



**COUNCIL OF PRISON LOCALS  
33 WOMEN AND FAIR  
PRACTICES NEWSLETTER**

*“You must not be fearful about what you are doing when it is right” –Rosa Parks*

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CPL 33 Vice President for Women  
and Fair Practices

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### What have I been up to?

The week of December 10, 2017, I took part in the Gun Locker committee meeting along with Council President Young and South Central Regional Vice President Buchanan. We completed the draft policy, and it will be sent to the field for a 30-day review. The implementation of Gun Lockers will take place in two phases. The First Phase will include locations that are controlled by the BOP and where parking is available, as well as locations that are controlled by entities such as Military Installations, General Service Administration (GSA) and where authorization is granted to the BOP. The second include locations where construction would need to be completed and/or lockers will need to be installed.

***'we must make right an obligation and not option'***

### **Did You Know?**

I often receive phone calls regarding Reasonable Accommodations (RA), Limited Light Duty (LLD) and Modified Duties Assignments (MDA). I want to ensure our members request the proper accommodation. Below is a layout of the difference between the three using legal and non-legal terms.

#### **What is a Reasonable accommodation? See Reasonable Accommodation Policy 372.03**

The Americans with Disabilities Act (ADA) defines a Reasonable Accommodation as "any modification or adjustment to a job or work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform job functions.

#### **What is Limited Light Duty? See policy Workers Compensation Program 1601.05**

A limited light duty is a temporary change of duties, hours or other modification, used to assist any employee when returning to work with an injury or condition sustained at work.

#### **What is a Modified Duty Assignment? See Master Agreement Article 18 section L**

A Modified Duty Assignment is a change in duties, hours or other modifications used to assist any employee when returning to work with a NON-work-related injury or condition sustained when not working.



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### Examples 1

Sam is diagnosed with flat footedness by his Doctor. Sam's Doctor tells him he will need special shoes indefinitely while working. Sam reports to work with his Doctor's note and makes a request for a Reasonable Accommodation of special shoes. Did Sam make the correct request?

If you answered YES, then you are correct. Sam's condition is a disability and Sam is able to perform all the essential job functions qualifying him for a Reasonable Accommodation.

### Example 2

Ivy is at work while sitting at her desk a computer falls fracturing her foot. Ivy's Doctor places her in a cast for 6 weeks and allows Ivy to return to work with restrictions. Ivy makes a request for a Modified Duty Assignment. Did Ivy make the correct request?

If you answered NO you are correct. Ivy should have made a request for a Limited Light Duty. Ivy suffered an injury while at work which is covered by the Department of Workers Compensation.

### Example 3

Kim is home painting the house when she slips and falls fracturing her arm. Kim's Doctor allows Kim to return to work with restrictions for 6 weeks. Kim makes a request for an Reasonable Accommodation Did Kim make the correct request?

If you answered NO you are correct, Kim's request should have been for a Modified Duty Assignment (see Master Agreement Article 18 section L). In this case Kim's injury is not "sufficiently severe", it is a temporary injury that will last less than 6 months. The injury happened while Kim was home which would entitle Kim to a Modified Duty Assignment.

### Case Track

GEO GROUP TO PAY \$550,000 TO SETTLE EEOC SEXUAL HARASSMENT AND RETALIATION LAWSUIT. <https://content.govdelivery.com/accounts/USEEOC/bulletins/1d18234>

EEOC ORDERS DOJ TO GIVE EMPLOYEE MAXIFLEX SCHEDULE

All one needs to prove an illegal denial of a reasonable accommodation is to show that: (1) she is an individual with a disability; (2) she is a qualified individual with a disability; and (3) the Agency failed



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to provide a reasonable accommodation. For example, a DOJ employee had a sleep disorder as a result of Major Depressive Disorder. When the employee requested a reasonable accommodation, the Agency implemented a gliding schedule for Complainant. However, this was not an effective

accommodation because Complainant still had to report to work between 8 am and 9:30 am. She could not do so 21 times in a 90-day period. So, the agency terminated her. The Agency did not want to allow her any flexibility after 9:30 am. DOJ might have won this case because coming to work at a reasonably predictable time and during hours when co-workers are available is an essential part of most jobs.

This employee was a Management & Program Analyst. But..., and this is a very big but, for some reason the Agency never offered EEOC arguments as to why providing the employee with a maximum flexible schedule would present an undue hardship, therefore, DOJ lost.

Who knows whether failure to make that argument was a huge blunder by Agency Counsel or the job did not require regular reporting hours. The Agency had a legal burden to carry and it did not even try. As a result, the employee is about to get approximately four years of back pay with interest, related financial benefits such as TSP contributions, leave, etc. That is in addition to any compensatory damages up to \$300,000.00 that she can prove.

The lesson here for employee representatives is that if an employee asks for a maxiflex schedule accommodation and the agency refuses for no better reason than it does not want to do it, the agency is going to have a hard time disciplining the employee for being late—and the employee's attorney is probably going to walk away with a very fat check. For more details check out Davina W., Complainant, V. Jeff B. Sessions, Attorney General, Department of Justice (Federal Bureau of Investigation), Agency. Appeal No. [0120152757](#)(2017).

***“WE MUST BE WILLING TO STAND UP TO INJUSTICE”***



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### Helpful Links:

<https://www.eeoc.gov/federal/directives/md110.cfm>

<https://osc.gov>

<https://www.mspb.gov>

[https://www.bop.gov/resources/policy\\_and\\_forms.jsp](https://www.bop.gov/resources/policy_and_forms.jsp)

### Training links:

<https://www.traliant.com/eeoc/copliance> (Free Courses)

<https://www.eeoc.gov> (EEOC Training Institute)



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