

S.C. Association of Counties

Navigating FMLA, ADA, and  
Worker's Comp

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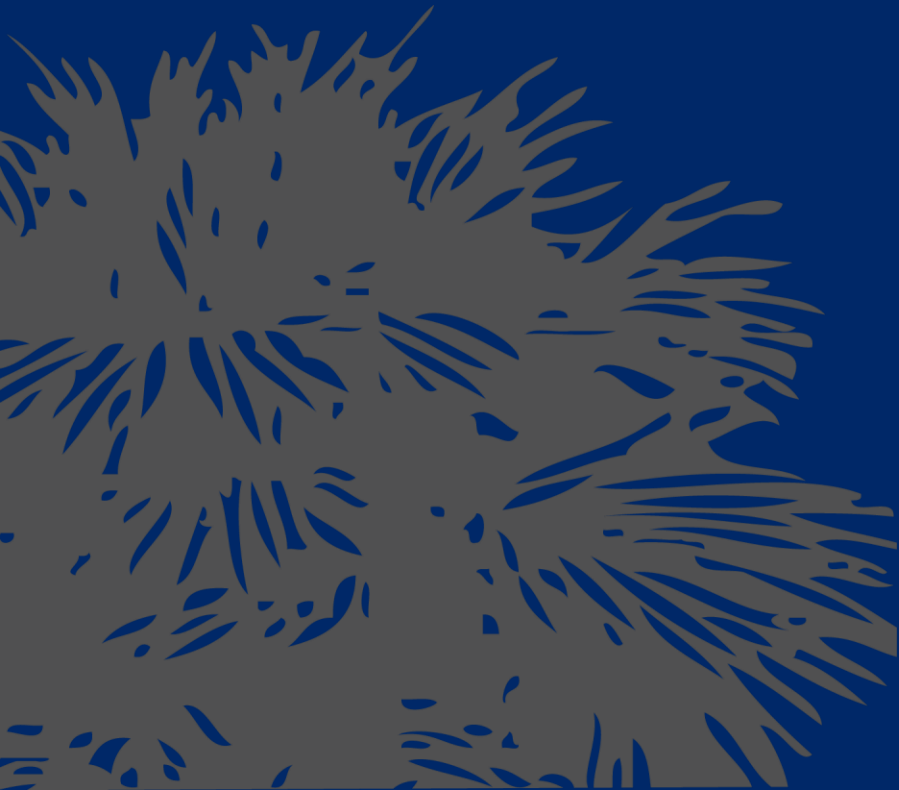


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- *Are we having fun yet?*



# The New (and improved?) ADA

- Disability is to be construed broadly
- “Substantially limits” is to be construed broadly
  - Summary judgment is not easy
- Temporary impairment now considered a disability

# Major Life Activities

- Old
  - Caring for oneself
  - Performing manual tasks
  - Walking
  - Seeing
  - Hearing
  - Speaking
  - Breathing
  - Learning
  - Working

- New, additional (non-exhaustive list)

- Eating

- Sleeping

- Standing

- Lifting

- Bending

- Reading

- Concentrating

- Thinking

- Communicating

- New – “major bodily functions”
  - Immune system
  - Normal cell growth
  - Digestive
  - Bowel
  - Neurological
  - Respiratory
  - Circulatory
  - Reproductive functions

- Impairments that are episodic or in remission are treated as if active

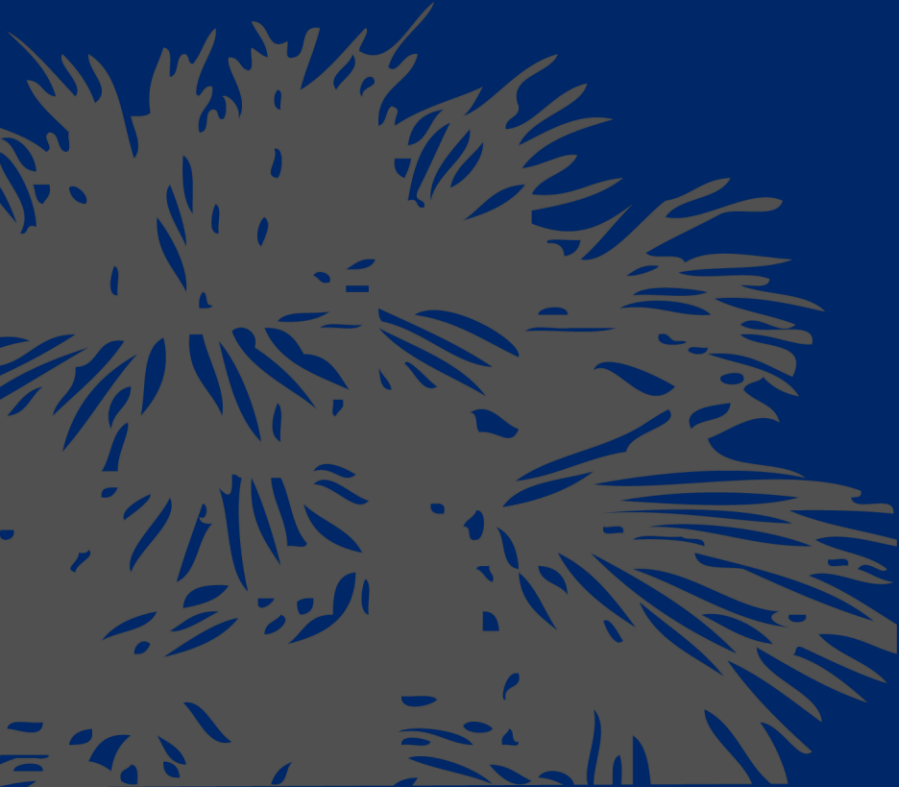
- Example: cancer in remission

- Impairment does not have to actually affect an individual's ability to work to be covered



- Mitigating measures *cannot* be considered in assessing whether an individual has a disability
  - Medication for conditions like epilepsy, depression, blood pressure
  - Insulin
  - Prosthetic devices; walkers canes
  - Hearing aids

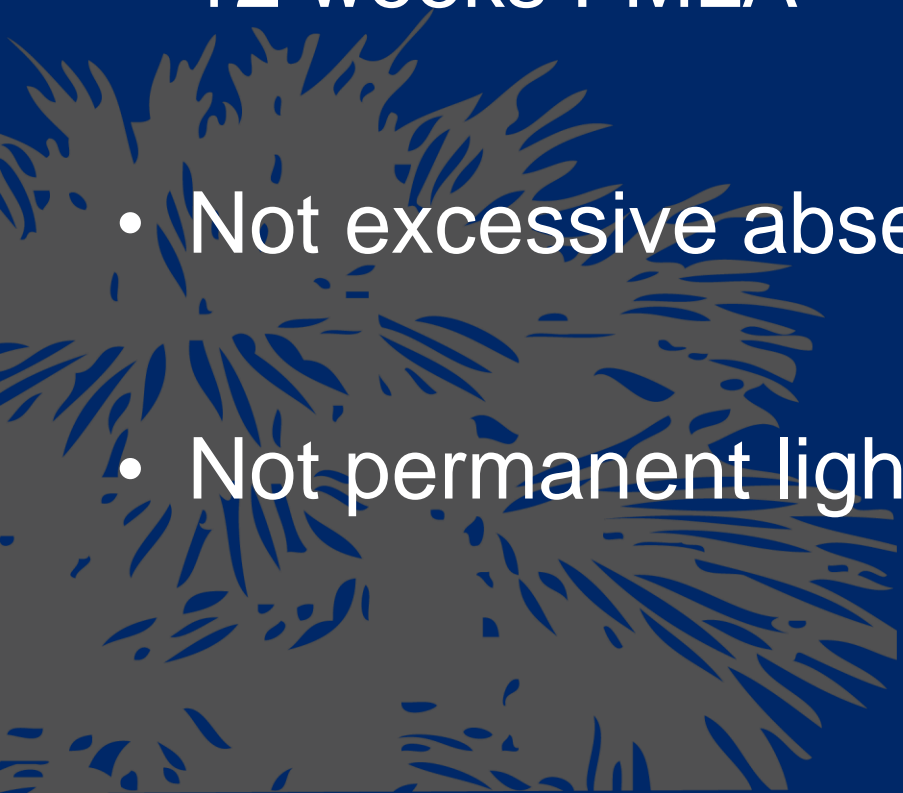
- *But* you can consider mitigating measures in determining whether an employee can perform the essential functions of the job.



# “Regarded As” Disabled

- New – An employee can establish an employer “regarded” him as disabled if the employer believed the employee to have an actual or perceived impairment even if the employer did not perceive the impairment to limit a major life activity.

- Accommodation
  - Modified work schedule
  - Flexible reporting time
  - Intermittent FMLA
  - Shift change
  - Reassignment
  - Work from home

- 
- Not indefinite leave but maybe more than 12 weeks FMLA
  - Not excessive absenteeism
  - Not permanent light duty

- *Most important* -- engage in the interactive process
  - Employee does not get to dictate the terms of accommodation. But must have the conversation.

- Current ADA Issues
  - Additional leave as a “reasonable accommodation” vs. FMLA 12 week limit
  - Learning disabilities
  - Obesity
  - Pregnancy

# Pregnancy Issues

- FMLA
  - Women do not need to have complications to be protected by the FMLA
    - Appointments
    - Morning sickness
    - Care for the newborn (but no intermittent)



– Do not require women to take leave unless they cannot perform their job

- Light duty, *if* available

- ADA issues re: pregnancy
  - FMLA exhausted
  - Not entitled to FMLA
    - Leave as an accommodation
  - But, pregnancy without complications is not covered by ADA

# Conduct Issues and the ADA

- Do not need to lower a conduct standard for an employee with a disability
- ***But*** if a disability is causing the misconduct, the employer must consider providing an accommodation

- Employer's awareness of a disability does not require the employer to ask if the misbehavior is caused by the disability.

