

Staying Compliant – Developments in Leave Laws, Benefits and Workplace Accommodations



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Agenda

- » Recent Developments in Leave Laws
- » Updates in Employee Benefits
- » Workplace Accommodations Trends
- » Best Practices for Compliance
- » Q&A



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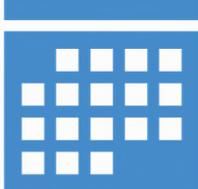


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Recent Developments in Leave Laws

» Summary of leaves available in NJ

- » FMLA
- » NJFLA
- » Earned Sick Leave
- » NJ Safe Act
- » Organ Donation
- » Emergency Responders Employment Protection Act
- » Jury Duty
- » Military Leave



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Proposed Expansion of Leave Laws on Federal and State Levels

- » Proposed FMLA amendments – H.R. 1035
- » Proposed NJ bereavement leave – S2978
- » Proposed expansion of NJ FLI benefits – A5208
- » Proposed NJFLA amendment – reduce number of required employees – A3451
- » Laws in Other States
 - » Neonatal (Colorado; Illinois)
 - » Prenatal (New York)
 - » Nursing Mothers in the Workplace Act (Illinois)
 - » Rhode Island Fair Employment Practice Act - menopause accommodations

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Recent Case: FMLA eligibility

- » *Rodriquez v. SEPTA*, No. 23-3074-cv (3d Cir. 2024) (Court of Appeals found that migraines did not meet “serious health condition” criteria under FMLA due to lack of periodic medical visits)



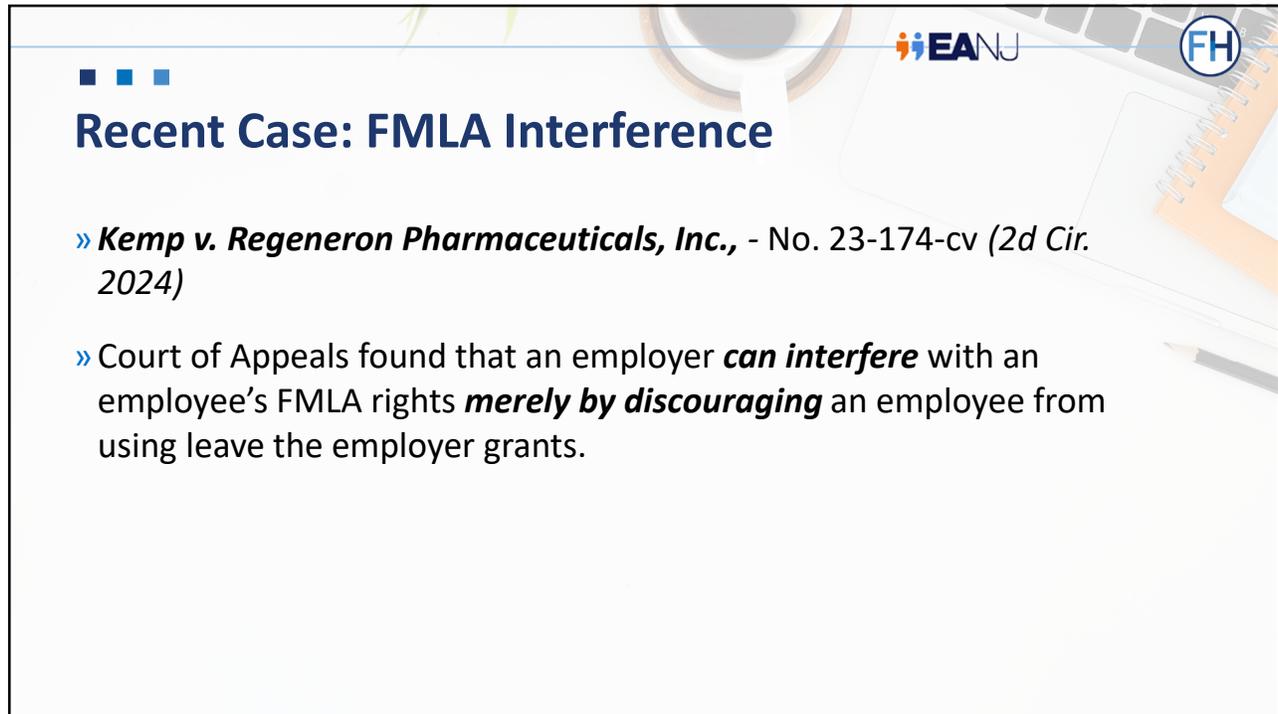
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Recent Case: NJFLA Claim Timing

- » *Hyra v. Chipotle Services, LLC et al*, No. 3:2024cv08836 (D.N.J. 2025)
- » District Court denied employer’s motion to dismiss employee’s NJFLA claim, finding that an ***employee can bring an interference or retaliation claim even where an employee is terminated prior to the birth of the child.***

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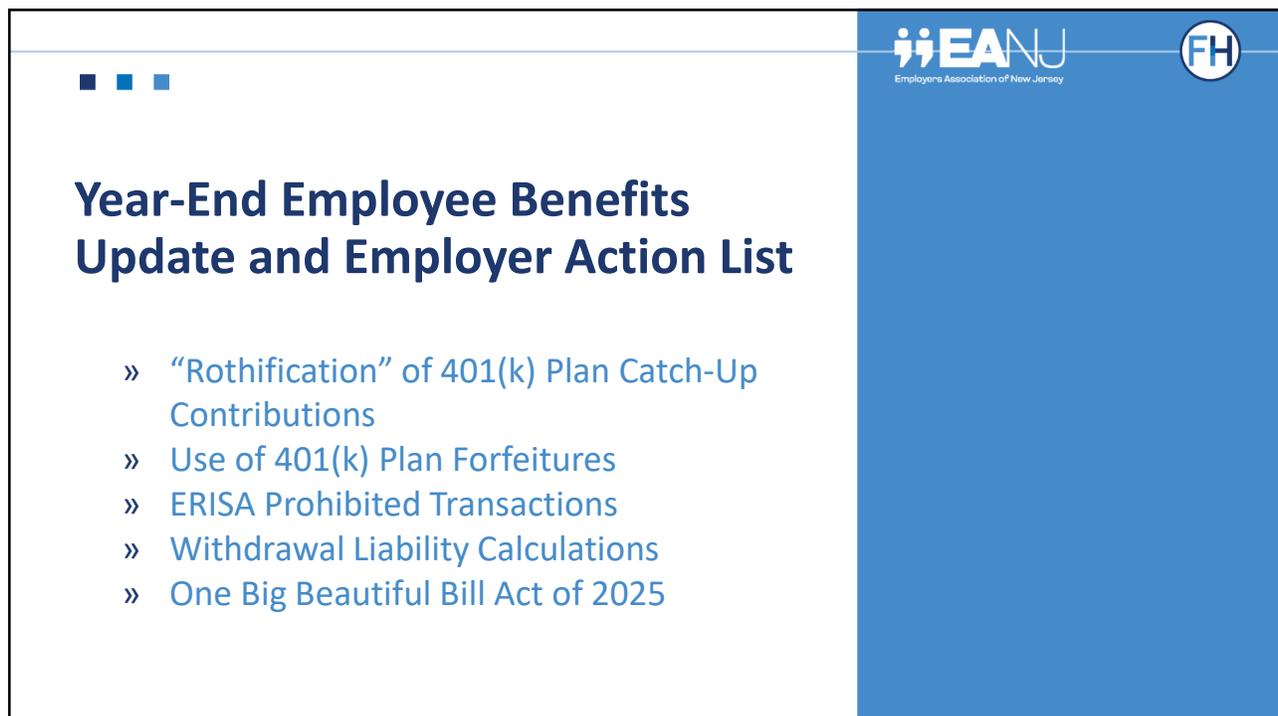
Recent Case: FMLA Interference

» *Kemp v. Regeneron Pharmaceuticals, Inc.*, - No. 23-174-cv (2d Cir. 2024)

» Court of Appeals found that an employer *can interfere* with an employee's FMLA rights *merely by discouraging* an employee from using leave the employer grants.

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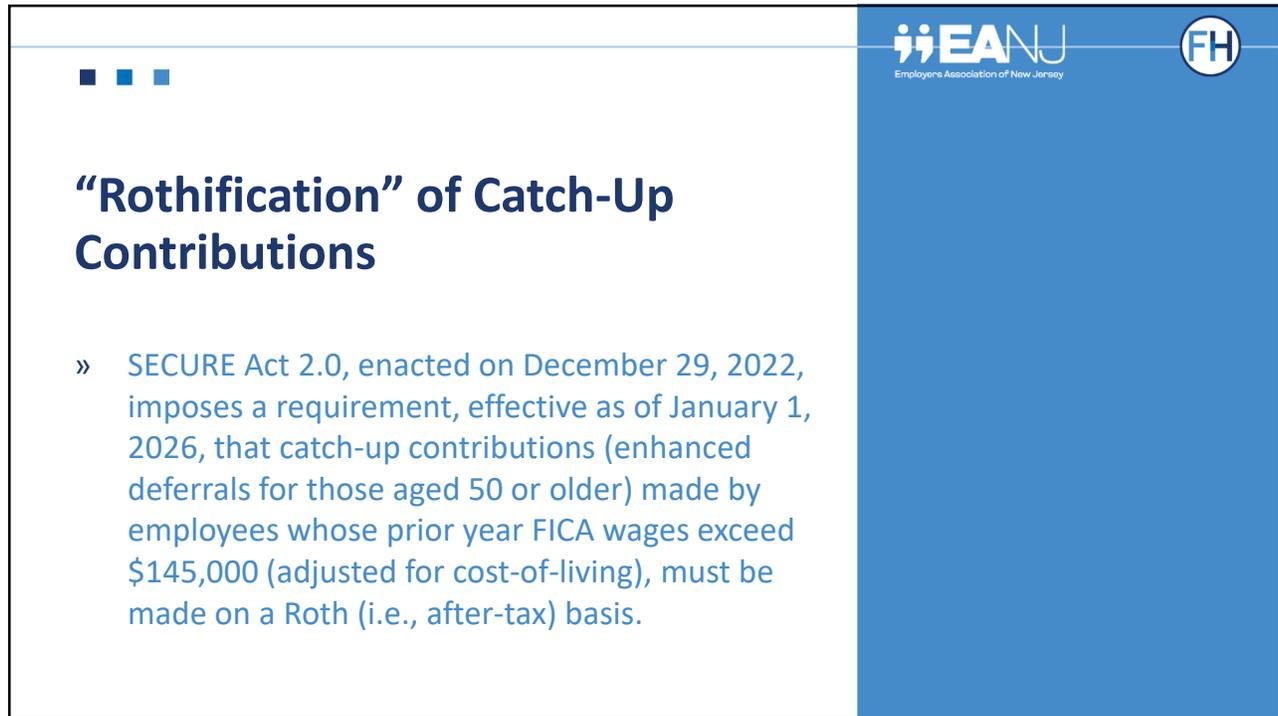
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Year-End Employee Benefits Update and Employer Action List

- » “Rothification” of 401(k) Plan Catch-Up Contributions
- » Use of 401(k) Plan Forfeitures
- » ERISA Prohibited Transactions
- » Withdrawal Liability Calculations
- » One Big Beautiful Bill Act of 2025

 
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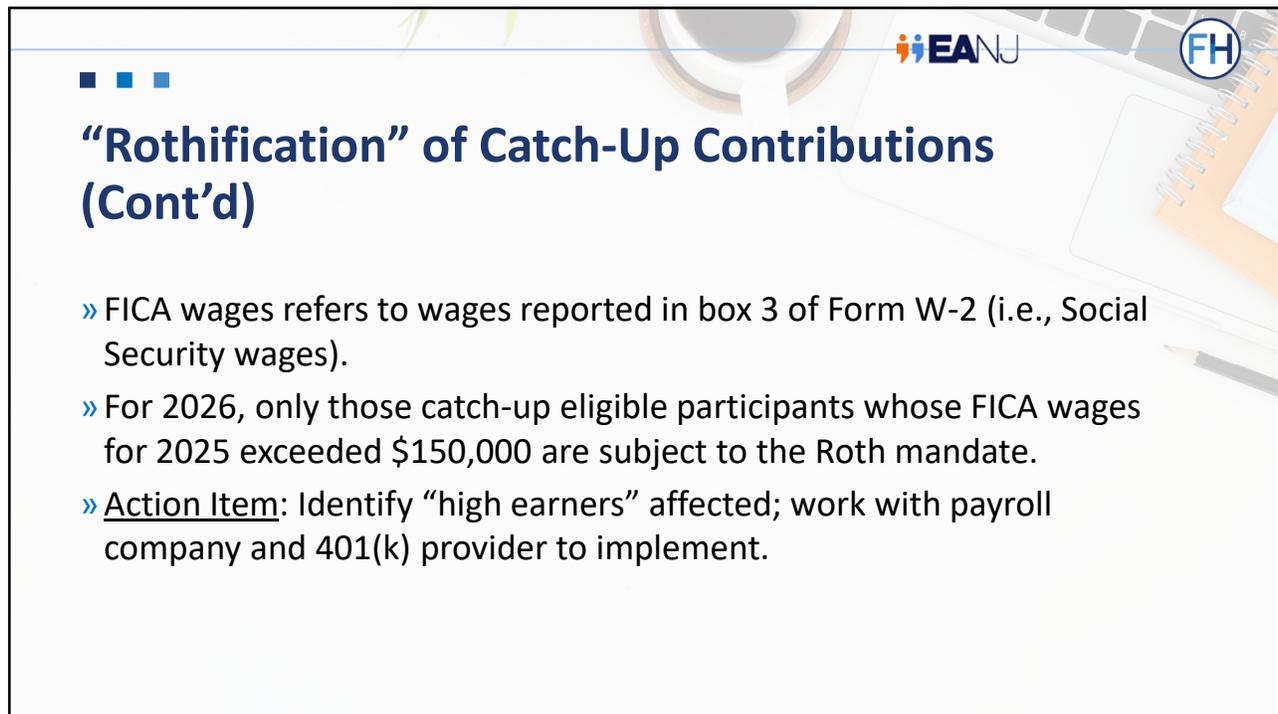


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“Rothification” of Catch-Up Contributions

- » SECURE Act 2.0, enacted on December 29, 2022, imposes a requirement, effective as of January 1, 2026, that catch-up contributions (enhanced deferrals for those aged 50 or older) made by employees whose prior year FICA wages exceed \$145,000 (adjusted for cost-of-living), must be made on a Roth (i.e., after-tax) basis.

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“Rothification” of Catch-Up Contributions (Cont'd)

- » FICA wages refers to wages reported in box 3 of Form W-2 (i.e., Social Security wages).
- » For 2026, only those catch-up eligible participants whose FICA wages for 2025 exceeded \$150,000 are subject to the Roth mandate.
- » Action Item: Identify “high earners” affected; work with payroll company and 401(k) provider to implement.

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Use of 401(k) Plan Forfeitures

- » What is a forfeiture? Unvested portion of account when employee terminates employment.
- » How are forfeitures used? Pay administrative expenses, reduce employer contributions and/or allocate to plan participants, in all instances based on terms of plan document.

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Use of 401(k) Plan Forfeitures (Cont'd)

- » IRS Timing Rule. Forfeitures must be used within 12 months following end of plan year in which they're incurred.
- » Litigation Issue. Employers increasingly are being sued for retaining discretion on use of forfeitures in a manner that results in employer contributions being reduced instead of administrative expenses borne by plan participants being paid; courts do not necessarily agree that such retention or use of discretion is problematic.

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Use of 401(k) Plan Forfeitures (Cont'd)

» **2025 U.S. District of New Jersey ERISA Class Action.** Class action lawsuit alleging company breached its fiduciary duties to plan participants under ERISA by using the discretion afforded to it under the plan document to apply forfeitures to reduce its matching contributions rather to pay administrative expenses charged to participants.

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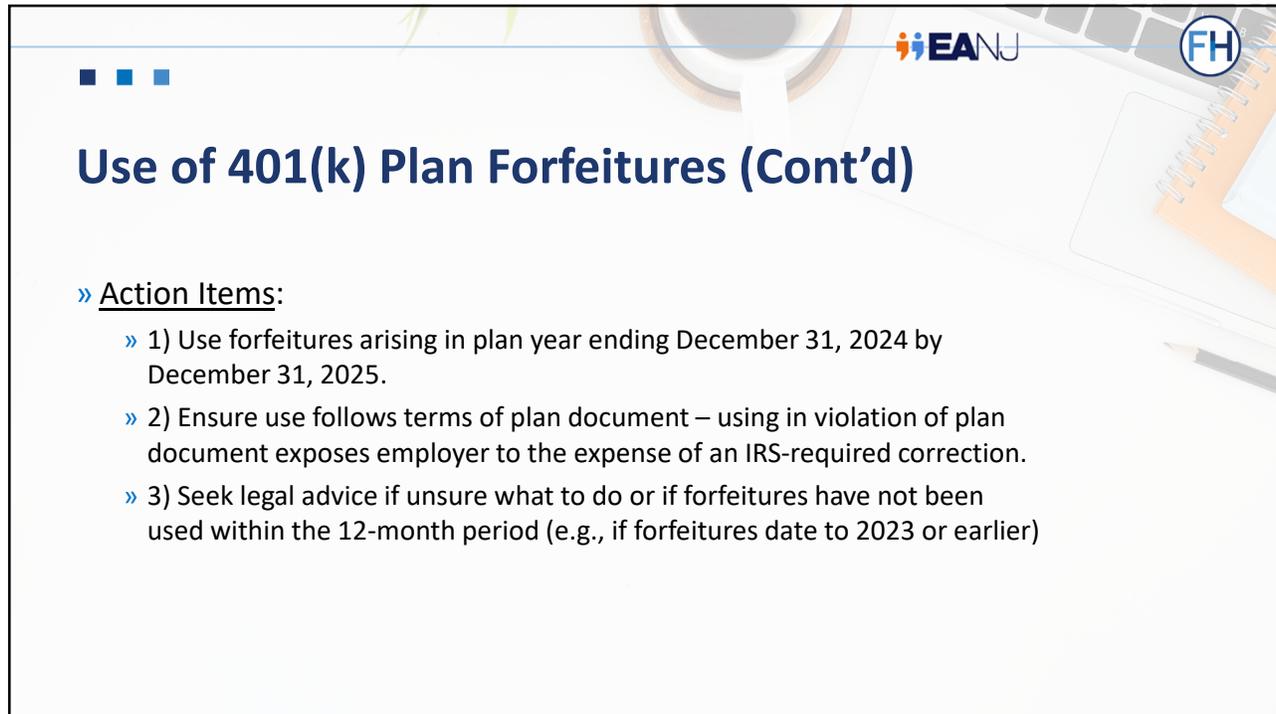
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Use of 401(k) Plan Forfeitures (Cont'd)

» **2025 U.S. District of New Jersey ERISA Class Action (Cont'd).** Court dismisses plaintiff's claims, noting that precluding employer from using forfeitures in accordance with plan document would create a "new benefit," which ERISA does not require, and impose a categorical ban on using forfeitures to reduce employer contributions, thereby negating the fact-specific nature of the fiduciary breach inquiry.

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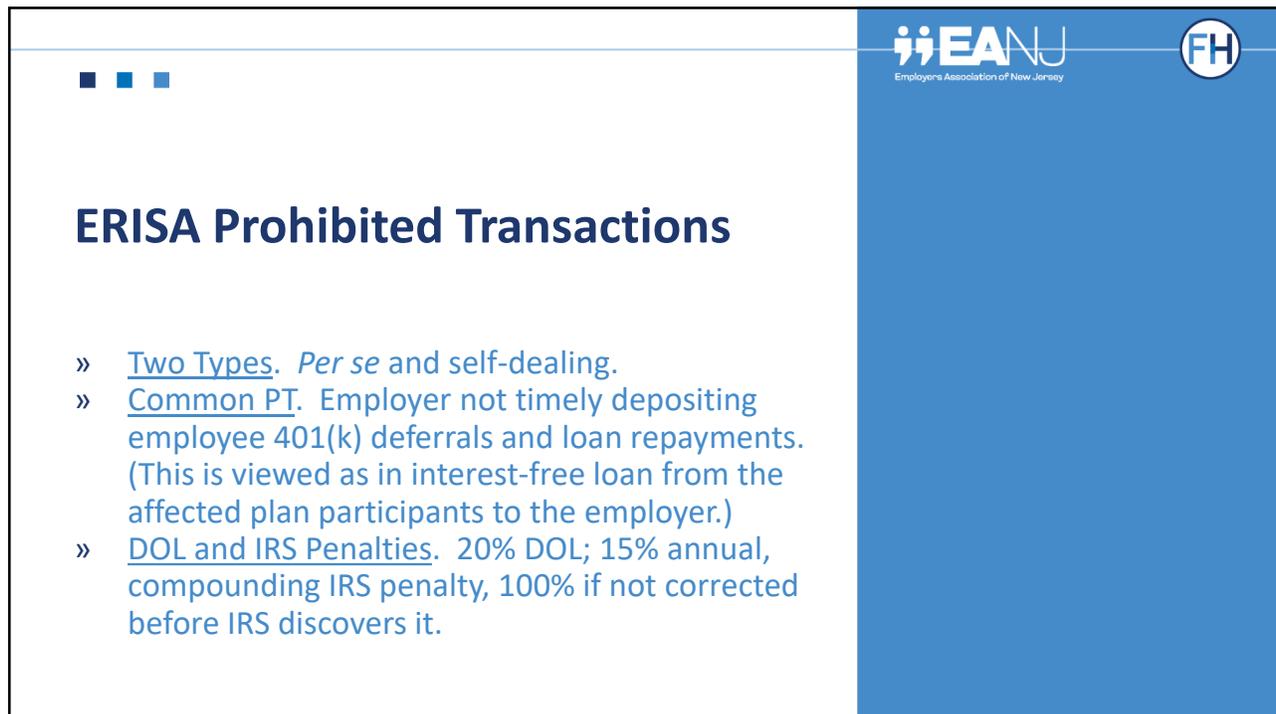
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Use of 401(k) Plan Forfeitures (Cont'd)

» Action Items:

- » 1) Use forfeitures arising in plan year ending December 31, 2024 by December 31, 2025.
- » 2) Ensure use follows terms of plan document – using in violation of plan document exposes employer to the expense of an IRS-required correction.
- » 3) Seek legal advice if unsure what to do or if forfeitures have not been used within the 12-month period (e.g., if forfeitures date to 2023 or earlier)

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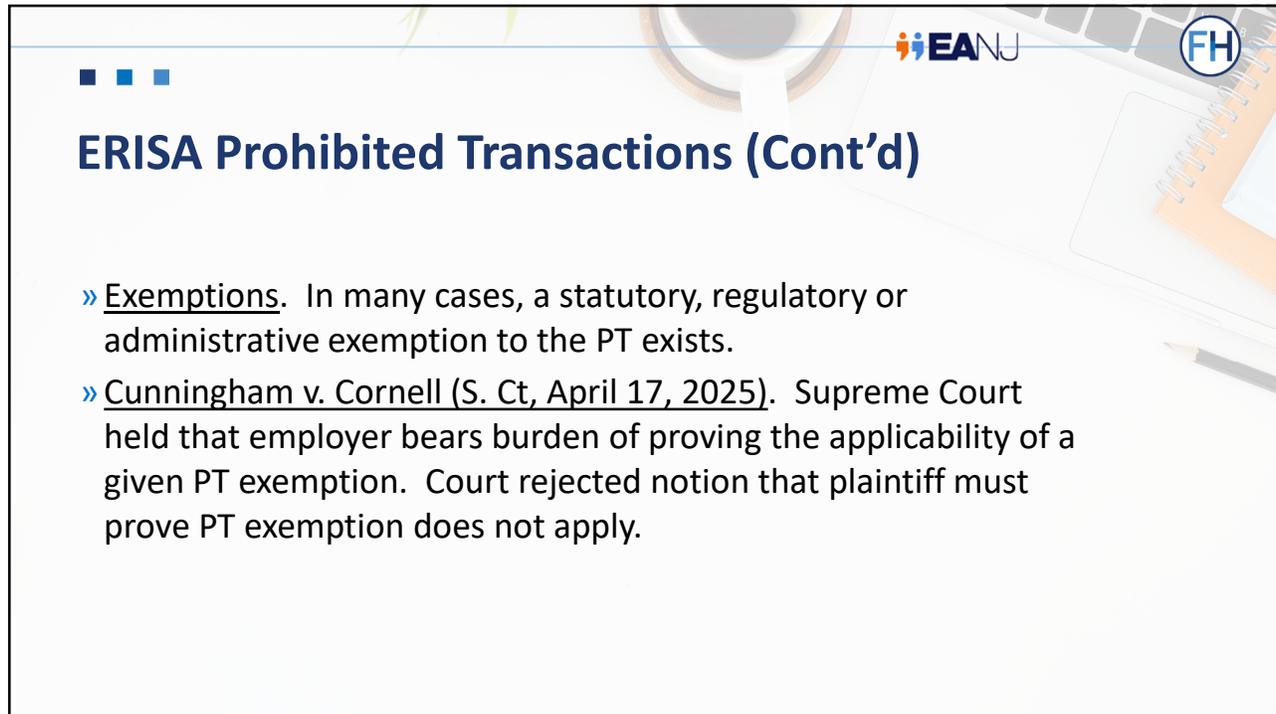


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ERISA Prohibited Transactions

- » Two Types. *Per se* and self-dealing.
- » Common PT. Employer not timely depositing employee 401(k) deferrals and loan repayments. (This is viewed as in interest-free loan from the affected plan participants to the employer.)
- » DOL and IRS Penalties. 20% DOL; 15% annual, compounding IRS penalty, 100% if not corrected before IRS discovers it.

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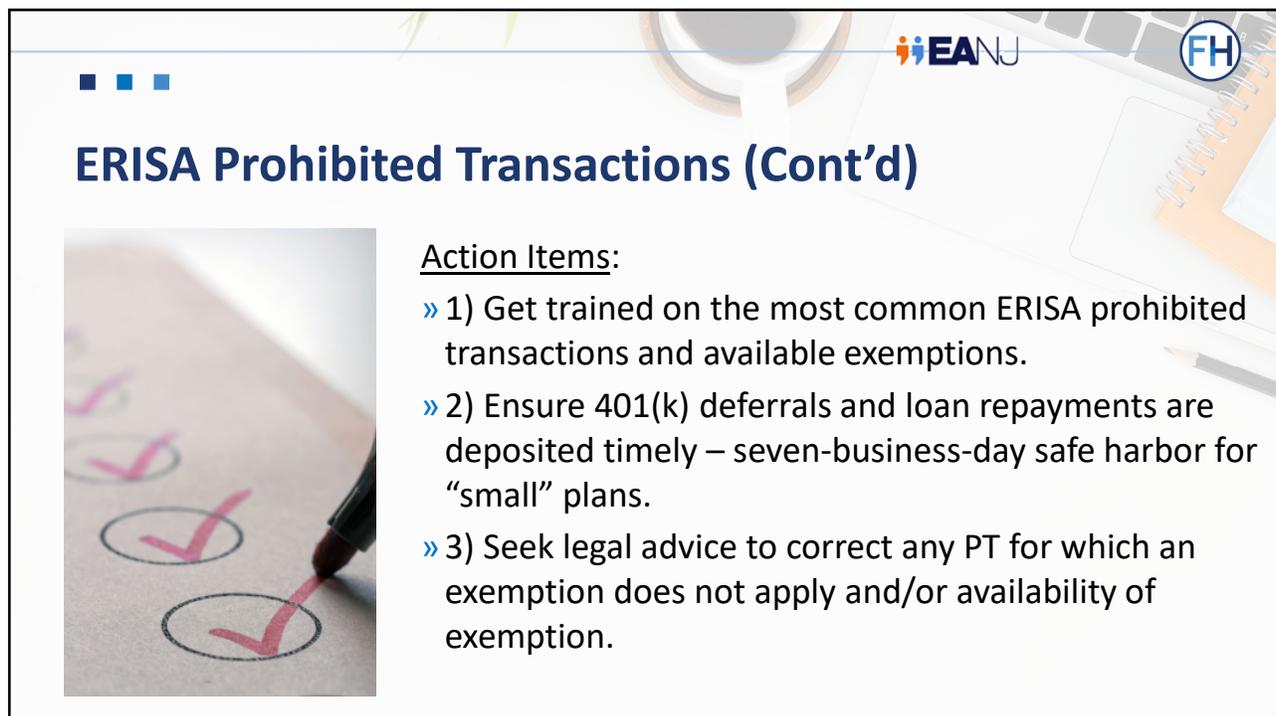


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ERISA Prohibited Transactions (Cont'd)

- » Exemptions. In many cases, a statutory, regulatory or administrative exemption to the PT exists.
- » Cunningham v. Cornell (S. Ct, April 17, 2025). Supreme Court held that employer bears burden of proving the applicability of a given PT exemption. Court rejected notion that plaintiff must prove PT exemption does not apply.

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ERISA Prohibited Transactions (Cont'd)



Action Items:

- » 1) Get trained on the most common ERISA prohibited transactions and available exemptions.
- » 2) Ensure 401(k) deferrals and loan repayments are deposited timely – seven-business-day safe harbor for “small” plans.
- » 3) Seek legal advice to correct any PT for which an exemption does not apply and/or availability of exemption.

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Withdrawal Liability Calculations

- » What is withdrawal liability? Liability of employer to multiemployer pension plan (plan covering union employees of multiple employers) when employer reduces operations or ceases having a collective bargaining obligation to contribute to plan.

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Withdrawal Liability Calculations (Cont'd)

- » How Calculated? Typically, calculations are made as of the last day of the plan year preceding the withdrawal (the “statutory calculation date”), based on reasonable actuarial assumptions.
- » M & K Employee Solutions v. Trustees of IAM National Pension Fund. The Supreme Court will determine whether the plan must use the actuarial assumptions most recently adopted before the statutory calculation date or may use assumptions adopted after the statutory calculation date based on updated information (e.g., a lower interest rate, which, all else being equal, increases withdrawal liability).

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Withdrawal Liability Calculations (Cont'd)



Action Items:

- » 1) Employers contributing to multiemployer pension plans should pay close attention to this case. If the Court rules that post-measurement date assumptions can be used, and interest rates continue declining, employers can find themselves with significantly higher levels of liability.
- » 2) Ask for withdrawal liability estimate once every 12 months.

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One Big Beautiful Bill Act of 2025

- » OBBBA '25 ushered in multiple changes in employee benefit plan provisions.
- » Dependent Care Assistance Plan. Beginning in 2026, OBBBA '25 increases the contribution cap for dependent care flexible spending accounts, which employees use to pay for childcare and related expenses (e.g., summer camp) for their children on a pre-tax basis. The cap is increased from \$2,500 to \$3,750 for an employee filing separately and from \$5,000 to \$7,500 for an employee jointly with his or her spouse. Many employers will want to provide this enhancement to make it easier for their employees with children to pay for childcare and related expenses.



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One Big Beautiful Bill Act of 2025 (Cont'd)

- » [Permanency of Tax Credit for Paid Family and Medical Leave.](#) OBBBA '25 makes permanent the federal income tax credit for employers offering paid family and medical leave ("PFML"). Further, employers are now able to receive the credit for PFML provided to employees who have been employed for at least six months, rather than the previously required 12 months. However, employees to be customarily employed for at least 20 hours per week to qualify for the credit. The law also permits employers who are required by state or local law to provide paid family and medical leave to receive credit for paid leave provided above the state or locally required amounts.



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One Big Beautiful Bill Act of 2025 (Cont'd)

- » [Pre-Deductible Telehealth Services.](#) OBBBA '25 makes permanent, and retroactively effective to plan years beginning after December 31, 2024, the ability of employers to offer telehealth services under a high-deductible health plan without imposing a deductible for such services on their employees and eligible dependents.



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One Big Beautiful Bill Act of 2025 (Cont'd)

- » [Permanency of Tax Exclusion for Employer Payment of Student Loans](#). For employers paying student loans on behalf of their employees, the up to \$5,250 federal income tax exclusion for certain payments made under an educational assistance program is made permanent and, for taxable years beginning after 2026, is subject to an inflation adjustment. Employers must have a written education assistance program and update their accounting systems accordingly.





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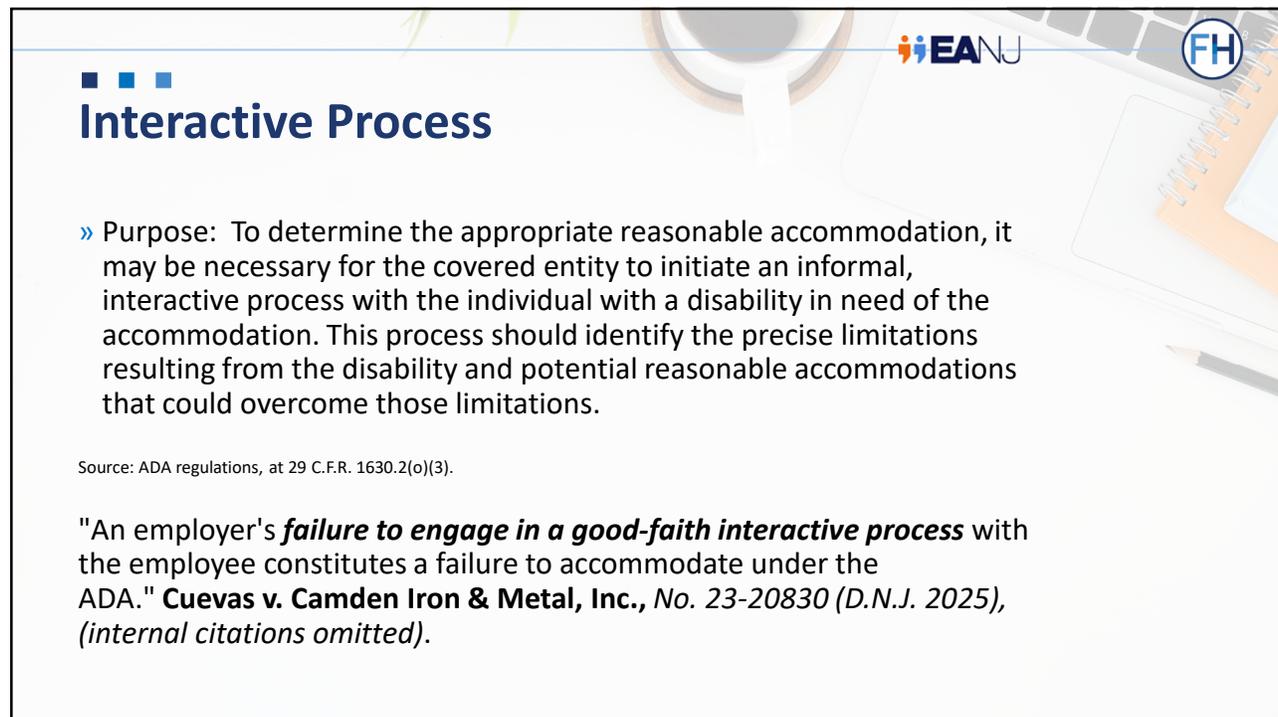
Review of Accommodation Analysis

- » An employer **must provide reasonable accommodations** to an employee's known disability under both the ADA and NJLAD.
- » The employee **must give enough information** for the employer to reasonably understand both the existence of the disability and the need for assistance.
- » The employee's notice need not be in writing or invoke specific words but **must clearly indicate that the employee seeks help related to the disability**.
- » An employer's duty to accommodate extends only so far as necessary to enable the employee **to perform the essential functions of the job; it does not require acquiescence to every demand**.

Cf. Cuevas v. Camden Iron & Metal, Inc., No. 23-20830 (D.N.J. 2025), and Scheuer v. RMTS, LLC, No. A-0272-23 (App. Div. N.J. 2025).




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Interactive Process

- » Purpose: To determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Source: ADA regulations, at 29 C.F.R. 1630.2(o)(3).

"An employer's **failure to engage in a good-faith interactive process** with the employee constitutes a failure to accommodate under the ADA." **Cuevas v. Camden Iron & Metal, Inc.**, No. 23-20830 (D.N.J. 2025), (internal citations omitted).

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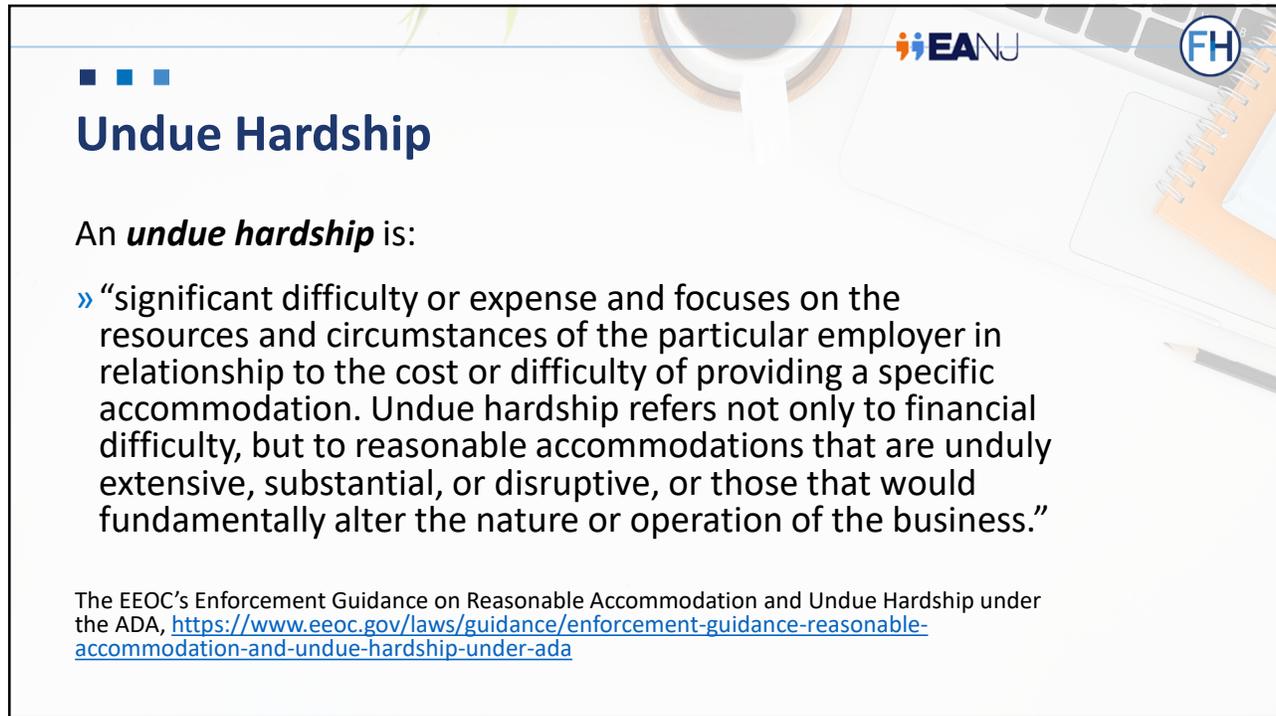
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Workplace Accommodation Trends

- » Evolving ADA accommodation standards
- » Pregnancy and lactation accommodation laws
- » Religious accommodations after recent cases
- » Remote/hybrid work accommodation considerations

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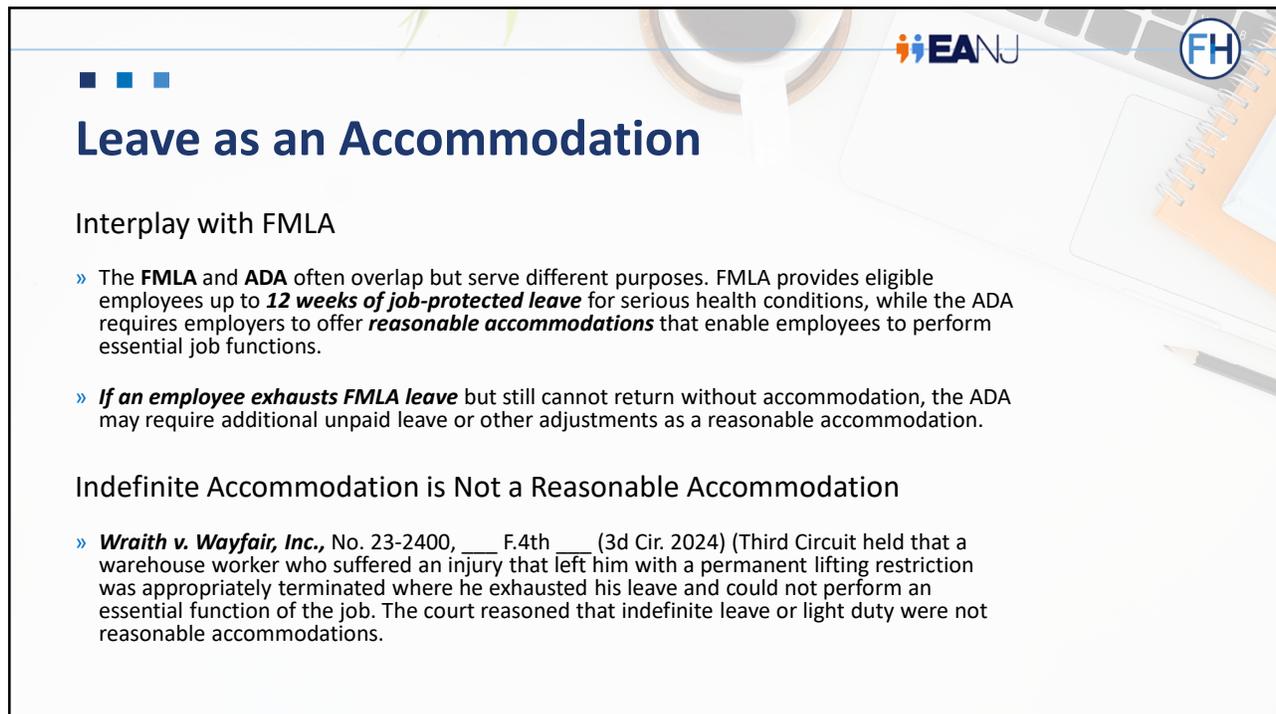
Undue Hardship

An *undue hardship* is:

- » “significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.”

The EEOC’s Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>

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Leave as an Accommodation

Interplay with FMLA

- » The **FMLA** and **ADA** often overlap but serve different purposes. FMLA provides eligible employees up to **12 weeks of job-protected leave** for serious health conditions, while the ADA requires employers to offer **reasonable accommodations** that enable employees to perform essential job functions.
- » **If an employee exhausts FMLA leave** but still cannot return without accommodation, the ADA may require additional unpaid leave or other adjustments as a reasonable accommodation.

Indefinite Accommodation is Not a Reasonable Accommodation

- » ***Wraith v. Wayfair, Inc.***, No. 23-2400, ___ F.4th ___ (3d Cir. 2024) (Third Circuit held that a warehouse worker who suffered an injury that left him with a permanent lifting restriction was appropriately terminated where he exhausted his leave and could not perform an essential function of the job. The court reasoned that indefinite leave or light duty were not reasonable accommodations.)

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Pregnant Workers Fairness Act (PWFA)

- » Requires covered employers to accommodate applicants' and employees' known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."

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Pregnant Workers Fairness Act (PWFA)

- » PWFA ***expressly prohibits a covered entity from requiring a qualified employee to take leave*** if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.
- » PWFA, like the ADA, requires an employer to ***engage in the interactive process*** to identify a reasonable accommodation.

<https://www.eeoc.gov/summary-key-provisions-eeocs-final-rule-implement-pregnant-workers-fairness-act-pwfa>

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Work from Home Requests

- » You may not need to grant your employee's request to continue to work from home to accommodate her disability but denying that request merely starts the interactive process of figuring out whether and how to accommodate her reasonably.
- » You are not obligated to provide the accommodation the employee requests, as long as you provide an effective accommodation.
- » You will need to articulate why a request to work from home creates an “undue hardship”.

<https://www.eeoc.gov/laws/guidance/work-hometelework-reasonable-accommodation>





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EEOC Guidance on Work from Home Requests



- » **“The ADA does not require an employer to offer a telework program to all employees...** Not all jobs can be performed at home... Allowing an employee to work at home may be a reasonable accommodation where the person’s disability prevents successfully performing the job on-site and the job, or parts of the job, can be performed at home without causing significant difficulty or expense.”

<https://www.eeoc.gov/laws/guidance/work-hometelework-reasonable-accommodation>

- » **But a word of caution:** The EEOC notes that an employee’s pandemic work-at-home experience **“could be relevant”** to the employer’s consideration of a subsequent, post-pandemic request.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (Questions D.15 & D.16)




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EEOC Guidance on Work from Home Requests

- » Any time an employee requests a reasonable accommodation, **the employer is entitled to understand the disability-related limitation** that necessitates an accommodation. If there is no disability-related limitation that requires teleworking, then the employer does not have to provide telework as an accommodation. Or, if there is a disability-related limitation but the employer can effectively address the need with another form of reasonable accommodation at the workplace, then the employer can choose that alternative to telework.
- » The **fact that an employer temporarily excused performance of one or more essential functions** when it closed the workplace and enabled employees to telework . . . **does not mean that the employer permanently changed a job's essential functions**, that telework is always a feasible accommodation, or that it does not pose an undue hardship. These are fact-specific determinations.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
(Question D.15)

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Recent Cases on Work from Home Requests

- » **EEOC Case in S.D.N.Y.** EEOC filed lawsuit after shipping company refused to extend telework arrangements, already in place for 3 years, for 3 employees with disabilities. **Case is ongoing. Stay tuned.**
- » **U.S. Court of Appeals, Fourth Circuit Case Filed Against Snack Manufacturing Company.** (Court upheld grant of summary judgment against employee because “her essential job duties required her presence onsite.”)

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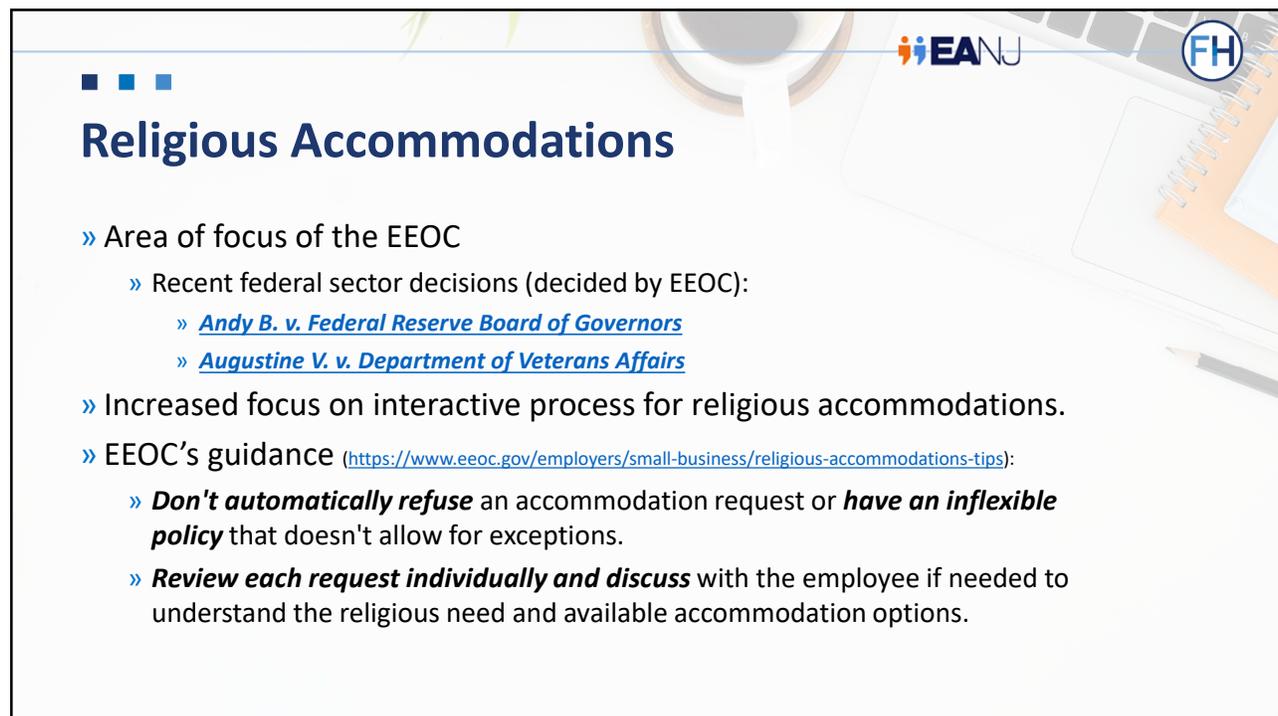


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Religious Accommodations

- » **Title VII of the Civil Rights Act of 1964** generally requires employers to give employees **religious accommodations** that impose **no undue hardship on the employer**.
- » **Undue hardship** interpretation:
 - » Prior to the *Groff* decision, lower courts allowed employers to deny employee religious accommodation requests that imposed **more than a “de minimis cost”** on the employer.
- » ***Groff v. Dejoy*, 143 S. Ct. 2279 (2023)** – *Groff* rejected the “more than *de minimis cost*” standard and held that an undue hardship means **“substantial increased costs in relation to the conduct of its particular business.”**
- » **Substantial increased costs**: Fact sensitive analysis including the employer’s size, operating costs, workplace, etc.

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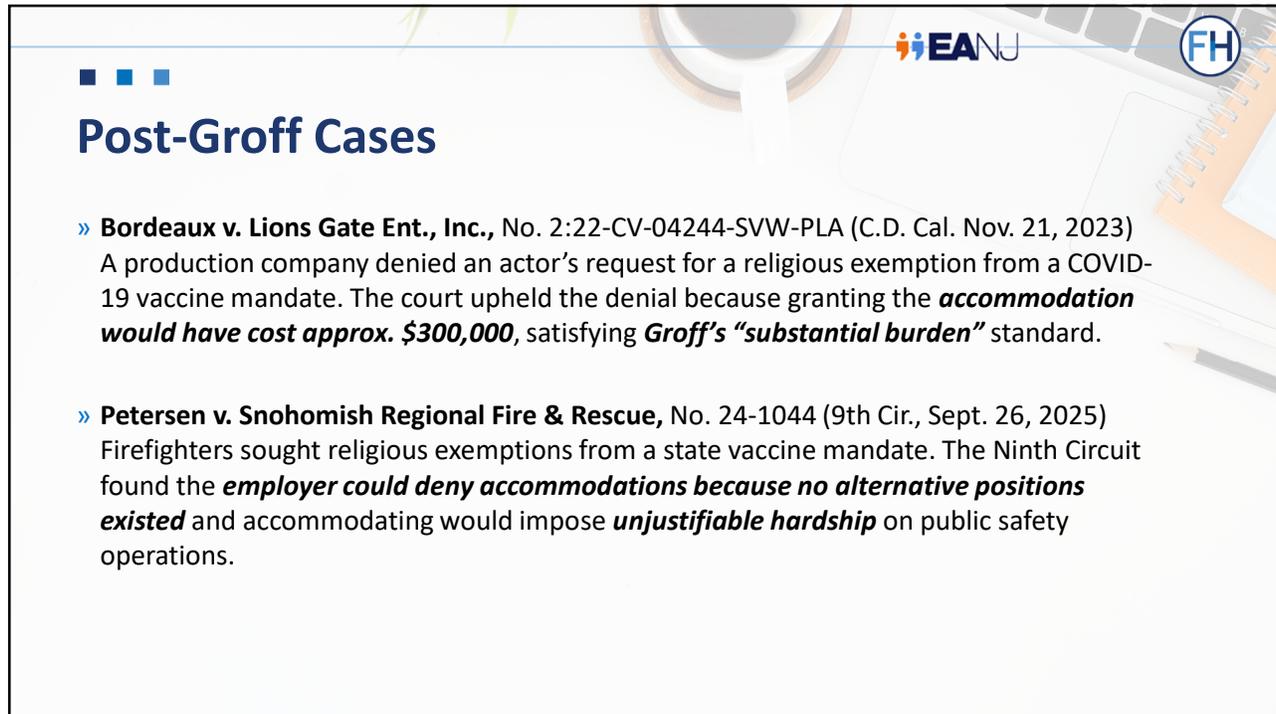


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Religious Accommodations

- » Area of focus of the EEOC
 - » Recent federal sector decisions (decided by EEOC):
 - » [*Andy B. v. Federal Reserve Board of Governors*](#)
 - » [*Augustine V. v. Department of Veterans Affairs*](#)
- » Increased focus on interactive process for religious accommodations.
- » EEOC’s guidance (<https://www.eeoc.gov/employers/small-business/religious-accommodations-tips>):
 - » **Don't automatically refuse** an accommodation request or **have an inflexible policy** that doesn't allow for exceptions.
 - » **Review each request individually and discuss** with the employee if needed to understand the religious need and available accommodation options.

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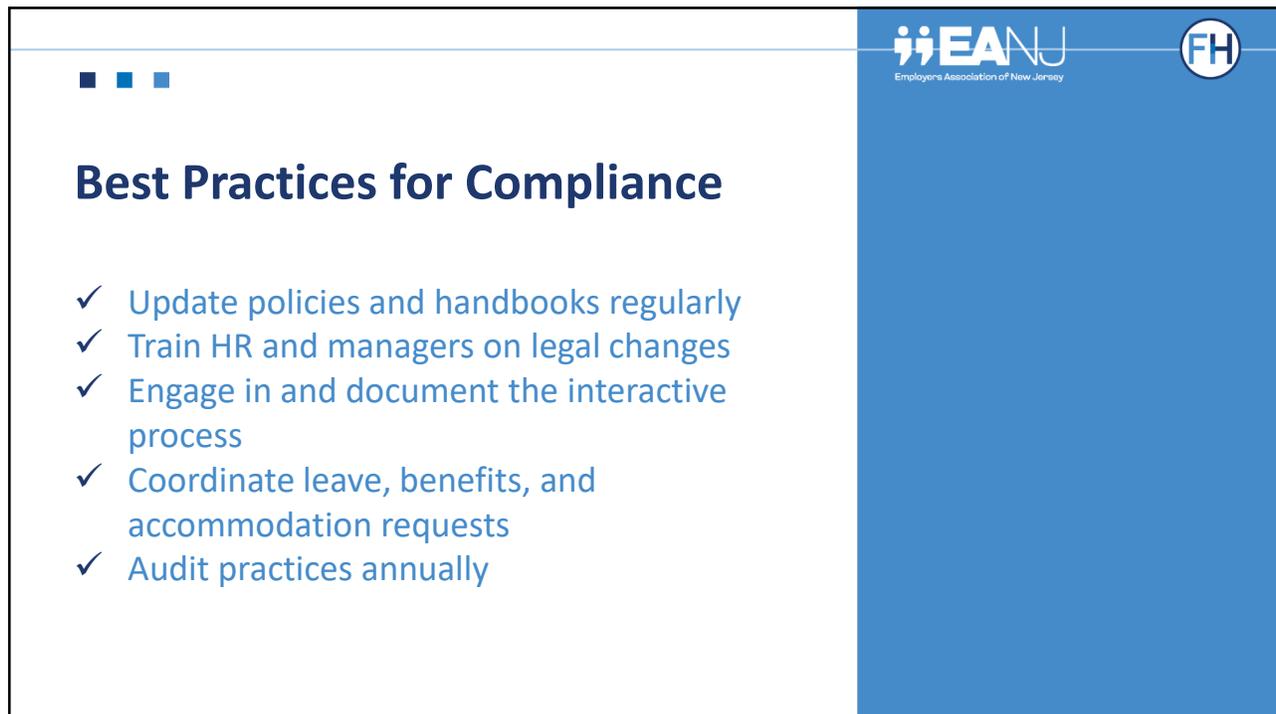



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Post-Groff Cases

- » **Bordeaux v. Lions Gate Ent., Inc.**, No. 2:22-CV-04244-SVW-PLA (C.D. Cal. Nov. 21, 2023)
A production company denied an actor's request for a religious exemption from a COVID-19 vaccine mandate. The court upheld the denial because granting the **accommodation would have cost approx. \$300,000**, satisfying **Groff's "substantial burden"** standard.
- » **Petersen v. Snohomish Regional Fire & Rescue**, No. 24-1044 (9th Cir., Sept. 26, 2025)
Firefighters sought religious exemptions from a state vaccine mandate. The Ninth Circuit found the **employer could deny accommodations because no alternative positions existed** and accommodating would impose **unjustifiable hardship** on public safety operations.

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Best Practices for Compliance

- ✓ Update policies and handbooks regularly
- ✓ Train HR and managers on legal changes
- ✓ Engage in and document the interactive process
- ✓ Coordinate leave, benefits, and accommodation requests
- ✓ Audit practices annually

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QUESTIONS?



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