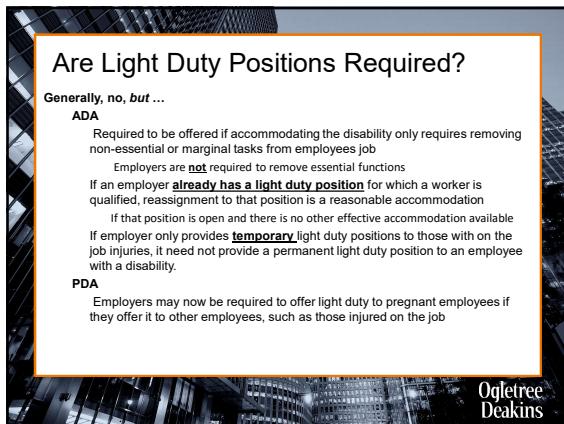


What do we mean by “light duty”?

- Temporary or permanent work that is physically or mentally less demanding than normal job duties.
- Other common uses of the term:
 - Excusing certain job functions
 - “Office” jobs v. “field” jobs
 - Other permanent positions generally considered “easier”

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Are Light Duty Positions Required?

Generally, no, but ...

ADA

Required to be offered if accommodating the disability only requires removing non-essential or marginal tasks from employees job

Employers are not required to remove essential functions

If an employer **already has a light duty position** for which a worker is qualified, reassignment to that position is a reasonable accommodation

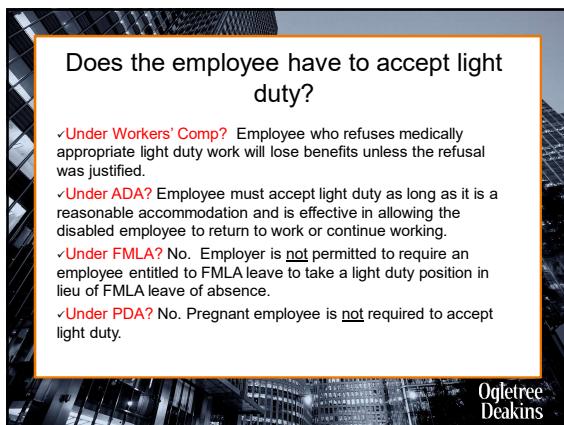
If that position is open and there is no other effective accommodation available

If employer only provides **temporary** light duty positions to those with on the job injuries, it need not provide a permanent light duty position to an employee with a disability.

PDA

Employers may now be required to offer light duty to pregnant employees if they offer it to other employees, such as those injured on the job

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Does the employee have to accept light duty?

- ✓**Under Workers' Comp?** Employee who refuses medically appropriate light duty work will lose benefits unless the refusal was justified.
- ✓**Under ADA?** Employee must accept light duty as long as it is a reasonable accommodation and is effective in allowing the disabled employee to return to work or continue working.
- ✓**Under FMLA?** No. Employer is not permitted to require an employee entitled to FMLA leave to take a light duty position in lieu of FMLA leave of absence.
- ✓**Under PDA?** No. Pregnant employee is not required to accept light duty.

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Light Duty Position Variations...

There are at least four significant types of light duty assignments:

1. Temporary position
2. Restructuring of employee's usual position
3. Reassignment to a vacant existing job
4. Modified work day

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Benefits of Light Duty Positions

- Employer gets at least some benefit from work
 - Reduce potential liability under the ADA
 - Increase morale
 - Increase productivity by reducing absences
- Can help reduce turnover
 - The longer an employee is out, the less likely he is to ever return
- Can cut off or control workers' compensation costs by limiting or eliminating temporary total disability benefits
 - Disability is often much more than the workers compensation costs

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Drawbacks to Light Duty Positions

- Risk of re-injury to the employee
- Inefficiencies arising from new position
- Administrative hassle to add a new job
- Might require you to keep an employee you'd rather see go

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How to Implement Light Duty Positions

- Permanent slate of light duty positions
 - Pros
 - One-time set-up
 - Defined role in the organization
 - Readily accessible job descriptions
 - Cons
 - Cannot be reserved for occupational injuries
 - Can encourage malingering

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How to Implement Light Duty Positions

- Ad hoc Light Duty Positions
 - Pros
 - Can be tailored to specific business and individual needs
 - Can be reserved for occupational injury only
 - Can be disregarded except when filled
 - Cons
 - Takes time to create a position and job description
 - Limited time to take advantage of Workers' Comp limits
 - Ad hoc positions may have poorly defined performance expectations and metrics

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Legal Principles to Keep in Mind

- ADA does not require employers to create new positions
- ADA does not require "bumping" incumbent employees
- Under FMLA, light duty must be "voluntary" and "uncoerced"
- Light duty time does not count against FMLA's 12 weeks
- Policies and performance expectations continue to apply in light duty jobs
- Employers can cut off or reduce workers' comp liability by offering light duty
- Employers who offer light duty to employees may now be required to offer light duty to pregnant workers

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Best Practices

- Create light duty positions on an ad hoc basis
- Limit creation of light duty positions to occupational injury or illness
 - May create obligations under PDA
- Make all light duty positions temporary
 - Best to have a defined time period (e.g., 90 days)
 - Consider creating a Light Duty Offer form that clearly states the time limitations on the position; the employee should sign the form to certify that she accepts a light duty position and understands the assignment is temporary (and thus she has no entitlement to the position)
- Have a written job description for each light duty position
- Any other job modifications should be handled as reasonable accommodations or FMLA leave – not “light duty”

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What do you think?

If an employer reserves light duty positions for employees with occupational injuries, does the ADA require it to consider reassigning an employee with a disability who is not occupationally injured to such positions as a reasonable accommodation?

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What do you think?

Does an employer have a duty under the FMLA to return an employee on leave to his job if that employee cannot perform essential functions of the position?

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What do you think?

ABC Widgets, Inc. ("ABC") creates light duty positions for employees when they are occupationally injured if they are unable to perform one or more of their regular job duties. Ann learns she is pregnant. Her doctor placed her on bed rest for two weeks, and, later, placed her on light duty restrictions. She requests that ABC create a light duty position for her as a reasonable accommodation. ABC denies Ann's request because she has not been injured on the job. The company's modified work policy denies an accommodation of light duty work for non-work related injuries.

Has ABC violated the ADA?

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What do you think?

Nurse Betty suffered a work-related injury to her neck and right shoulder while on the job at County Hospital. Betty's job requires she be able to lift 50 pounds. However, her physician limited her to occasional lifting of no more than 20 pounds due to her injury. She was initially awarded a light duty assignment through the hospital's light duty program. While on light duty, she was also granted intermittent FMLA leave. After Nurse Betty exhausted her FMLA leave and still could not perform the essential functions of her job, County Hospital refused to reinstate Nurse Betty to its light duty program.

Did County Hospital violate Nurse Betty's FMLA rights when it removed her from the light duty program and placed her on continuous FMLA leave?

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