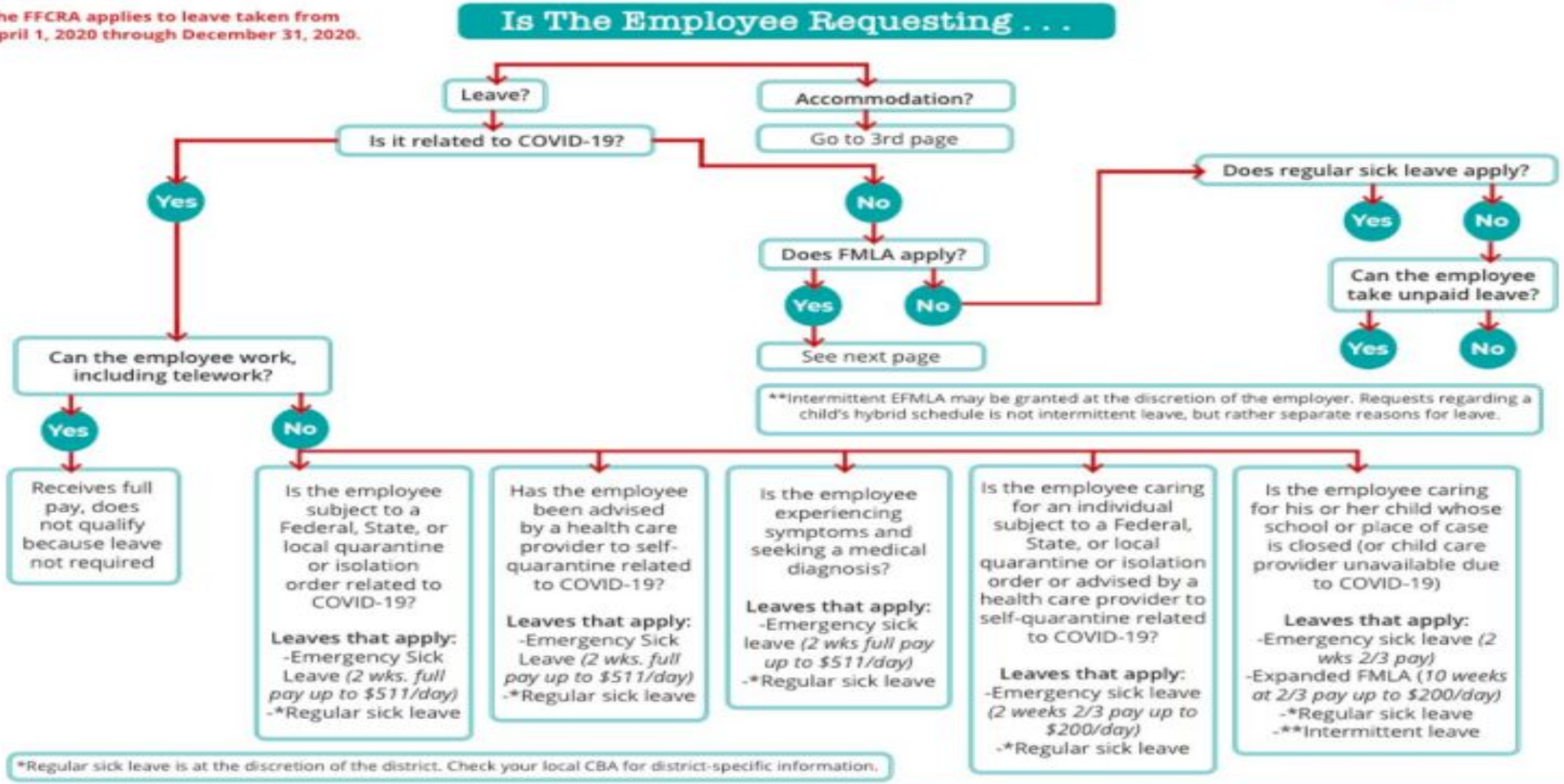
The FFCRA applies to leave taken from April 1, 2020 through December 31, 2020.




*Regular sick leave is at the discretion of the district. Check your local CBA for district-specific information.

# AMERICANS WITH DISABILITIES ACT (ADA)

# The Basics

- Prohibits discrimination on the basis of disability
- Applies to all employment practices: recruitment, pay, hiring, firing, promotion, job assignments, training, leave, lay-off, benefits
- Applies to all public and private employers with fifteen or more employees.
- Reasonable accommodations for employees and applicants with disabilities who are otherwise qualified to perform the **essential functions** of the job, and who satisfy the requisite skill, education, experience, and other job-related requirements.
- Disability
  - physical or mental impairment that substantially limits one or more major life activities (*e.g.*, learning, reading, concentrating, thinking, communicating, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working); or
  - has a record of an impairment (*e.g.*, cancer in remission); or
  - is regarded as having an impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment)
- Undue Hardship

# Employer Obligations

- Interactive Process
  - Requires communication and good-faith exploration of accommodations
  - Bad faith will lead to employer liability
  - OK to ask for documentation from medical provider
- Reasonable Accommodation
  - Examples: acquiring or modifying equipment or devices, job restructuring, part-time or modified work schedules, reassignment to a vacant position, adjusting or modifying examinations, training materials or policies, providing readers and interpreters, and making the workplace readily accessible to and usable by people with disabilities.
  - https://askjan.org/
- Questions regarding disability before an offer of an employment, i.e.- do you have a heart condition
- Documentation

# Interactive Process to Comply with the ADA

- **Analyzing** the job to determine its essential functions;
- **Consulting** with the to determine the nature of your disability, what job-related limitations it poses, and how those limitations may be addressed through reasonable accommodations;
- **Identifying**, in consultation with the employee, potential accommodations and assessing the effectiveness of each option; and
- **Selecting and implementing** an accommodation that is reasonable and effective, taking into consideration as appropriate the individual's preferred accommodation.

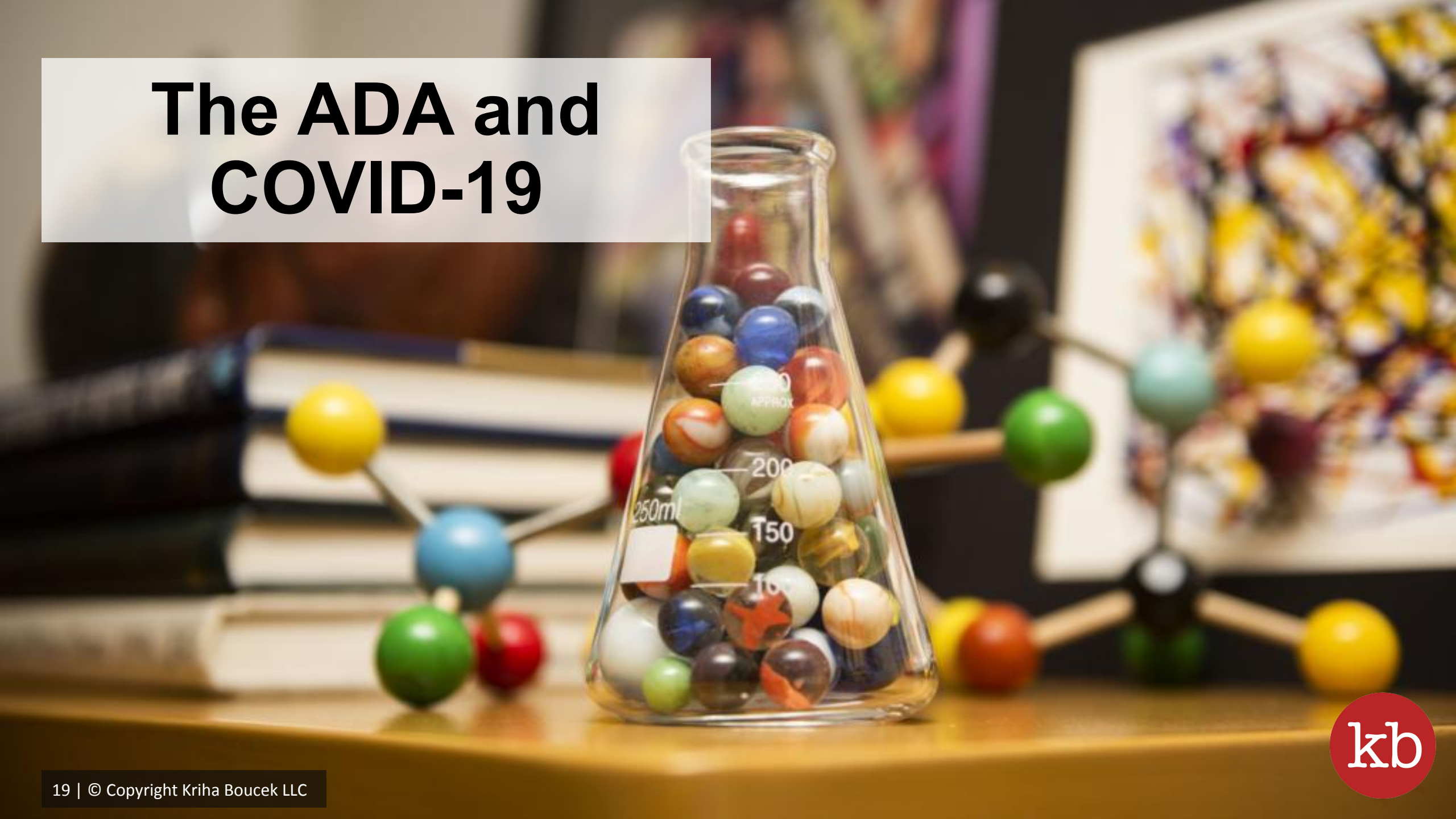
 

# Undue Hardship

- Action requiring significant difficulty or expense when considered in light of factors such as an organization's size, financial resources and the nature and structure of its operation
- Hardship analysis:
  - The nature and cost of the accommodation
  - The overall financial resources of the facility and the employer as a whole - effect on expenses and
  - The employer’s type of operation, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer.
  - The impact of the accommodation on the operation of the facility.
- Undue Hardship examples
  - Full-time interpreter for teacher with hearing disability
  - Altering a seniority system

# The ADA and COVID-19



# What are some examples of reasonable accommodations for disabilities impacted by COVID?

- Telework, if it is available in the school district
- Additional PPE
  - ✗ Mask
  - ✗ Face Shield
  - ✗ Gown
  - ✗ Plexiglass
- Additional adult support in the classroom to reduce contact with students
- Alternative entrance and exit
- Classroom that is well ventilated or contains an air purifier
- Reduced or eliminated supervision duties to reduce or eliminate contact with groups of people
- Leaves of absence
- Use of sick leave
- Alternate assignments if they are available

# Is Telework Required?

- No, but maybe …. Look at Section D. at the link below!
  - ✗ https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws
- Can I deny Telework?
- How can I deny Telework?
- Is it smart to deny Telework?
- How did COVID-19 mitigation tiers affect telework?
- What are situations where Telework is or is not an accommodation?

# Accommodation Decision Tree

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**Does the employee have a known pre-existing condition/disability that makes them "high risk" for COVID-19 complications?**

**Yes**

Begin the interactive process

1. How does the disability create a limitation on your ability to work?
2. How will the requested accommodation effectively address the limitation?
3. Is there another form of accommodation that could effectively address the issue?
4. Would the requested/proposed accommodation enable the employee to continue performing the "essen¬tial functions" of his/her position?

Provide reasonable accommodations as determined through the interactive process

If the employee cannot work and no reasonable accommodations are available, consider other leave options available through the collective bargaining agreement. An employee may also be suspended/disciplined for failure to come to work.

**No**

**Note:** age, acting as a caregiver, and fear of getting COVID-19 are not disabilities and accommodations may be provided, but are not required. Pregnancy and fear of contracting COVID-19 would likely not qualify, however, a pregnancy complication would qualify.

Request a note from the employee's doctor, written consent to contact the doctor, or take the employee's word and begin the interactive process

**Ask:**
Is the doctor's note sufficient to determine if the employee has a disability?

1. Does it specify the disability and explain why accommodations are needed?
2. Does it specify how the health issue limits the employee?
3. Is the doctor an expert in the area he/she is diagnosing in?
4. Does the note seem credible?

**Yes**

**No**

Explain why the note is insufficient and allow employee opportunity to timely provide missing information. Is new information sufficient?

**Yes**

**No**

If information continues to be insufficient, district may require the employee undergo a medical exam by district's selected health care professional. All costs must be paid by district and exam must be limited to 1) determining whether a disability exists; and 2) the limitations the disability may pose for the employee doing his/her job. Is new information sufficient to indicate employee has a disability requiring reasonable accommodations?

**Yes**

**No**

Interactive process not required

**Note:**

-Accommodations must be reasonable and must allow the employee to continue to perform his/her essential job functions. To help determine reasonableness, consider whether the accommodation would create an undue hardship for the district.

If a disability related limitation does not require telework, you do not need to provide telework as an accommodation. If you can effectively address the employee's needs through another form of reasonable accommodation at the workplace, you can choose the alternative to telework.

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# Questions?


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# Common Scenarios


 

# An employee has Covid19

 

# An employee has a high risk condition

 

# An employee is pregnant

 

# An employee is living with someone with a high risk condition

 

# An employee lives in a school district that has elected to go back to in person instructions, the person has an accommodation to telework

 

# An employee lives in a school district that has elected to go back to in person instruction, leaving the employee without child care

 

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# Questions?


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