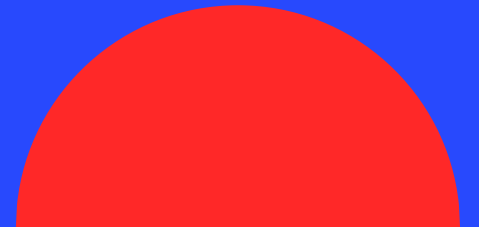
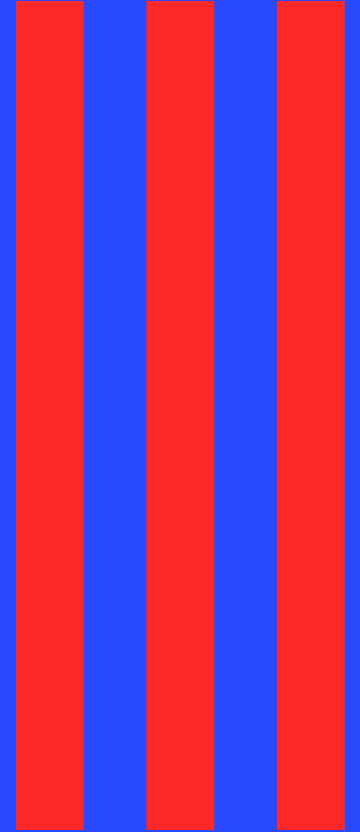


It's All Fun and Games Until Someone Calls HR

**Presented to the 2024 Insurance Summit
Florida League of Cities**



What's Up for Discussion?

Hot  Topics in Employment

- Bullying and Harassment
- New Pregnancy Considerations
- Guns
- Returning to the Workplace
- Marijuana Issues
- New Salary Levels for Exempt Status
- 2024 Challenges



Bullying & Harassment



1 **48.6 million**
Americans are bullied
..... at work

2 **65%**
of bullies
..... are bosses



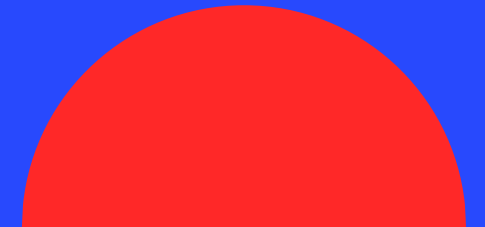
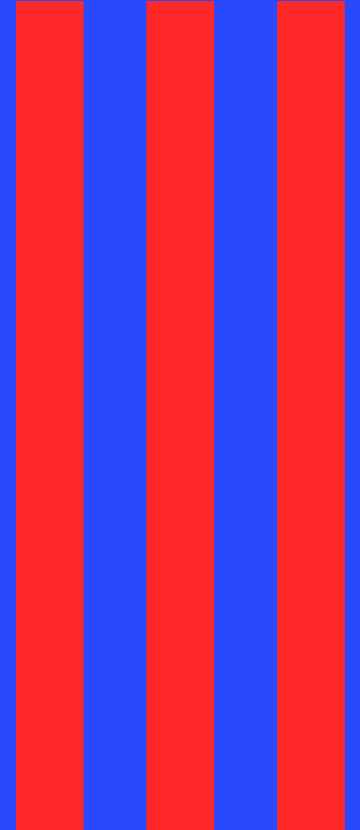
Workplace bullying is most often
a top-down issue

3 **30%** of workers
have direct experience
being bullied in the workplace
19% additional
have witnessed it



4 **60%**
of American employers
..... still act negatively
when bullying is reported

5 **43%**
The bullying
rate for remote
workers
..... with most virtual
bullying occurring
during online meetings



EEOC Stats FY 2022

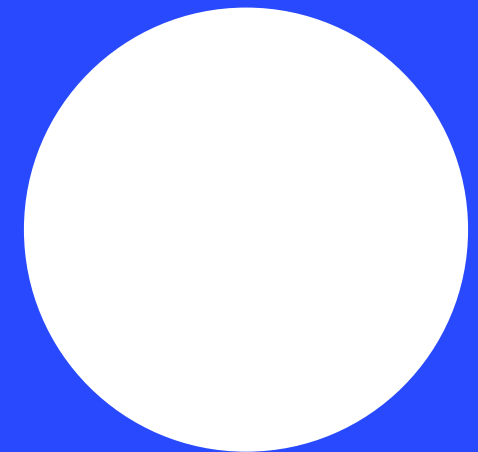
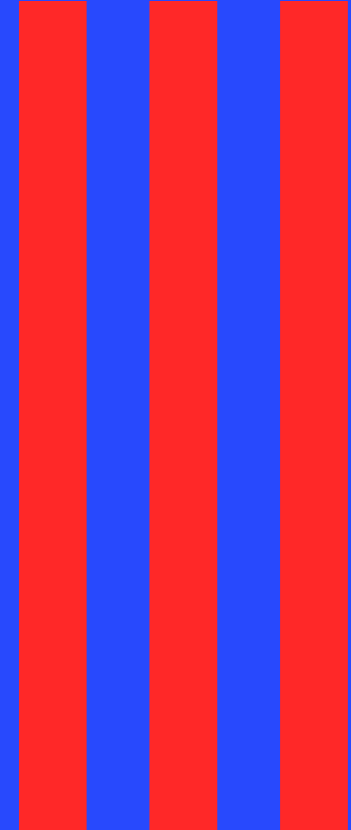
Charges Filed



10%+ Retaliation – All Statutes

10%+ Retaliation – Title VII Only

Between 2018 & 2022 $\frac{1}{3}$ of all charges included allegations of harassment

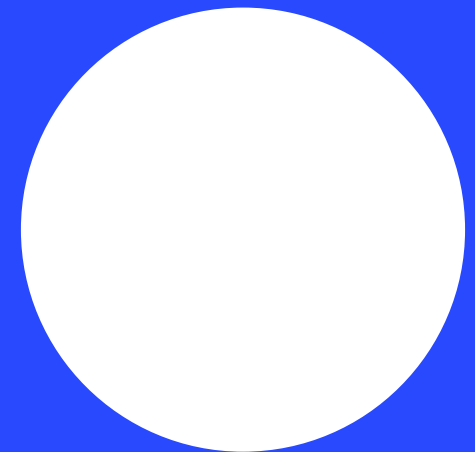
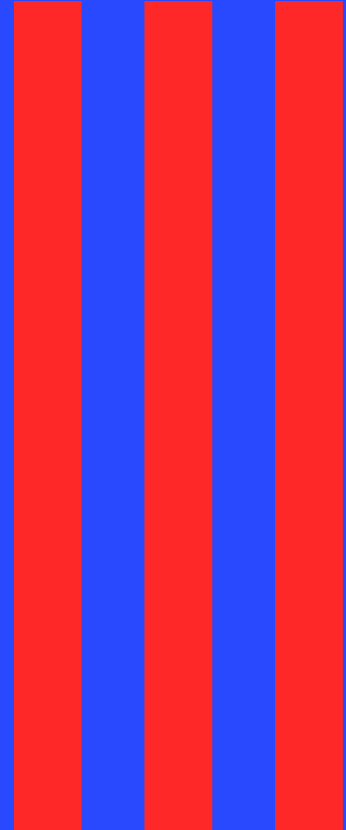


EEOC Proposed Guidance

Published October 2, 2023

Public Comments closed November 1, 2023

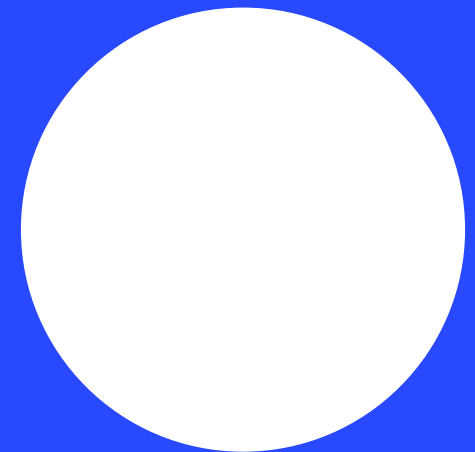
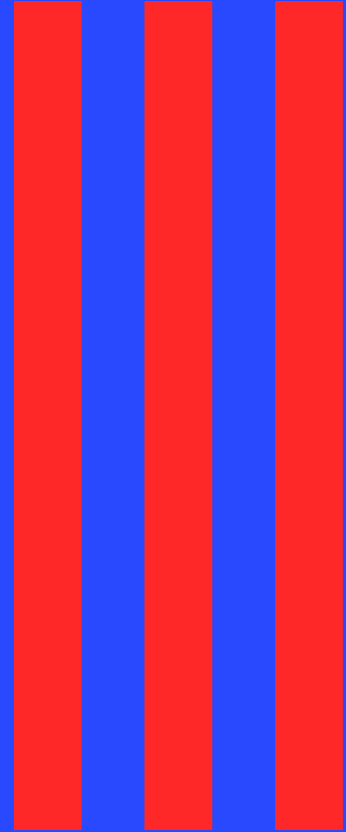
Would be 1st update since 1999



EEOC Proposed Guidance

Key Elements

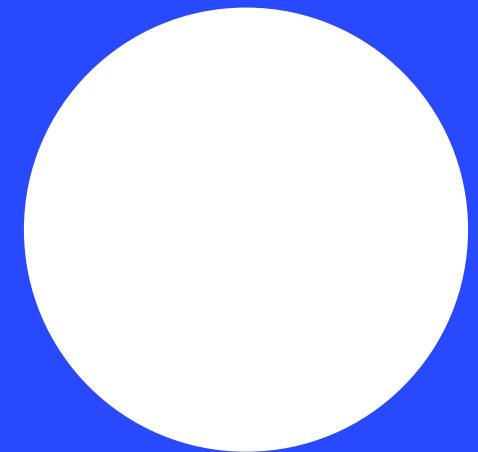
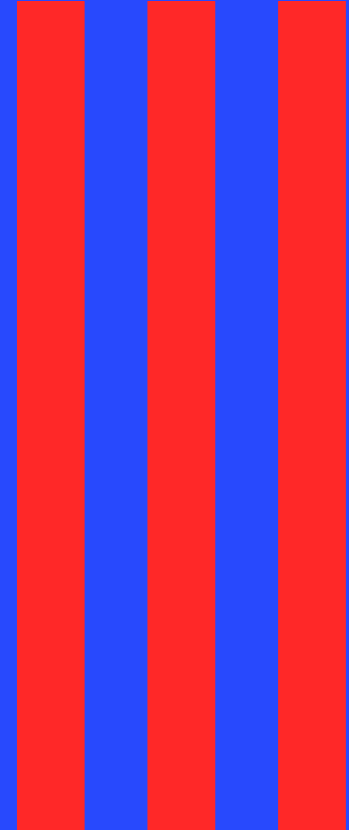
- **Includes virtual conduct and specifies that phones, computers, social media – even if not work related – can affect terms and conditions of employment**
- **Includes expansion of sex discrimination to include harassment on the basis of sexual orientation and gender identity**
- **Also expands into pregnancy, childbirth or related medical conditions**



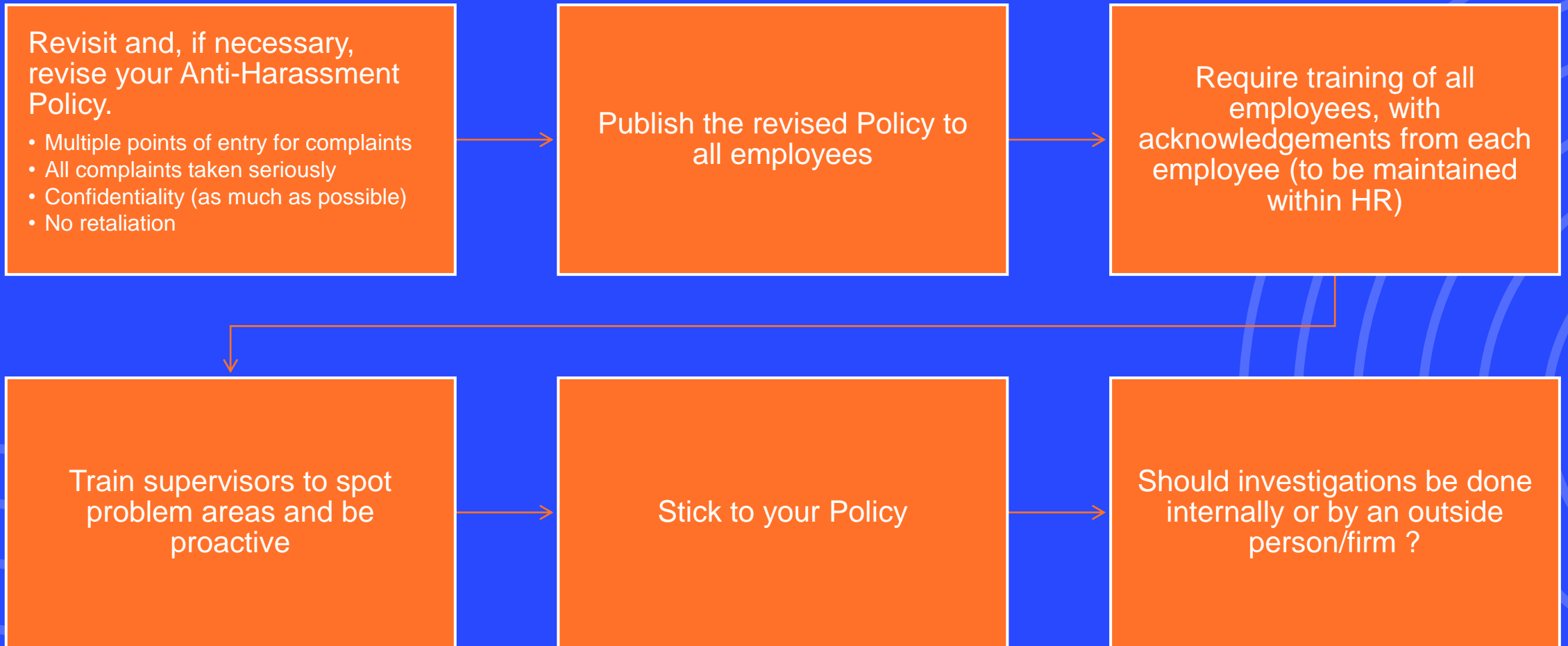
EEOC Proposed Guidance

Clarifies that an effective complaint process includes:

- **Prompt and effective investigations**
- **Corrective Action**
- **Confidentiality**
- **Anti-Retaliation protections**



What Should You Do?



Pregnancy & Babies

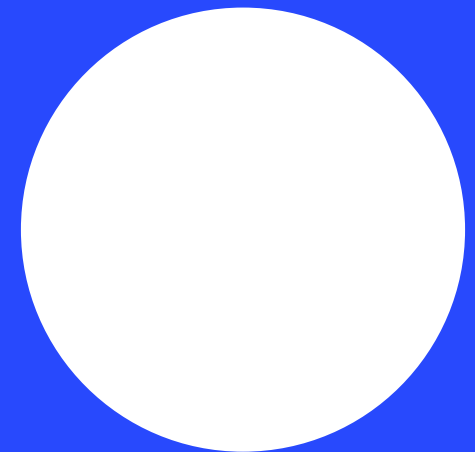
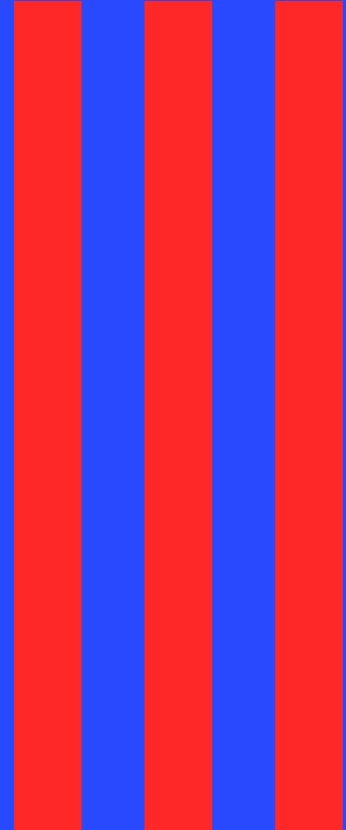


Pregnant Workers Fairness Act (PWFA)

Took effect June 27, 2023

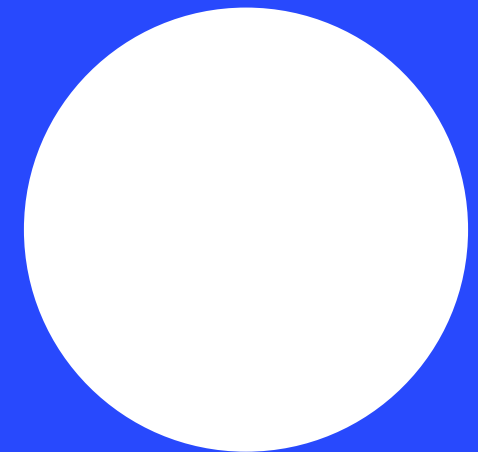
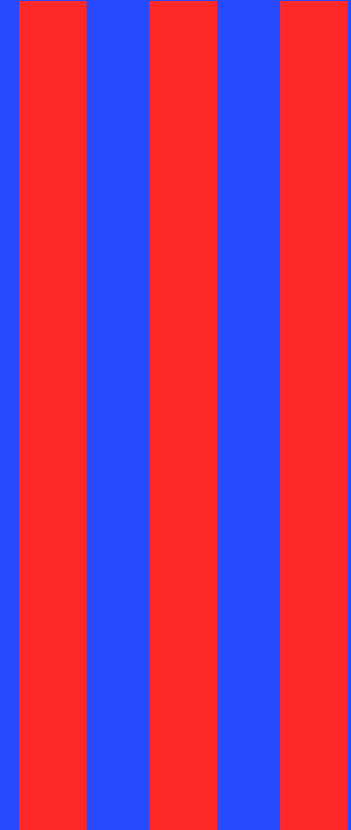
Fills the gap between Title VII and the ADA

**Relief is in addition to other federal, state,
and local laws (Title VII, ADA, FMLA, PUMP)**



Prohibited Actions under the PWFA

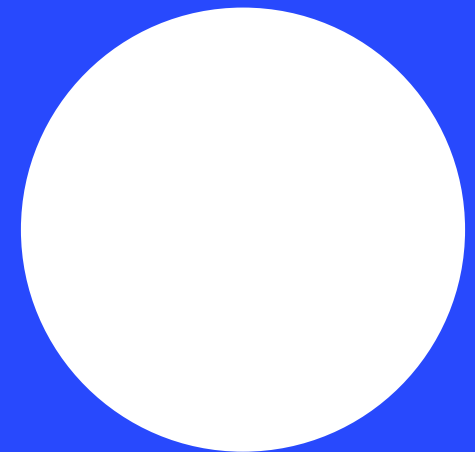
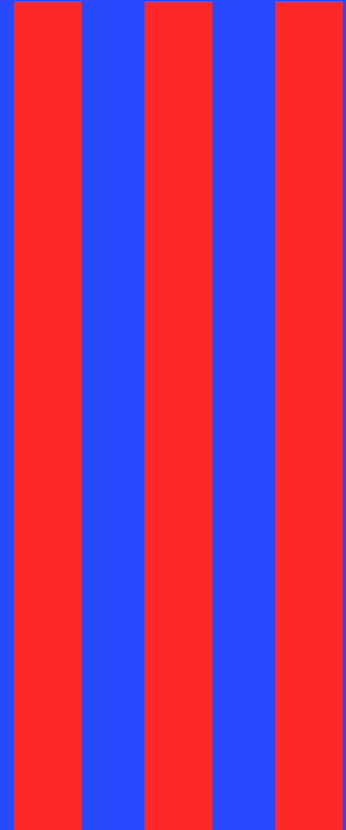
- Requiring covered employees to “accept an accommodation other than any reasonable accommodation arrived at through the interactive process”;
- Denying “employment opportunities” to covered employees “based on the need” to “make reasonable accommodations”;
- Requiring covered employees “to take leave, whether paid or unpaid, if another reasonable accommodation can be provided”; and
- Taking “adverse action in terms, conditions, or privileges or employment against” covered employees for requesting reasonable accommodations.



Pregnant Workers Fairness Act (PWFA)

Employee will be qualified for a reasonable accommodation if the employee can:

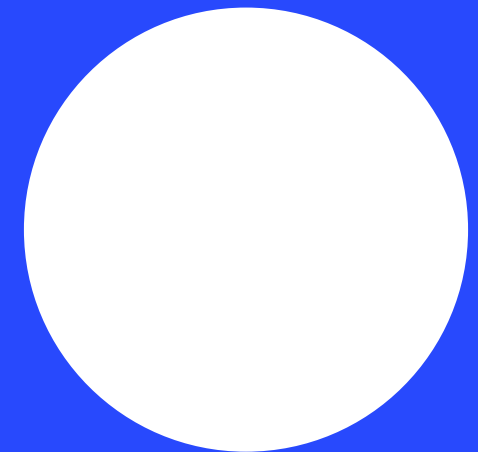
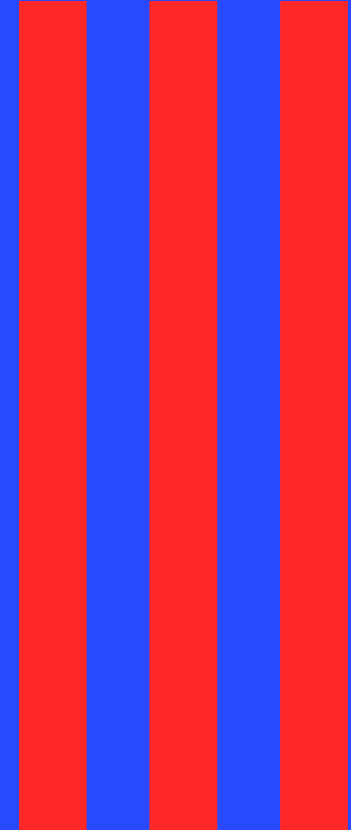
- identify “any inability to perform essential functions is for a temporary period;
- the essential function could be performed in the near future; and
- the inability to perform the essential function can be reasonably accommodated.”



Pregnant Workers Fairness Act (PWFA)

Examples of a reasonable accommodation:

1. Ability to sit or drink water;
2. Access to closer parking;
3. Flexible hours;
4. Telework;
5. Temporary reassignment
6. Appropriately sized uniforms and safety apparel;
7. Additional break time to use the bathroom, eat, and rest;
8. Ability to take leave or time off to recover from childbirth; and
9. Exemption from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy (light duty).



TIPS FOR ASKING FOR A REASONABLE ACCOMMODATION

IF YOUR PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITION MAKES IT HARDER FOR YOU TO PERFORM YOUR JOB, YOU CAN ASK FOR A CHANGE CALLED A REASONABLE ACCOMMODATION:



1 TALK to your employer. Your manager, human resources, or person designated in the company policy is a good place to start.

Covered employers must provide a reasonable accommodation unless it will cause them an undue hardship.



2 EXPLAIN that because of a physical or mental condition related to your pregnancy, childbirth, or related medical condition, you need a change.



3 SHARE with your employer what barriers you are facing. Give ideas, if you have them, for what could help you do your job.

For example, you may need to do your job differently, a piece of equipment, additional breaks, leave, or a different schedule.



4 IF YOUR EMPLOYER SAYS "NO"

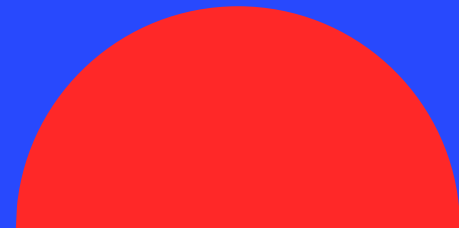
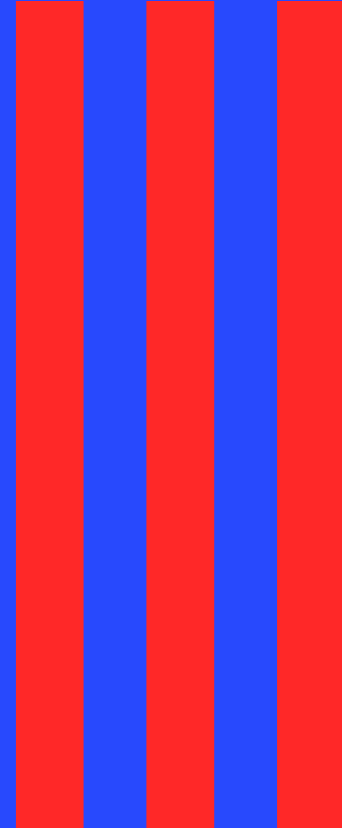
PROVIDE information. Tell your employer about the EEOC's webpage: [What You Should Know About the Pregnant Workers Fairness Act](#).



REACH OUT to the EEOC. The EEOC can help you decide on next steps.



CONTACT US:
1-800-669-4000
WWW.EEOC.GOV



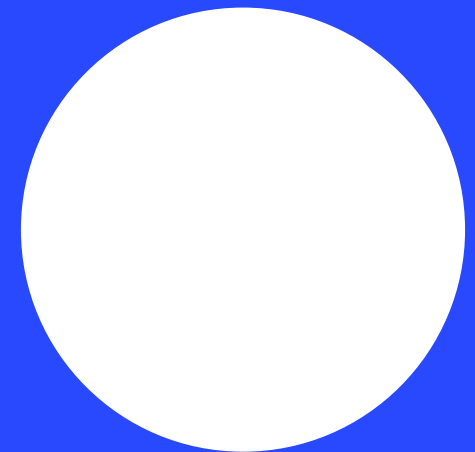
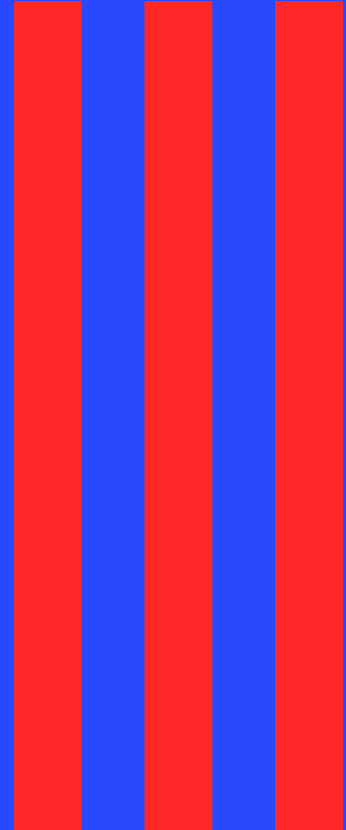
EEOC Rule

Published TOMORROW – April 19

A mere 408 pages of regs.

**Provides the Final Rule and Interpretive
Guidance for the EEOC**

- Not law – *Chevron* deference



Employer Takeaways

Train supervisors about the PWFA. First level supervisors may be particularly likely to receive accommodation requests and should be trained about how to respond, including how to avoid retaliating against those who request or use a reasonable accommodation.

Workers do not need to use specific words to request an accommodation to begin the interactive process. Once an employee requests an accommodation, use the interactive process.

Limitations may be minor and may be associated with an uncomplicated pregnancy and may require accommodations that are easy to make.

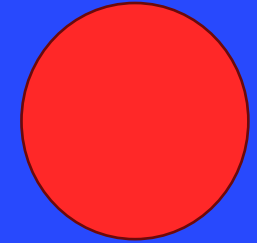
A worker may need different accommodations as the pregnancy progresses, they recover from childbirth, or the related medical condition improves or gets worse.

For assistance identifying possible reasonable accommodations, consult the Job Accommodation Network (JAN) (<https://askjan.org/>)

Guns in the Workplace



Concealed Weapons



790.01 Carrying of concealed weapons or concealed firearms.—

(1) A person is authorized to carry a concealed weapon or concealed firearm, as that term is defined in s. 790.06(1), if he or she:

(a) Is licensed under s. 790.06; or

(b) Is not licensed under s. 790.06, but otherwise satisfies the criteria for receiving and maintaining such a license under s. 790.06(2)(a)-(f) and (i)-(n), (3), and (10).

(3) Except as provided in subsection (5), a person who does not meet the criteria in subsection (1) and who carries a concealed firearm, as that term is defined in s. 790.001, on or about his or her person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

To License or not to License



790.013 Carrying of concealed weapons or concealed firearms **without** a license.—

A person who carries a concealed weapon or concealed firearm without a license as authorized under s. 790.01(1)(b):

(1)(a) Must carry valid identification at all times when he or she is in actual possession of a concealed weapon or concealed firearm and must display such identification upon demand by a law enforcement officer.

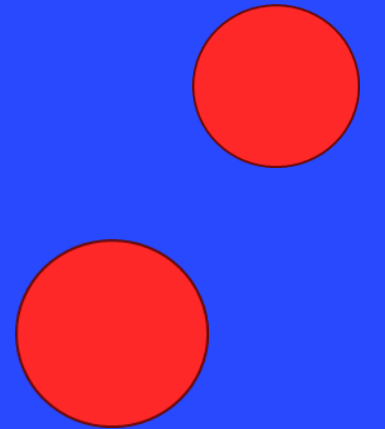
(b) A violation of this subsection is a noncriminal violation punishable by a \$25 fine, payable to the clerk of the court.

(2) Is subject to s. 790.06(12) in the same manner as a person who is licensed to carry a concealed weapon or concealed firearm.

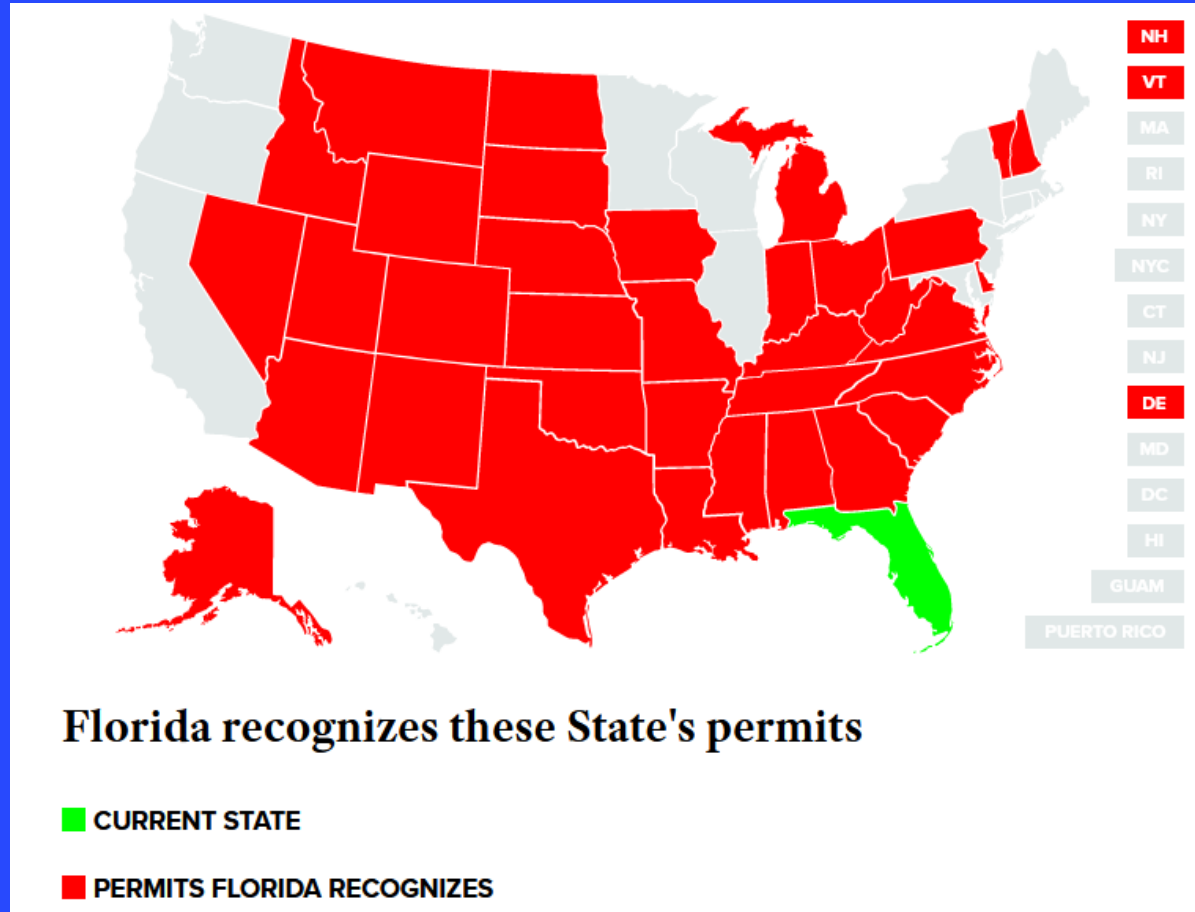
To License or not to License

Advantage of a License:

- Allows carrying other concealed weapons
- May carry concealed firearms in states with reciprocity
- Can purchase a firearm without the waiting period



Reciprocity illustrated

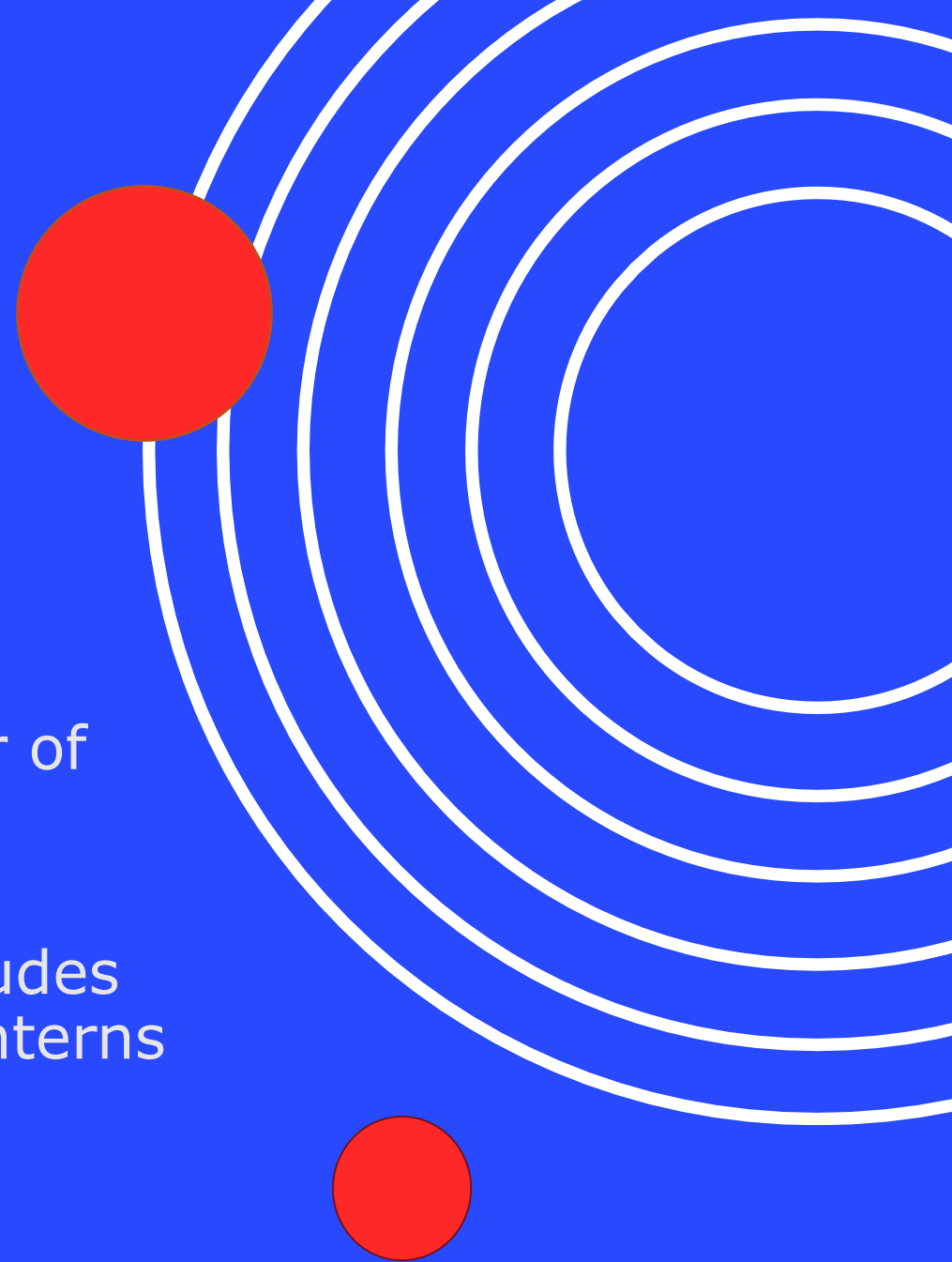


HB 543 – Impact on Employers

Applies to ALL employers who have employees

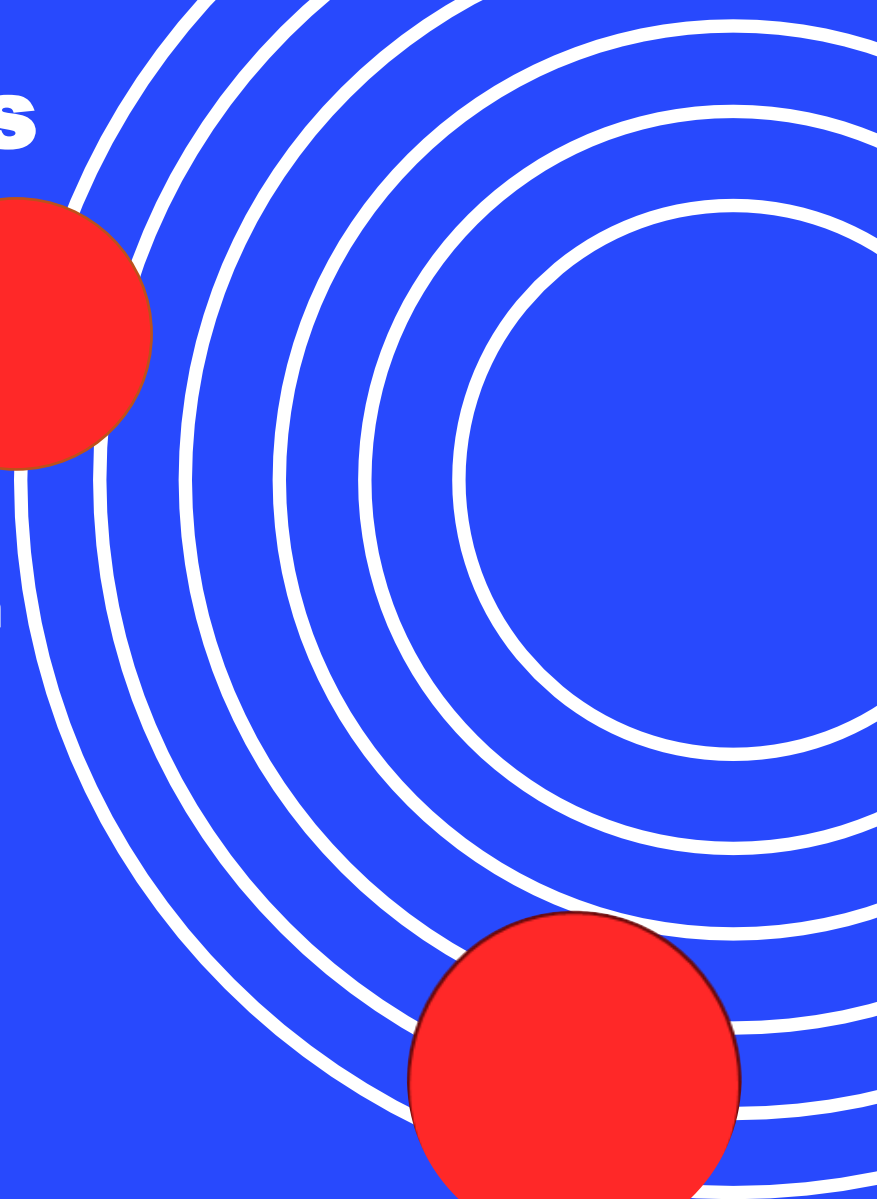
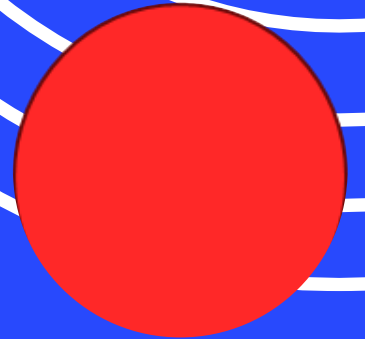
In other words: no minimum number of employees

Broad definition of employees and includes independent contractors, volunteers, interns or other similar types of workers



HB 543 – Specific Prohibitions on Employers

- **Conditioning employment on whether employees are authorized to carry a concealed weapon or firearm;**
- **Conditioning employment on any agreement by employees or applicants that prohibits them from keeping a legal firearm locked inside or to a private vehicle in a parking lot for lawful purposes;**
- **Prohibiting or attempting to prevent employees, customers, or invitees from entering employer parking lots because their private vehicle contains a legal firearm that is being carried for lawful purposes and cannot be seen within the vehicle;**



HB 543 – Specific Prohibitions on Employers

- Discharging or otherwise discriminating against employees for exercising their constitutional right to keep and bear arms or for exercising their right to self-defense, as long as the employee never exhibits a firearm on employer property for any reason other than lawful defensive purposes;
- Violating the privacy rights of employees through verbal or written inquiries regarding the presence of a firearm inside or locked to a private vehicle in a parking lot or by searching a private vehicle in a parking lot to determine whether a firearm is in the vehicle; or
- Taking any action against an employee based on anyone's verbal or written statements regarding the storage of a firearm inside a private vehicle in a parking lot for lawful purposes

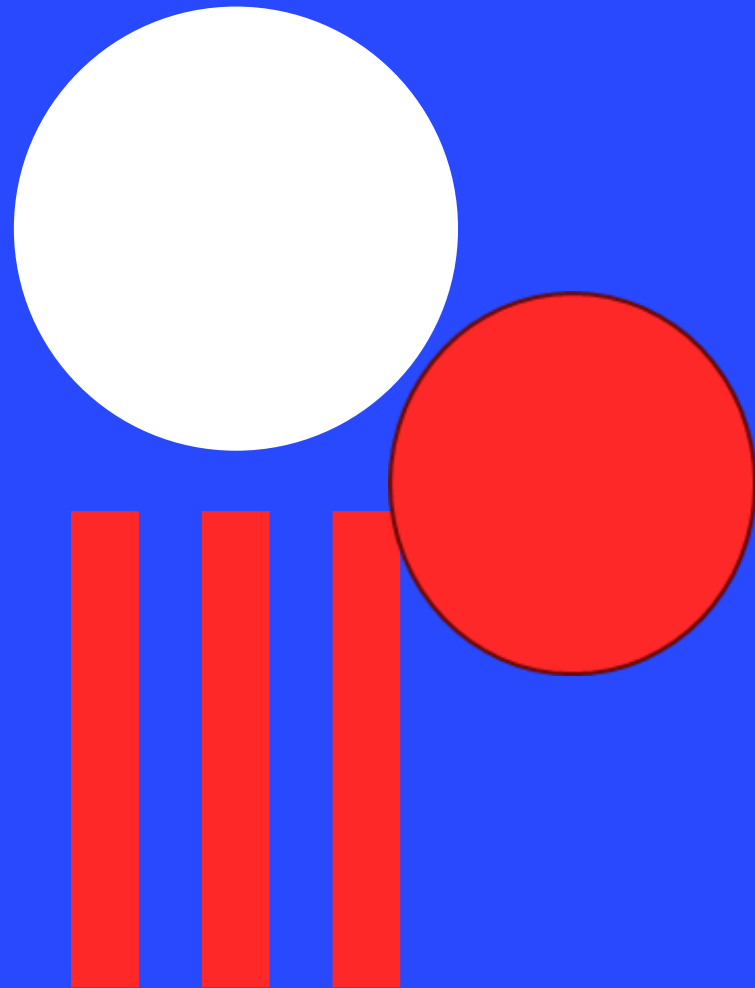
Unpacking the Parking Lot rule

Those with a valid CWFL or recognized out of state license/permit may carry concealed on their person in their vehicle or may have a loaded firearm anywhere in their vehicle if it is concealed from the ordinary view of others.

Those without a CWFL may carry a firearm, loaded in their vehicle as long as it is securely encased or not readily accessible for immediate use.

- (14) “Readily accessible for immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.
- (15) “Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access.

Unpacking the Parking Lot rule



Specific exemptions for

- Schools
- Correctional institutions
- Nuclear power plants
- Defense contractors
- Employers involved with explosive materials
- A vehicle owned, leased or rented by the employer
- Any property prohibited under federal law

HB 543 – What can an Employer Prohibit?



HB 543 does not impact an employer's ability to:

- prohibit employees from actively carrying a concealed weapon or firearm while at work
- prohibit employees from possessing a concealed weapon or firearm at the workplace that is not locked within or locked to the employee's vehicle.

Employers may still implement policies which prohibit the carrying of concealed weapons or firearms and may continue to take disciplinary action against employees for carrying a concealed weapon or firearm or for displaying such weapon or firearm at the workplace.

What should employers do now?

Revisit and revise policies relating to possession of a weapon or firearm at the workplace

- Quick fix: “Employees are strictly prohibited from possessing firearms on XYZ’s premises, except when in compliance with Section 790.251, Florida Statutes.”

Be EXPLICIT.

BUT, use caution and include language that either excludes the employer’s parking lot or explicitly states that employees may maintain a weapon or firearm within their locked personal vehicle in the employer’s parking lot.

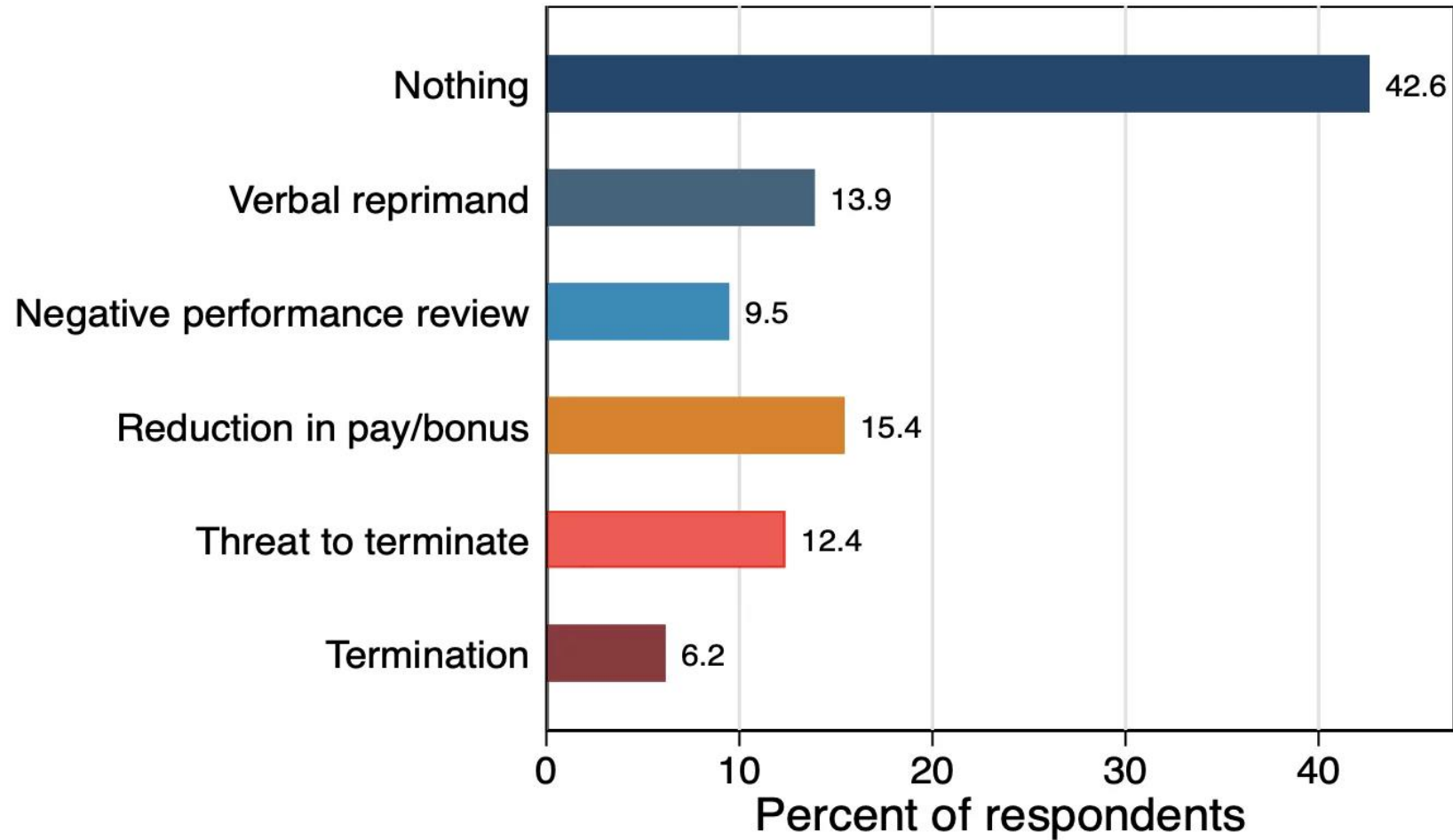
Consider training employees on these issues, but be prepared

Use extreme caution when considering disciplinary action against an employee of possession of a weapon or firearm

The Great Resistance

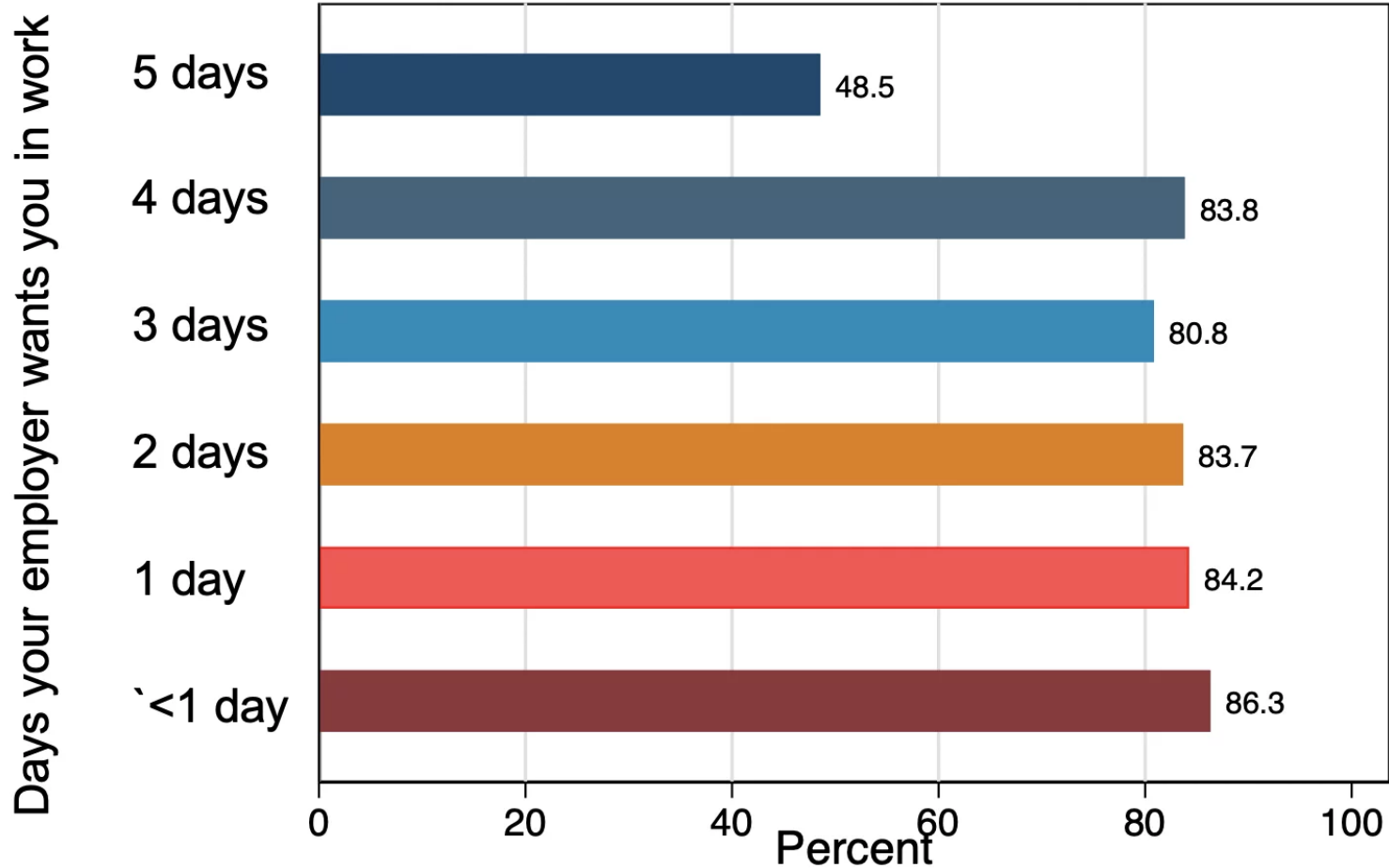


Employer's response to employees who come in fewer days than requested



Notes SWAA survey, May 2022. N = 1,919 & 2,390 Details www.wfhresearch.com

Employees' response to whether they came to work as many days as employer wanted.



Note SWAA May 2022. Employees who WFH 1+ day a week. N = 2,390
www.wfhresearch.com

Wicked Weed & the Workplace

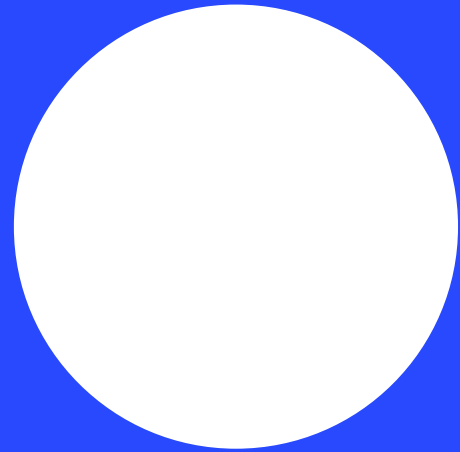
Enhancing your presentation





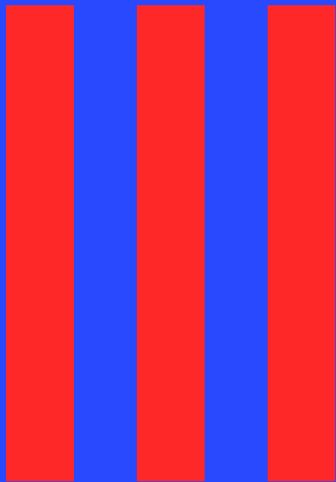
Once upon a time....

Two Things to Monitor



1. Will the DEA move Cannabis from Schedule I to Schedule III?

2. Will Florida Voters Approve the Constitutional Amendment?



Salary Increase for Exempt Employees

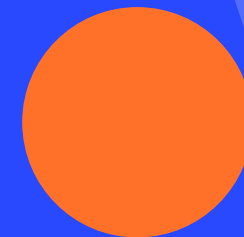
US Department of Labor is set to issue its final rule amending salary-level requirements for white collar exemptions under the Fair Labor Standards Act.

The proposed rule will:

1. Increase the standard salary level requirement for EAP employees from \$684 per week (\$35,568 annually) to \$1,059 per week (\$55,068 annually) – an increase of more than 50 percent.
2. The Department has indicated it will update these earnings thresholds every three (3) years based on available wage data.

If enacted as proposed, the final rule could go into effect 60 days thereafter.

BUT, legal challenges will be fierce.



2024



Final tips & takeaways

- Revisit policies, revise them, publish them, train them, and implement them.
- Process, process, process – be interactive, if not proactive
- Consistency and thoroughness over quick and easy
- Call for help when you need it
- Stay agile



Thank you

Michael P. Spellman

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