



EDUCATIONAL SERIES FOR HEALTHCARE PROFESSIONALS

2018

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**EDUCATIONAL
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TAKING TIME OFF WORK

Key Topics:

- Family and Medical Leave Act
- Medical certification
- Disability insurance
- Practical tips for taking time off

RESEARCH: TAKING TIME OFF WORK

FMLA:

- About 60% of workers are protected by FMLA
- 50% of those covered are not aware the FMLA applies to them
- 50% of workers taking FMLA leave take leave for 10 days or less
- 78% of those who need FMLA leave, don't take it because they can't afford it
- 98% of people taking FMLA leave return to the same employer

Paid Sick Leave:

- 40% of employees in US don't receive paid sick leave ~ 44 million
- Cancer patients who received paid sick leave after treatment were 59% more likely to keep their job & 33% had less financial worries

RESEARCH: DISABILITY INSURANCE

SSA Disability:

- In August 2015, 8,345,427 people received SSI
- Every month, 14 million people get a disability check from the government
- In 2014, 53.7 was the average age of disabled-worker beneficiaries
- Average monthly benefit for a disabled worker is \$1,130
- 32.7% of workers with a disability work part-time vs. only 18.4% of workers without a disability

CASE STUDY: JEREMY

- Jeremy is 43 and has been diagnosed with cancer.
- Jeremy has been an executive at a bank for 3 years and often works 80+ hours a week. He often comes home for dinner with his family and then works late at night from his home office.
- The bank branch where he works has 22 employees, but there are two other branches in town, one with 18 employees and one with 20.
- Jeremy doesn't know yet, but thinks he will need to take time off work for treatment.
- However, he is worried about losing his job. He has 4 weeks of vacation time and about 20 hours of sick time. He thinks his employer offers some type of disability insurance. He is also thinking about asking if he can work from home.
- *What are his options?*

EMPLOYER POLICIES

- Employee Benefits
 - Health/dental/vision insurance
 - Short-term and/or long-term disability insurance
 - Life and/or accidental death insurance
- Other Benefits
 - Sick time
 - Vacation time or paid time off (PTO)
 - Pool of donated hours
 - Flex time/job sharing
 - Telecommuting
- Medical Leave Process
- Reasonable Accommodation Process

FAMILY & MEDICAL LEAVE ACT (FMLA)

- Federal law for:
 - Employees with a serious medical condition
 - Employees with a spouse, parent, or child with a serious medical condition
 - Parents
 - Spouses (common law spouses & same-sex spouses as of 3/27/15)
 - Children (biological, foster, adopted, step, or *in loco parentis*)
 - » 18+ only if “incapable of self-care because of a mental or physical disability”

FMLA ELIGIBILITY

Employer: private employers with 50+ employees (75 mile radius) and all government employers (federal, state, local)

- 75 mile radius
 - “As the car drives, not as the crow flies”
- No fixed worksite
 - Ex: sales rep, truck driver, flight attendant

Employee: 12 months, 1,250 hours

- 12 months = total of 12 months in 7 years
- 1,250 hours = at least 24 hours in each of the 52 weeks/year

What hours of work count toward FMLA?

FMLA ELIGIBILITY

What hours of work count toward FMLA?

- 1250 hour requirement:
 - Only count hours physically worked
 - Not breaks, vacation, or travel time
 - Except: those on military leave during the 12 months preceding the leave and airline flight crew
- 12 month requirement:
 - Paid vacation or sick leave counts
- Exempt employees:
 - Burden on employer to show you didn't meet hour requirement

FMLA BENEFITS

Protections

- Up to 12 weeks leave, per year
- Unpaid leave
- FMLA Bubble:
 - Job protected
 - FMLA protects job where sick leave/STD/LTD don't
 - Health insurance protected

FMLA TIPS

- Can be used in segments or intermittently
- Deciding the year period
- Asking for FMLA & giving notice
 - Foreseeable v. unforeseeable
- Can work with the ADA
- Employers can't require employees to exhaust PTO, vacation, & sick leave before using FMLA
- Employers can require use of PTO, vacation, & sick leave
- Employees can request use of PTO, vacation, & sick leave

STATE LEAVE LAWS

- FMLA type leave for smaller employers:
 - DC (20), ME (15 pvt, 25 public), MD (15), MN (21), OR (25), RI (30 for public employers), VT (15)
- Expanded definition of family:
 - CT, DC, HI, MD, NJ, OR, RI, VT, WI
- Expanded use of FMLA leave:
 - CT, ME, MD, OR
- Paid sick leave:
 - DC, CT, CA, MA, OR + Cities – see chart
 - Federal Contractors - EO
- Unpaid leave to take family members to routine medical visits:
 - MA, VT

<http://TriageCancer.org/StateLaws>

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PRACTICAL TIPS FOR LEAVES

Short Term Leaves:

- Point Person
- Understand employer rules

Long Term Leaves:

- Staying connected to network and industry
- Consult or freelance
- Volunteer
- Courses/certifications/continuing education

CASE STUDY: ALEX

- Alex's daughter has cancer. He works at a large company and would like to take time off work, but his employer said this is a "bad time."
- When Alex asked about the FMLA, the employer gave him a large stack of paperwork to fill out. Included in the stack of papers was a document that asked Alex to provide the contact information for his daughter's physician and a release form to allow the employer to get a copy of his daughter's medical record.
- Alex is not only a private person and has not shared what his family is going through at work, but his daughter has a hereditary cancer and Alex is concerned about sharing her diagnosis with his employer.
- *What are Alex's options?*

DISCLOSURE IN MEDICAL CERTIFICATION

- Employers entitled to medical certification for RA's & FMLA
 - But diagnosis may not be required
 - Patients should talk to their healthcare team
- Be careful of employer forms and state laws
- Employers CANNOT:
 - Ask for copies of medical records
 - Put your medical information in your employee file

WHO CAN PROVIDE FMLA CERTIFICATION?

Health care professionals =

- MDs, DOs, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, Christian Science practitioners;
- any HCP recognized by the employer or the employer's group health plan's benefits manager

WHAT CAN AN EMPLOYER ASK FOR FMLA vs. ADA

- Name, address, phone #, and fax # of health care provider
- Health care provider's type of practice/specialization
- Approximate date condition began and how long it will probably last
- Description of serious health condition sufficient to support need for FMLA leave
 - E.g., symptoms, diagnosis, doctor visits, medications, continuing treatment, etc.
- “Sufficient documentation” to substantiate employee has a disability under ADA and needs the requested accommodation
- “Sufficient” = Describes:
 - nature, severity, duration of impairment,
 - activity the impairment limits,
 - extent to which the impairment limits ability to perform the activity or activities, and
 - why a reasonable accommodation is needed

FMLA & MEDICAL CERTIFICATION

- Employers can't contact health care professionals, for additional info, except:
 - FMLA: Only to "authenticate" and "clarify"
 - ADA: Maybe not w/o employee's permission
- Recertification
 - Asking for extended leave
 - Circumstances or conditions have changed
- Return to work certification
 - Being asked for this certification when you have reservations

INCOME FOR CAREGIVERS

- State Paid Leave for Caregivers
 - Ex: CA, DC, NJ, RI, WA, NY
 - May be other state laws that provide paid leave for specific employees
- IHSS
 - In-Home Support Services, but may be called something different in each state
 - Through state Medicaid program

<http://trriagecancer.org/stateresources>

INCOME OPTIONS

Disability Insurance

- Short term vs. long term
 - Short term – generally up to 6 months
 - Long term – generally 12+ months
- Private Disability Insurance
 - Purchase through employer
 - Purchase directly from company
- State Disability Insurance
 - CA, HI, NJ, NY, RI, and PR

INCOME OPTIONS

- Social Security Administration
 - Social Security Disability Insurance (SSDI)
 - 10.5 million receive SSDI
 - Supplemental Security Income (SSI)
 - 8.3 million receive SSI
- Triage Cancer Resources:
 - Quick Guide on Disability Insurance
<http://TriageCancer.org/QuickGuide-DisabilityInsurance>
 - Blogs on Disability Insurance
<http://trriagecancer.org/blog/category/employment/disability-insurance/>



SSA DISABILITY DEFINITION

- SSA Definition of Disability:
 - You cannot do YOUR job; and
 - You cannot adjust to a NEW job; and
 - Your disability has, or is expected to, last for at least one year or to result in death.
- DDS (Disability Determination Services):
 - State agency that determines disability for SSA
- Can I apply while I am still working?
 - It depends . . .

DISABILITY DETERMINATION PROCESS

1. Are you working, earning more than \$1,180* (SGA) a month?
 - If yes, review ends and you will not be deemed disabled for SSDI.
 - If no, go to step 2
2. Is your medical condition “severe”?
 - If yes, go to step 3.
 - If no, review ends and you will not be deemed disabled for SSDI
3. Is your medical condition on the List of Impairments?
 - If yes, go to step 4.
 - If no, then agency looks at severity of condition. If severe enough go to step 4.
4. Can you do the work you did before?
 - If yes, review ends and you will not be deemed disabled for SSDI.
 - If no, go to step 5.
5. Can you do any other type of work?
 - If yes, review ends and you will not be deemed disabled for SSDI.
 - If no, you will be deemed disabled for SSDI.

*For non-blind individuals

APPLICATION INFORMATION

- Social Security number;
 - Birth certificate;
 - Names, addresses and phone numbers of the doctors, caseworkers, and hospitals visited and dates of your visits;
 - Names and dosage of all medications
 - Medical records from doctors, therapists, hospitals, clinics, and caseworkers that you already have in your possession;
 - Lab and test results;
 - A summary of where you worked and the kind of work you did; &
 - A copy of your most recent W-2 Form
-
- “Patient is responding well . . .”

QUICK DISABILITY DETERMINATION

- Computer program analyzes file for factors that show a high probability you will be found to be disabled
- If chosen as a QDD case, a disability examiner can review it without a review by a medical consultant
- Case could be approved within 20 days of applying, if medical records are complete and your disability onset date can be quickly determined
 - If alleged onset date is more than a few months ago, the QDD may make you go through the regular process
 - If QDD wants to deny benefits, it must be reviewed by a medical consultant first

COMPASSIONATE ALLOWANCES

SSA Compassionate Allowances Program

- Started in 2008
- Certain medical conditions = presumptively eligible
- Approximately 60 cancer diagnoses
- www.ssa.gov/CompassionateAllowances
- Fast processing only: still have 5-month waiting period and review by medical consultant

TERI (TERMINAL ILLNESS) CASES

- An allegation that the illness is terminal, ALS, AIDS
- Claimant is receiving inpatient or home hospice care
- Possible examples:
 - cancer that is: metastatic (the cancer has spread); diagnosed as Stage IV; persistent (recurrent following therapy); or inoperable or unresectable
 - cancer of the esophagus, liver, pancreas, gallbladder, or brain
 - mesothelioma
 - small cell or oat cell lung cancer
 - acute lymphocytic leukemia (ALL)/acute myelogenous leukemia (AML)
- Fast processing only: still have 5-month waiting period and review by medical consultant
- Tell SSA about a TERI case when first applying

SSI

- Eligibility
 - Low income level **AND**
 - Low asset level (\$2,000 individual) **AND**
 - Specific category **AND**
 - Age 65+; or Blind; or “Disabled”
 - Status (US Citizen or certain immigrants)
- \$735 maximum federal amount in 2017 (\$750 in 2018)
- State supplement payments, except AZ, MS, ND, & WV
- Payments: retro back to application date
- Health Insurance Option: Medicaid (automatically)
 - Except nine 209b states: CT, HI, IL, MN, MO, ND, NH, OK, VA

SSI

- What counts as income?
 - Anything received, cash or in-kind, that can be used to meet needs for food and shelter
 - Earned income
 - Wages (\$65 disregard, then ½ of all earned income after that)
 - Unearned income
 - SS benefits, pensions, unemployment, SDI, interest, dividends, money from family and friends (\$20 disregard)
 - In-kind support and maintenance
 - Food and shelter (mortgage, rent, utilities, property insurance, property tax) that someone else pays for (except if received by a nonprofit – e.g., food bank)
 - SSI benefits reduced by up to \$265

*Note: there are very detailed rules about income disregards

SSI

- What doesn't count as a resource?
 - Home SSI recipient lives in and land it is on
 - Household goods and personal property (e.g., furniture, etc.)
 - One vehicle
 - Burial plot
 - Burial funds and/or life insurance up to \$1,500
 - Retroactive SSA benefits up to 9 months after receipt
- Transfer look back period of 36 months!
 - Ineligible for up to 36 months depending on amount of transfer

SSDI

- Worked and paid into the system 5 of the last 10 years (if older than 31)
 - Generally, need 40 credits, 20 in the last 10 years
 - Example: You earn one credit for each \$1,300
 - Earning \$5,200 = 4 credits for the year
- Amount of payment based on amount of your contributions
 - Capped at \$2,687 in 2017 (\$2,788 in 2018)
- 5 month waiting period
- But payments can be retroactive 12 months (excluding waiting period)
- Health Insurance Option: Medicare (after 24 months of SSDI)

SSDI TIMING EXAMPLE

Billy is approved for SSDI benefits on September 1, 2016, for a disability that began on January 1, 2016.

His first benefit check would arrive October 2016 & would include:

- first month's payment (October 2016),
- plus the retroactive benefits payments from the four months of June 2016 to September 2016

Note: January 2016 – May 2016 will not be included in the retroactive benefits, as that serves as the 5 month waiting period

SSA APPEALS

- About 65% of applications initially denied
- Work with health care team to document medical condition and how it affects your ability to WORK
- Must appeal in writing within 60 days of receiving denial letter (5 days after date on the letter)
- 4 Levels of Appeal:
 - Request for Reconsideration
 - These states skip this level: AL, AK, CA (LA North & LA West only), CO, LA, MI, MO, NH, NY, PA
 - Hearing by an Administrative Law Judge
 - Review by the Appeals Council
 - Federal Court Review

ALJ HEARINGS

INDIANA ODAR OFFICES

<input type="text" value="Enter City or Judge Name"/>	<input type="text" value="Your state"/>	<input checked="" type="checkbox"/>	<input type="button" value="Find"/>
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The Office of Disability Adjudication and Review (ODAR) conducts Social Security Disability (SSD) hearings and Supplemental Security Income (SSI) hearings in 4 different offices in Indiana. Currently, in Indiana, the average wait time for a SSI or SSD hearing is **17.5 months**. The average case processing time in Indiana is **593 days**. The Indiana average for winning a disability hearing is **47%**. Click on one of the cities below to see detailed information about the hearing office and the administrative law judges (ALJ) that work there. This information for ODAR offices located in Indiana was last updated on 3/9/2018.

Office	Judges	Avg. Hearing Wait Time	Average Processing Time	Avg. Dispositions Per Day Per ALJ	Cases Dismissed	Cases Approved	Cases Denied
Evansville	7	18.0 months	600 days	2.0	19%	49%	32%
Fort Wayne	8	14.0 months	520 days	1.7	16%	45%	39%
Indianapolis	13	20.0 months	641 days	2.2	19%	51%	30%
Valparaiso In	13	18.0 months	613 days	2.0	22%	43%	35%
All indiana		17.5 months	593 days	2.0	19%	47%	33%
National Average:		17.3 months	577 days	1.9	21%	43%	36%

For stats by judge:

www.socialsecurity.gov/appeals/DataSets/03_ALJ_Disposition_Data.html

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SOCIAL SECURITY DISABILITY ATTORNEYS

- How to find one:
 - Bar Referral Services (see Triage Cancer State Resources)
 - American Bar Association
 - State/County/Local Bar Associations
 - Nolo.com Directory
- How it works:
 - Cases handled on contingency
 - Fees based on rules – must be approved by SSA
 - 25% of back pay, generally up to a \$6,000 cap
 - Attorneys fee paid by SSA, directly to atty, & you get rest

*Triage Cancer Quick Guide to Legal Assistance

PRIVATE LONG-TERM DISABILITY & SSDI

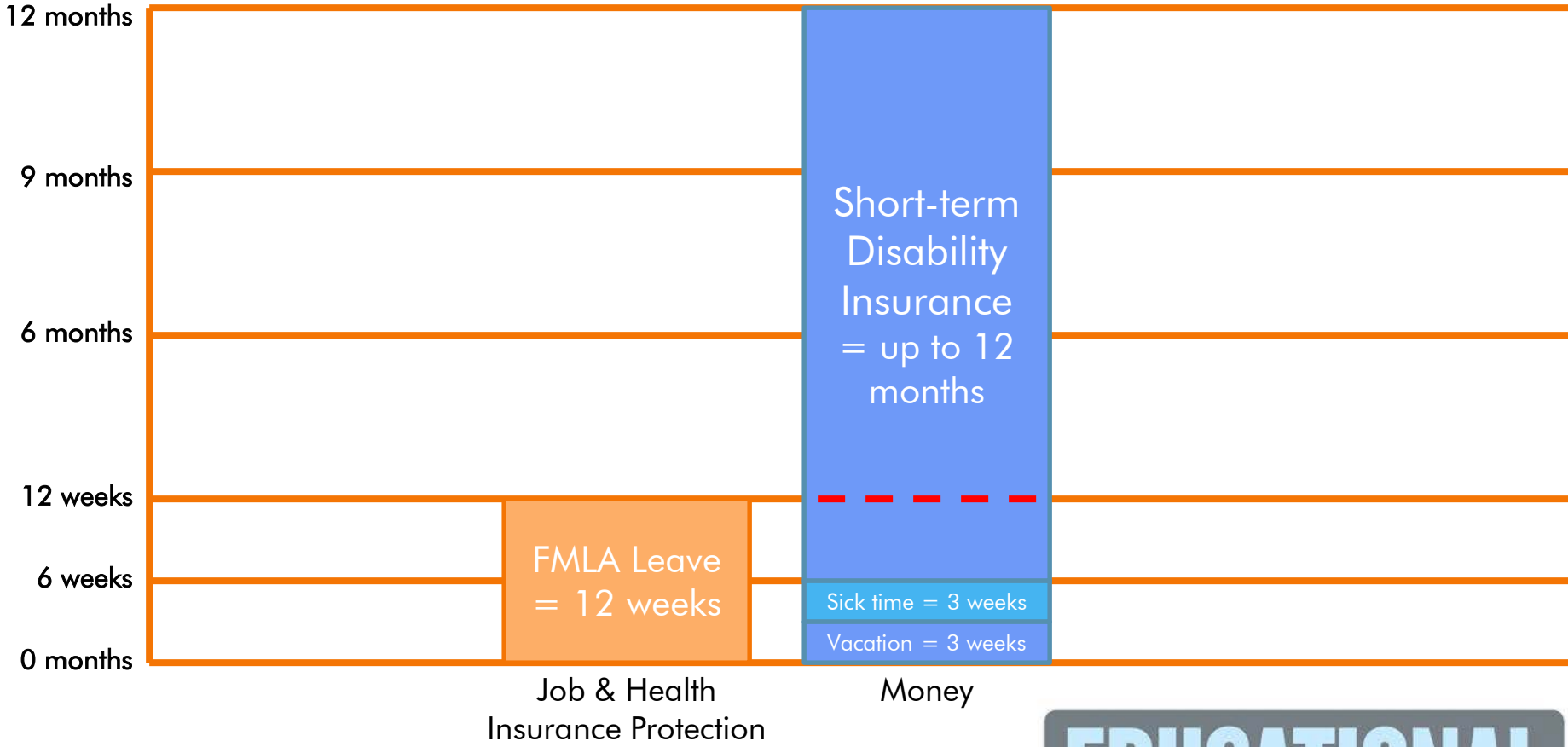
- Private LTD company may require applying for SSDI
- When eligible for both, can get SSDI plus a prorated LTD amount (amount depends on the policy)
- If receive SSDI retro for months you received LTD, your LTD policy may require paying them back something

FMLA & DISABILITY INSURANCE

- May be beneficial to take FMLA leave for the first period of time on disability insurance
- Why?
 - Job protection
 - Health insurance protection

*Triage Cancer Quick Guide to How the FMLA Works with Other Benefits

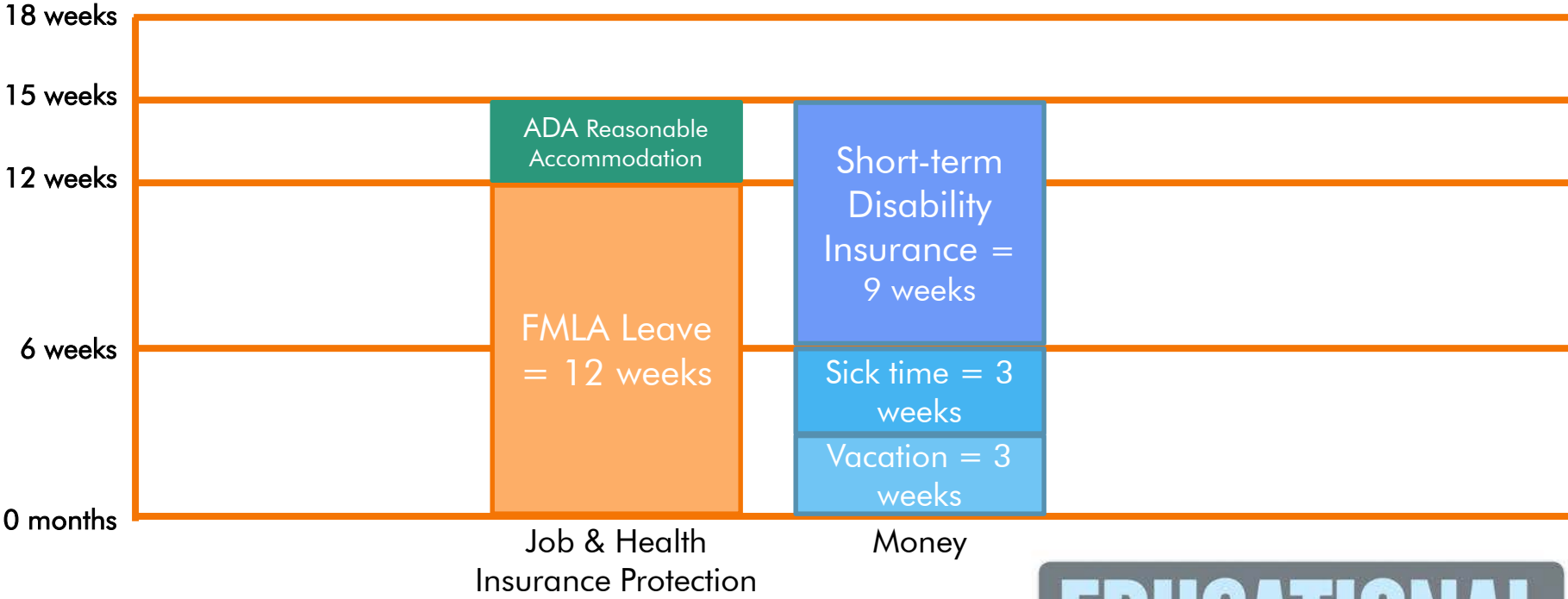
HOW FMLA WORKS WITH OTHER OPTIONS



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HOW FMLA WORKS WITH OTHER OPTIONS



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OTHER SOURCES OF INCOME

- Supplemental insurance policies
 - Ex: AFLAC
- Can you adjust your tax deductions?
- Assistance programs from mortgages/credit cards/etc. that suspend payments when you have a disability or lose your job
- Loans from 401k plans/pensions/retirement accounts
- Loans from life insurance
- Viaticals (life insurance sales)





CANCER FINANCES

A Toolkit for Navigating Finances After Cancer

[GET STARTED](#)

TOP TAKEAWAYS

1. FMLA can be used intermittently to protect your job and health insurance
2. Taking disability insurance benefits or sick leave doesn't necessarily protect your job
3. Appeal disability insurance denials

UPCOMING ACCREDITED WEBINARS

Educational Series for Healthcare Professionals*:

- **RETURNING TO WORK** - THURSDAY, OCTOBER 25
- **HEALTH INSURANCE OPTIONS** - THURSDAY, NOVEMBER 15

**All 60-minute sessions begin at 12 PM ET/9 AM PT*

Balancing Work & Cancer Webinars**:

AFTERNOON/MORNING SESSIONS - 1 PM ET / 10 AM PT:

- **OCCUPATIONAL THERAPY & VOCATIONAL REHAB** – WEDNESDAY, JUNE 6

~NEW TIME~ EVENING/AFTERNOON SESSIONS - 6 PM ET / 3 PM PT:

- **DISCLOSURE, PRIVACY & ONLINE BRAND** – WEDNESDAY, SEPTEMBER 12
- **WORKING THROUGH TREATMENT** – WEDNESDAY, OCTOBER 10
- **MANAGING LONG-TERM STRESS** – WEDNESDAY, NOVEMBER 7

More information & Registration:

<http://www.cancerandcareers.org/en/community/events/>

***All sessions are 60-minutes*

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MORE FROM CAC

NATIONAL CONFERENCE ON WORK & CANCER

Friday, June 22, 2018, New York City

www.cancerandcareers.org/conference

WEST COAST CONFERENCE ON WORK & CANCER*

Saturday, October 13 2018, Los Angeles

<http://www.cancerandcareers.org/en/community/events/westcoast-conference>

*Travel scholarships available – apply today!

TRIAGE CANCER RESOURCES

- Educational Blog (<http://TriageCancer.org/Blog>)
- Events (<http://TriageCancer.org/Events>)
 - Triage Cancer Conferences
 - Reno, NV ~ September 22, 2018
 - Lewiston, ME ~ October 27, 2018
- Cancer Survivorship Webinar Series (<http://TriageCancer.org/Webinars>)
- Insurance & Finance Intensive for Health Care Professionals
- Resources (<http://TriageCancer.org/Resources>)
 - Quick Guides
 - State Resource Contact Information
 - International Resources
 - Links to Partner Publications
- CancerFinances.org

ADDITIONAL RESOURCES

Legal Assistance:

- National Cancer Legal Services Network www.NCLSN.org
- LawHelp www.lawhelp.org
- Lawyer Referral Service:
<http://apps.americanbar.org/legalservices/lris/directory>

Employment Rights & Options:

- Equal Employment Opportunity Commission www.EEOC.gov
- Job Accommodation Network www.AskJan.org
- U.S. Department of Labor (COBRA) www.dol.gov/EBSA
- U.S. Department of Labor (FMLA) www.DOL.gov/WHD
- FlexJobs: www.flexjobs.com
- Workplace Transitions: www.workplacetransitions.org

Disability Insurance Options:

- Social Security Administration: www.SSA.gov

Health Insurance Options:

- www.CancerFinances.org

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