

ABSENCE MINDED

Insights on FMLA and ADA risks

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Together, all the way.™

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1. The cost and drivers of absence
2. Prevention and intervention
3. Compliance Concerns
4. FMLA & ADA tips
5. Solutions and Strategies to get it right

AGENDA

Absence is costly

How much does absence cost a
1,000-employee company each year?¹

\$18,000,000

This translates to **\$18 million**
based on an employer with 1,000
workers/average salary = \$50,000



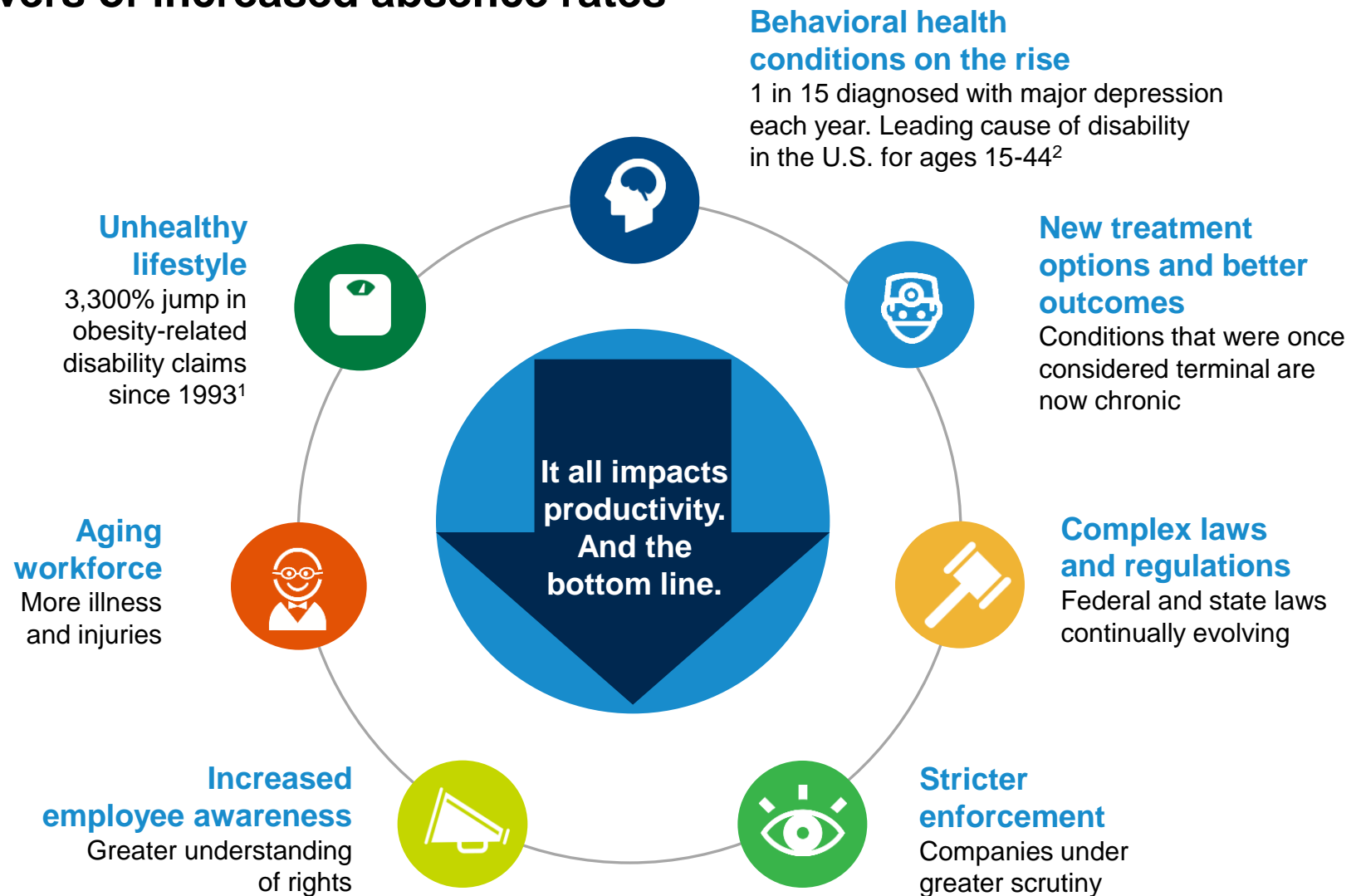
\$4 million is due to **unplanned absence**²



1. Mercer/Kronos Survey, "The Total Financial Impact of Employee Absences." 2010.

2. Mercer, "Survey on Absence and Disability Management." 2013.

Drivers of increased absence rates



1. Based on a Cigna 2013 internal analysis of data from our Short Term Disability book of business for the years of 1993 through 2012 (excludes maternity claim data).

2. NIMH RSS Web, "The Numbers Count: Mental Disorders in America." February, 2014.

The challenges. The opportunities. Managing intermittent leave.

Abuse/Fraud

“Spring fever”
“Weekend extenders”
“Poor performer avoiders”

Determining
“serious health
condition”

Tracking/
Administering

Manage employee
responsibilities and
expectations

BIG CHALLENGE

80% of organizations say it's the most difficult activity to manage¹

48% of employers reported never denying leave for any reason²

43% of employers spend 10-30 minutes requesting and/or reviewing documentation every time an FMLA leave is taken³

BIG OPPORTUNITIES

- **Consistent tracking and administration**
Only about 50% of family medical leaves were also a short-term disability event⁴
- **Allows for deeper understanding of absence drivers**
Employees on a family medical leave are 50% more likely to experience a future disability event⁵

1. DMEC/Spring Consulting, "Employer Leave Management Survey." 2013.

2. Equal Employment Advisory Council, citing Department of Labor's latest FMLA survey, March 1, 2013.

3. Mercer/Kronos Survey, "The Total Financial Impact of Employee Absences." 2010.

4. Cigna Internal Review, 2015.

5. Integrated Benefits Institute, "Early Warnings: Using FMLA to Understand and Manage Disability Absence." February, 2013.



The right approach. The right results.

Value for EMPLOYEES:

Prevention

Stay healthy and on the job

Intervention

Get back to health and back to business



Value for EMPLOYERS:

Administration

manage and track leave absences

Compliance

comply with state and federal laws

Analysis

uncover and reverse costly trends



BETTER SAVINGS. BETTER BOTTOM LINE.

Benefits that start on day one, not just when a leave is filed.



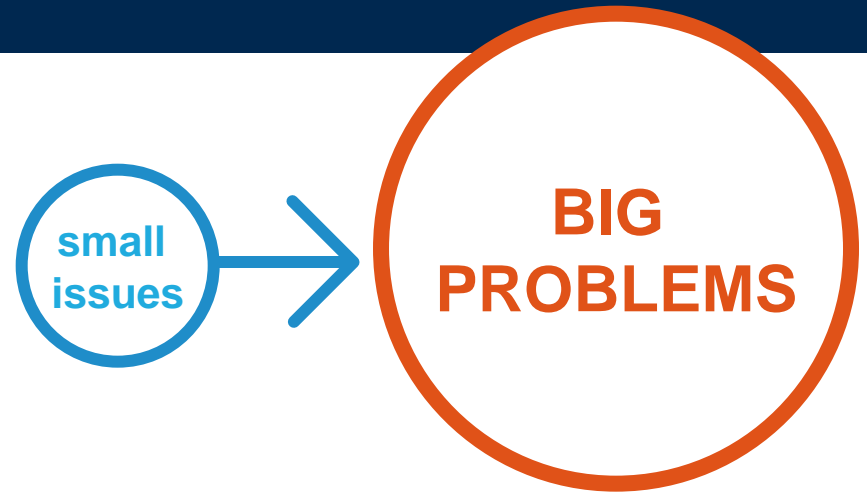
Too Often, Employees Don't Know What Support Programs are Available to Help

- Employers want to maximize employee engagement in health management and support programs to help reduce absence and medical costs



...and small issues can turn into big costly problems.

- When a disability occurs, it is a “teachable moment” and can be used to boost engagement and address a problem before it gets bigger

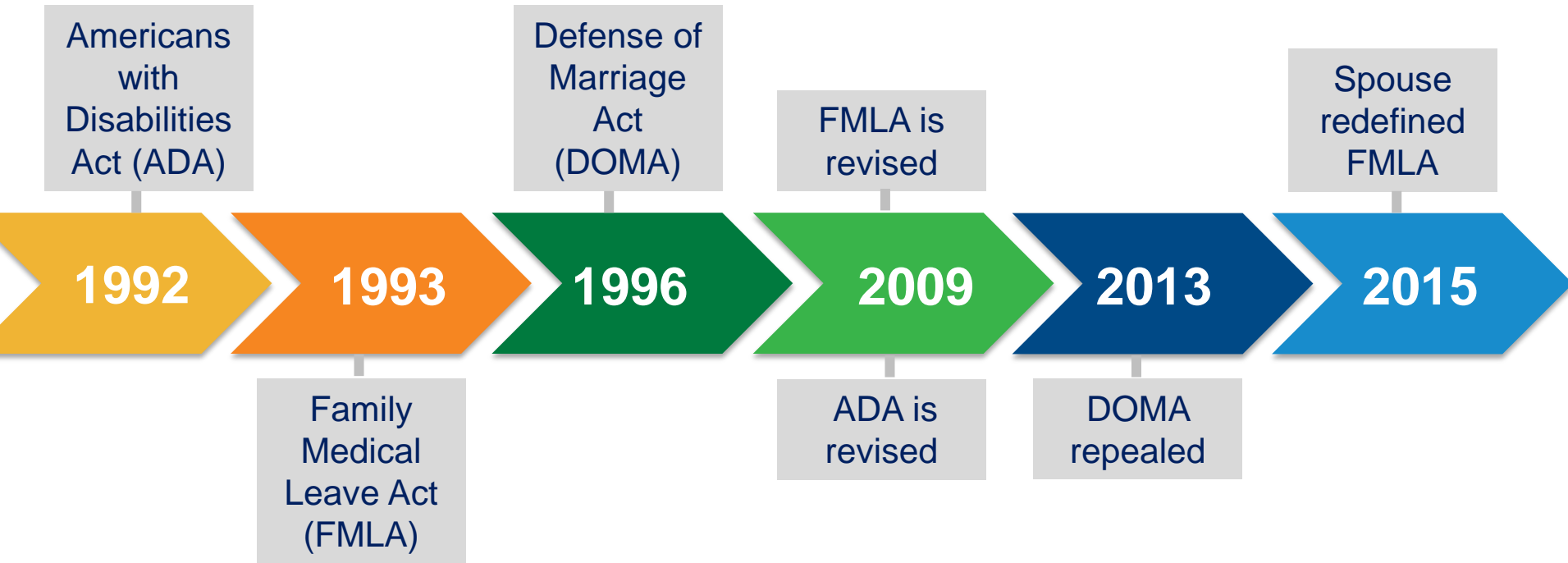


COMPLIANCE CONCERNS

How would you feel
about turning over
your FML records
to the DOL



Change is constant. Challenge keeps growing.



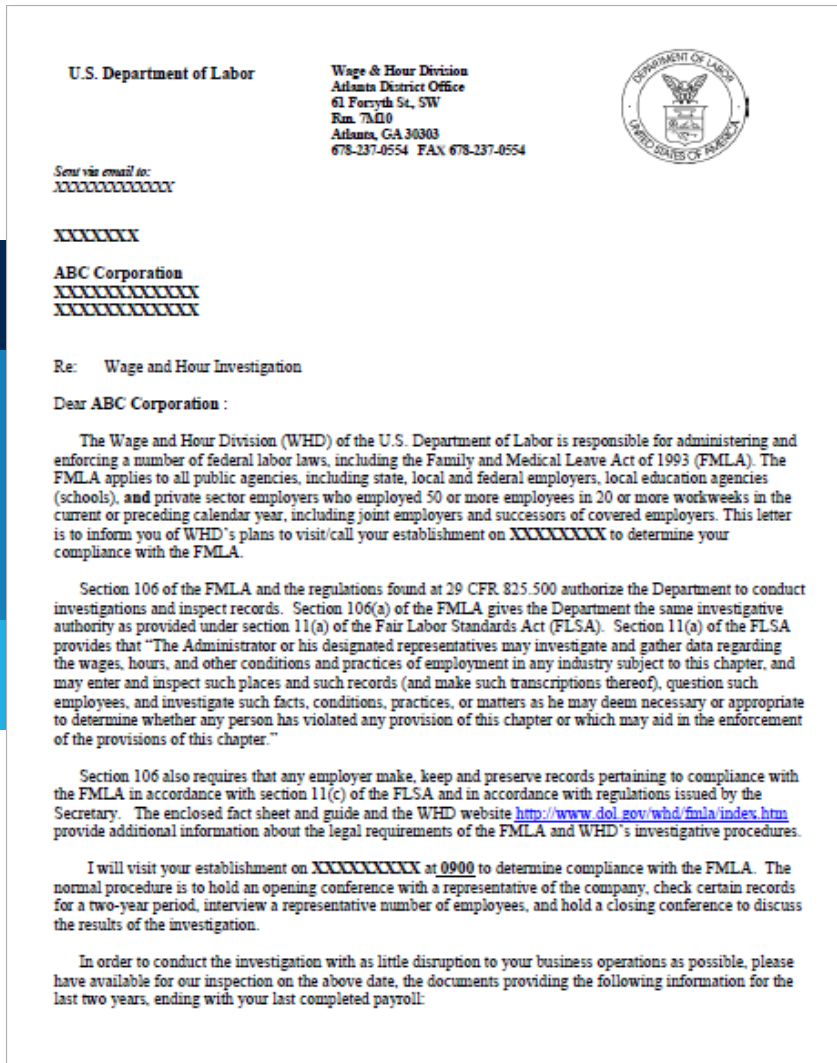
Department of Labor (DOL) update

DOL enforcement update

- Same sex spouses
- Focusing on systemic issues
- On-site audits
- Renewed emphasis on record keeping compliance



DOL audits



In 2013, DOL implemented an enforcement strategy that included more on-site investigations and policy reviews.



What employers can expect



The request for employment records is VERY broad



Not uncommon to have very short timeframe between notice and actual visit




No allegations of specific complaint or wrongdoing



Can conduct employee interviews



The investigation could expand beyond one location if systemic issues are found



Updated policy and accurate tracking for all leave types is critical



Equal Employment Opportunity Commission (EEOC) update

EEOC enforcement update

- Focusing on systemic issues
- Integrated case management
- Aggressively utilizing press releases
- Post ADAAA emphasis is on interactive process



EEOC press releases



U.S. Equal Employment Opportunity Commission

PRESS RELEASE

5-7-14

Sneakers Corp / Just Sneakers to Pay \$18,000 to Settle EEOC Disability Lawsuit

Legally Blind Veteran Denied Accommodation and Fired, Federal Agency Charged

BIRMINGHAM, Ala. - The Sneakers Corporation, doing business as Just Sneakers, Inc., will pay \$18,000 and furnish other relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today. The EEOC had charged the athletic specialty store with violating federal law by discriminating against a legally blind sales clerk because of his disability. Just Sneakers is a Georgia corporation operating athletic specialty retail stores in Georgia and Alabama.

The EEOC alleged in its lawsuit that, after rehiring a former employee into a sales clerk position at its Enterprise, Ala., store, Sneakers terminated him because of his blindness without discussion or consideration of any reasonable accommodation. The employee, Kyle Dalton, experienced vision loss during his service in the U.S. Army, and after he was medically discharged, he tried to return to his former job with Sneakers as a sales clerk. After less than a week, Sneakers fired him without considering whether an accommodation, such as a magnifying glass or a new computer monitor, might be reasonable. The EEOC also alleged that Sneakers treated non-disabled employees more favorably, including not terminating them when they actually displayed performance problems.

Such alleged conduct violates the Americans with Disabilities Act (ADA), which requires employers to provide reasonable accommodations to disabled workers. The EEOC filed suit (*EEOC v. The Sneakers Corporation*, Case No. 1:12-cv-00827-TFM) in U.S. District Court for the Middle District of Alabama after an investigation was completed by the EEOC's Mobile Local Office and after the agency first attempted to reach a pre-litigation settlement through its conciliation process.



FMLA & ADA BASICS & STRATEGIES FOR SUCCESS



Know the regulations and the risks

FMLA

12 weeks of leave

Determining eligibility

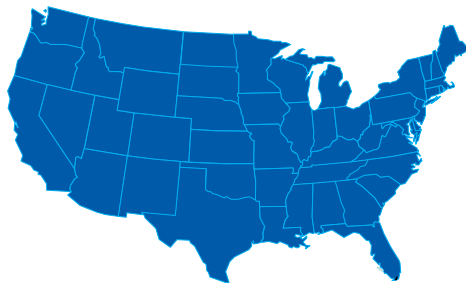
Employees maintain health benefits

Coordinating leaves

Job protection

Staying compliant

Don't forget about state laws



Coordination of leaves: to control costs, every absence needs attention



Coordination of leaves

**Can use
WC or STD
information**

To approve
FMLA

**If information
supports FMLA but
not WC or STD**

Approve FMLA and
deny WC or STD

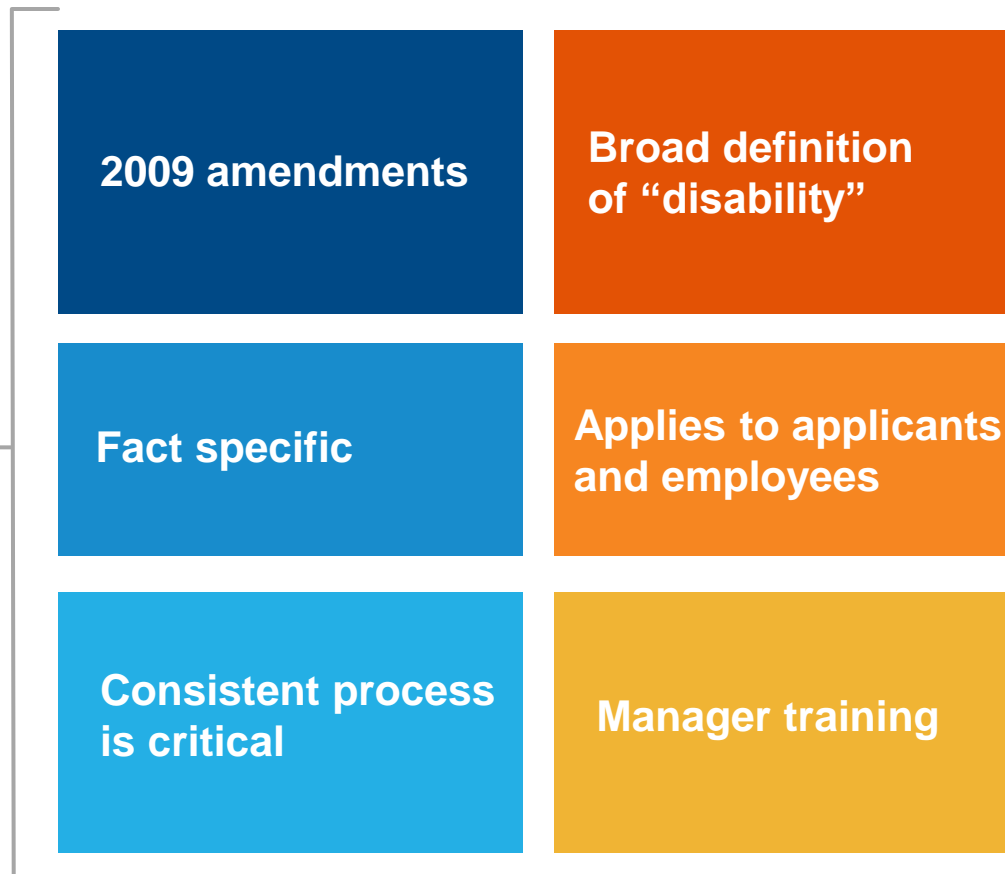
**If ADA reasonable
accommodation
request**

Information provided
to support ADA may
be used for FMLA
determination

Know the regulations and the risks

ADA

Americans with Disabilities Act



Employer obligations under the ADA

Interactive process

- Must engage with employee
- Conduct individualized assessments
- Document the process

Reasonable accommodations

- Assist employee in performing essential job functions
- Fact specific
- Accommodation must be “reasonable”

Inflexible Leave policies = regulatory risk

- Unpaid leave can be a reasonable accommodation
- One size does not fit all
- Duration of leave depends on circumstances



The interactive process – tips



Keith v. County of Oakland, 703 F.3d 918 (6th Cir. 2013)



- Nicholas Keith sued County after not being hired as a lifeguard because he was deaf.
- Keith was initially offered the position, subject to his passing a medical examination.
- The examining physician, however, refused to clear Keith, stating, “He's deaf; he can't be a lifeguard.”
- When the County refused to hire Keith, Keith filed a lawsuit alleging disability discrimination under the ADA.
- On appeal, the court held that questions of fact remained as to whether or not Keith was “otherwise qualified” under the ADA.

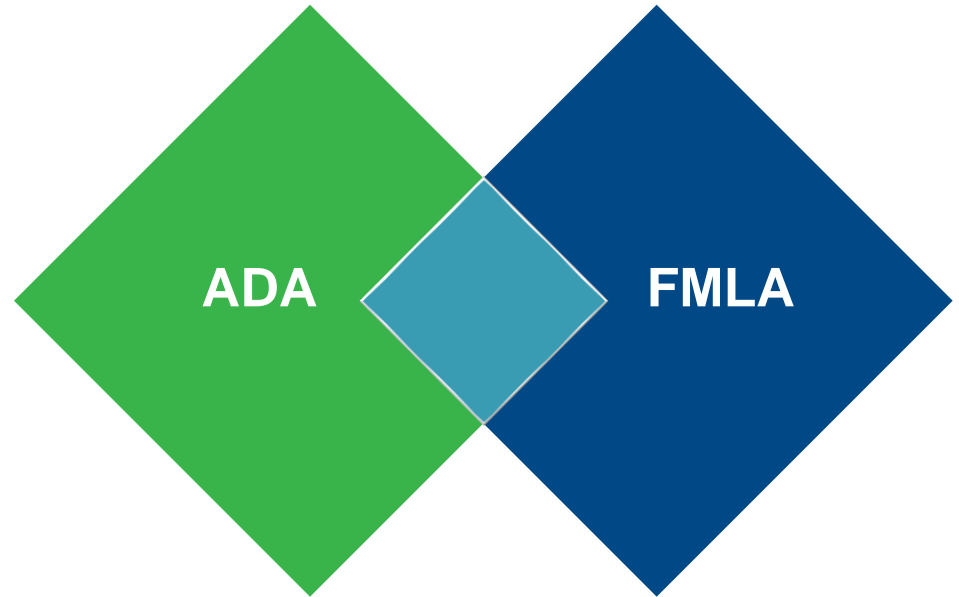




LEAVE AS A REASONABLE ACCOMMODATION

Coordination of leaves – ADA and FMLA

- Don't forget the ADA when administering FMLA leave
- An FMLA serious health condition can also qualify as a disability under the ADA
- Employees may be entitled to leave as an ADA reasonable accommodation if not eligible for FMLA



Leave as a reasonable accommodation



- Unpaid leave can be a reasonable accommodation
- Can the employee be transferred into a vacant position?
 - If not, unpaid leave may be a reasonable accommodation until a position opens up
 - Length of leave is fact specific
 - Watch inflexible leave policies

FMLA/ADA mistakes

“We only offer leave for employees on workers’ compensation.”

“That’s our policy.”

“You can come back to work once you have a full release.”

“She said she was sick, but she never said she was *disabled*.”

“The employee didn’t actually *ask* for an accommodation.”

“His doctor released him, but we can’t take that risk.”



SOLUTIONS & STRATEGIES TO GET IT RIGHT



A leave of absence policy is the foundation... on which *all* absence programs are built

Does the policy help:

Comply with FMLA & ADA regulations?

Prevent and reduce costly absences?

Optimize health, productivity and savings?



1 out of every **4** employers
are not using any type of system
for managing and tracking ADA¹



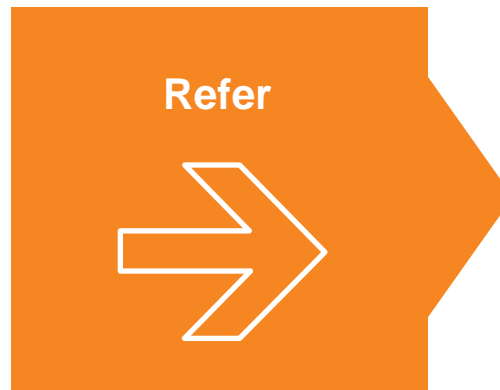
1 out of every **5** employers
are not using any type of system
for managing and tracking FMLA¹

Early intervention can reduce costs



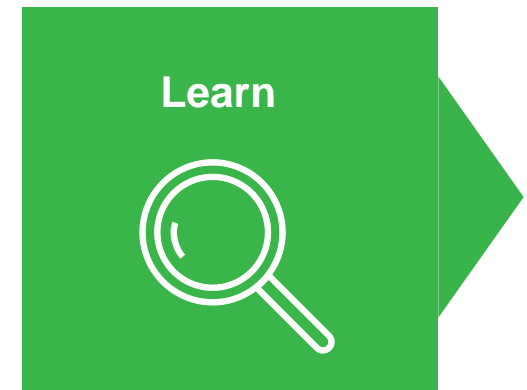
Reach out

Explain process
Set expectations
Insight to challenges



Refer

Vocational services
EAP
Health & Wellness



Review

Pattern analysis
Frequency/duration
Monitoring

Lower risk = lower cost

5% of high risk customers drive almost 50% of costs¹

Leverage existing programs to target specific absence risks



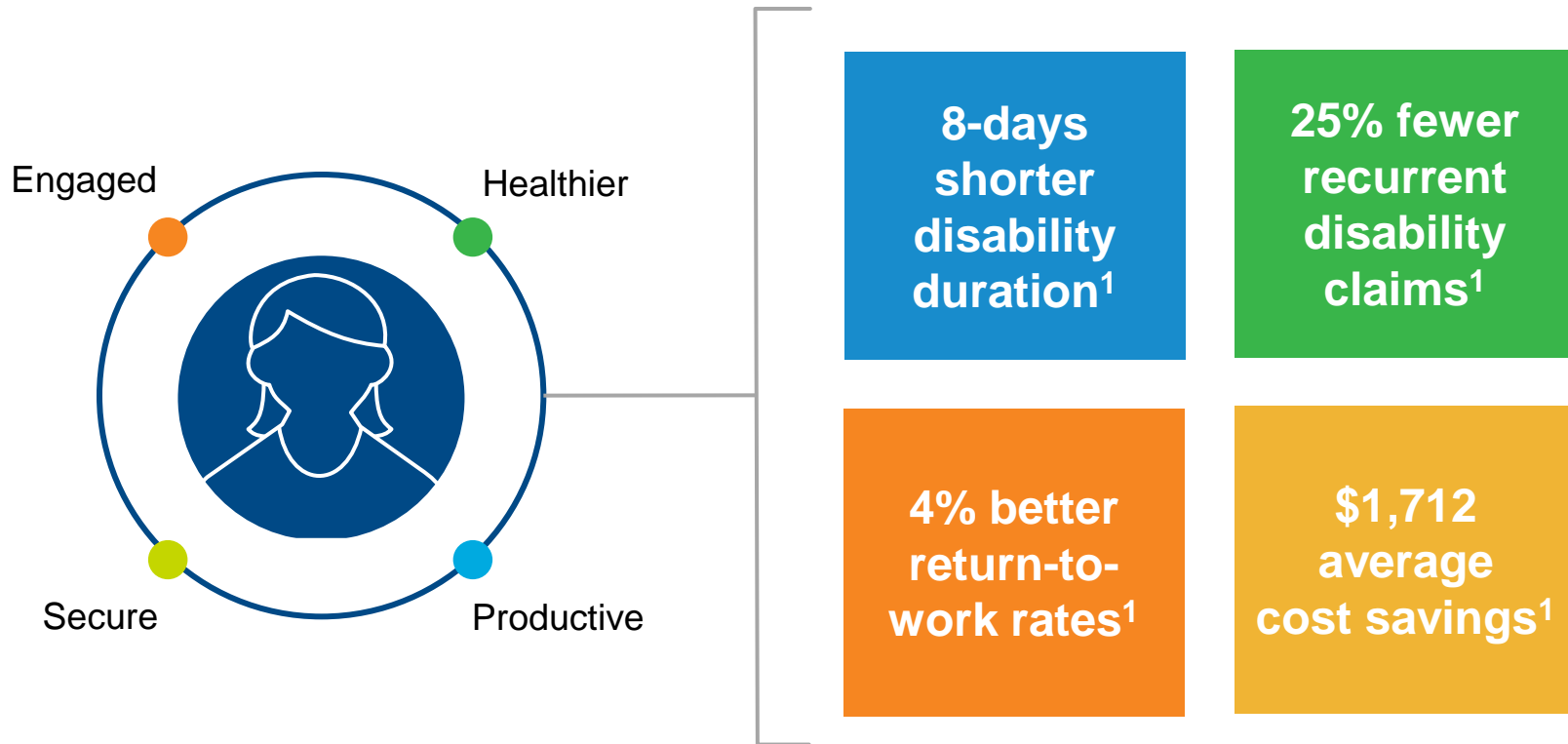
1. Published in the NIHCM Foundation Data Brief for July 2011 from the analysis of data from the 2008 Medical Expenditure Panel Survey.

The top 5 percent of the population accounted for almost half (47.5 percent.)

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The value of an integrated absence management program

Companies who combine Cigna disability and leave administration can see improved absence and savings



6.9:1 ROI for 1,000 life company²

Total cost per employee² = \$21
Total savings per employee² = \$146

1. Cigna internal book of business study, 2013 vs. those with disability only. Test for statistical significance was conducted at the 95% confidence level. For illustrative purposes only. Results are not guaranteed and actual client results will vary. Disability plans are insured or administered by Life Insurance Company of North America or Cigna Life Insurance Company of New York.

2. Cigna FMLA/STD Return on Investment Tool. June 2015. For illustrative purposes only. Results are not guaranteed and actual client results will vary.

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