

# THE KRIZNER GROUP

*AN EMPLOYMENT LAW BOUTIQUE*

## When Things Don't Go As Planned

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The Krizner Group

# First Things First

- Have a Plan
  - Do you have written instructions for how to deal with emergencies?
  - Render Aid Needed at the Time, but Avoid Unnecessary or Unqualified Emergency Medical Treatment
  - Call Necessary Law Enforcement/Medical Assistance – Document Basis for Doing So
  - Try Not to Panic – Remember the Plan

# Accidents Happen-Avoid Mistakes

- Immediate Investigation is Crucial
  - Take Pictures
  - Interview Witnesses
  - Gather Documents
  - Gather Equipment/Tools/Property

# Central Location

- Develop an Incident Report Form
  - Identity of Injured Person(s)
  - Identity of Responsible Person(s) (if known then)
  - Identity of Witnesses
  - Summary of Nature of Incident
  - Instructions to Attach Additional Documents or Information
  - Instructions About to Whom the Form Should Go
  - Any Special Instructions
    - GL Issues – Notification to Risk Manager or Equivalent
    - WC Issues – Notification to HR

# Incident Report Form Sample

## Sample Incident Report Form

Date(s): \_\_\_\_\_

Location(s): \_\_\_\_\_

Person Completing Form/Position: \_\_\_\_\_ / \_\_\_\_\_

Nature of Incident/Accident: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Physical or Other Injuries Initially Apparent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Person(s) Injured/Year of Birth/Contact Information: \_\_\_\_\_ / \_\_\_\_\_

Person(s) Primarily Responsible: \_\_\_\_\_  
Employee(s)    Yes    No

Witness 1: \_\_\_\_\_  
Witness 2: \_\_\_\_\_  
Witness 3: \_\_\_\_\_

Contact Information: \_\_\_\_\_  
Contact Information: \_\_\_\_\_  
Contact Information: \_\_\_\_\_

Law Enforcement or EMS Contacted?    Yes    No  
Why/Why Not: \_\_\_\_\_

Responsible Agency (DEP/DCF/DPBR/DWC) Contacted?    Yes    No    When? \_\_\_\_\_

Insurance Carrier Contacted?    Yes    No    When? \_\_\_\_\_

Pictures Taken? Yes    No    By Whom: \_\_\_\_\_  
(Attach Pictures or Specify Location of Files)

Witness Statements Taken?    Yes    No    By Whom: \_\_\_\_\_  
(Attach Statements or Specify Location of Files)

Contact Made with Next of Kin?    Yes    No  
Contact Name and Information: \_\_\_\_\_

Citations Issued?    Yes    No    Agency: \_\_\_\_\_

**Any information not able to be included on this form must be attached using additional pages.**

# Carrier/Agency Notification

- Have Organized Process
  - Who is keeper of the insurance information?
  - Is there a deadline to report accidents?
  - Where do the forms go?
  - What can I ask? What should others ask?
  - Who do I need to ask for help?

# Medical Management

- Four Primary Stages of Medical Issues
  - Reporting/Initiation
  - Notification/Determination
  - During Leave
  - Return to Work/End of Leave

# Policies Potentially Affected

- FMLA
- ADA
- Worker Injuries/Reporting W/C Claims
- Benefits
- Compensation
- Attendance
- Conduct
- Light Duty
- Drug Testing
- Concurrent Employment
- Lay-Offs/RIF
- Management Education

# FMLA Policy

- Combination of General and Specific
- Can reference, but not solely rely on, FMLA Poster
- Employees must get notice generally and specifically at time of qualifying event
- Requirements for employees must be clear for reporting/certification
- All amendments/changes must be considered and included

# ADA Policy

- ADA Applies with –
  - W/C OR Non W/C Condition or Injury
  - Return from Leave
- Is it clear in policy how to initiate
  - If employee, how do you know what to do or what is going on?
  - If employer, how do you know what to do or what is going on?
- Is there a clear understanding of what a disability is?
  - ADAAA Expansion of Disability

# Workers' Compensation Policy

- Requirements for reporting (employee AND supervisors)
- Requirements for cooperation with process
- Drug Free Workplace policy
- Deviation from Work Activities Policy (including fighting/horseplay)
- Return to Work requirements
- Requirements for Concurrent Employment

# Conduct/Attendance

- Notification for Leave
  - Call-In for short term/intermittent
  - Advance notice for large periods
- Intermittent Leave
  - Time increments (topped at 1 hour)
- Limits to Leave
  - Maximum permitted
  - Restrictions on Intermittent Leave

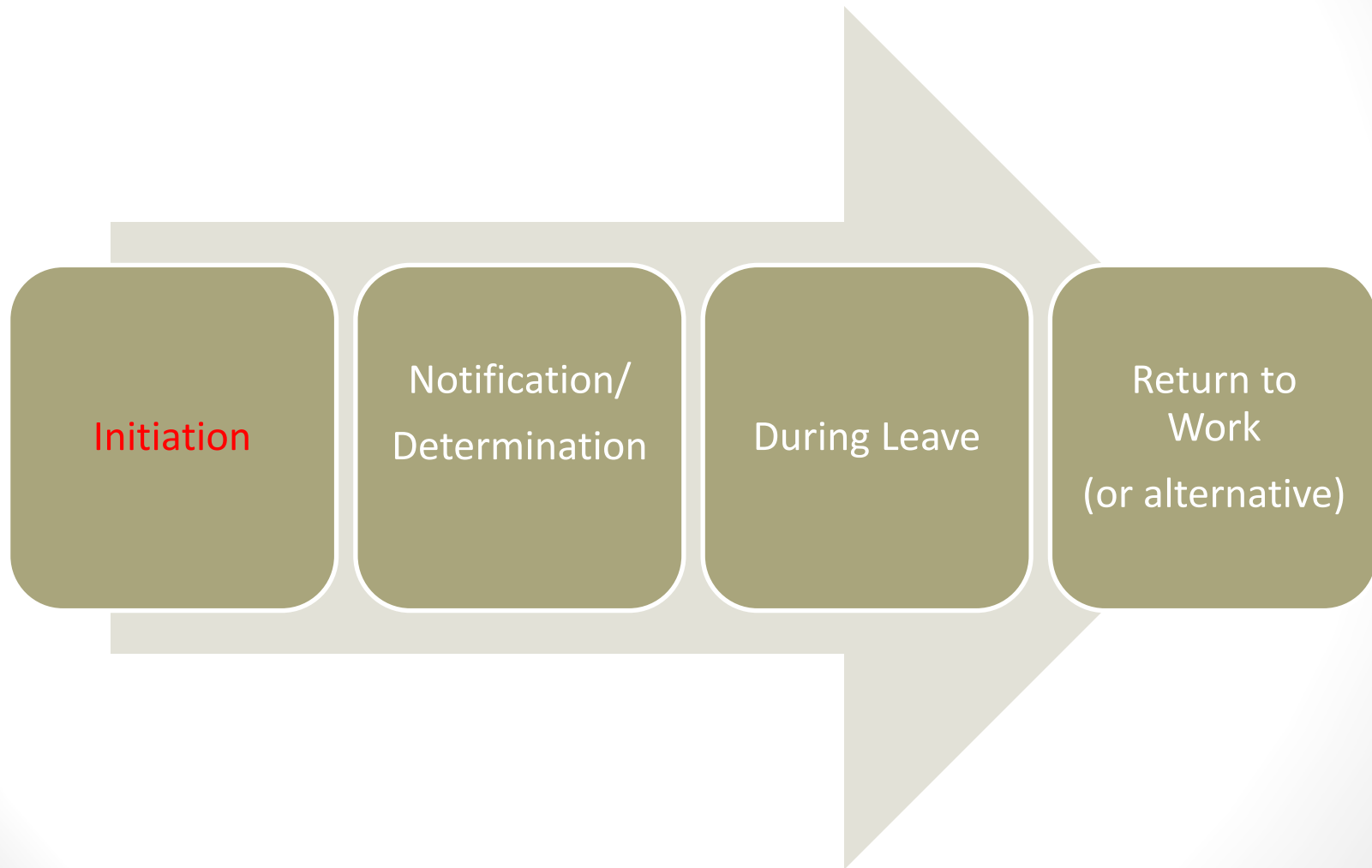
# Educating Management

- Triggering or Qualifying Events
- Who is the person to notify?
- What is the supervisor's authority/limitation?
- Who and how to interact with the employee?
- Discipline (including Termination) for violations
- Consistent and Documented Application of Processes

# Job Descriptions

- Must establish essential functions
  - Physical requirements
  - Mental standards
  - Psychological qualifications
  - Education/Experience
  - Attendance

# Process – Not “Set and Forget”



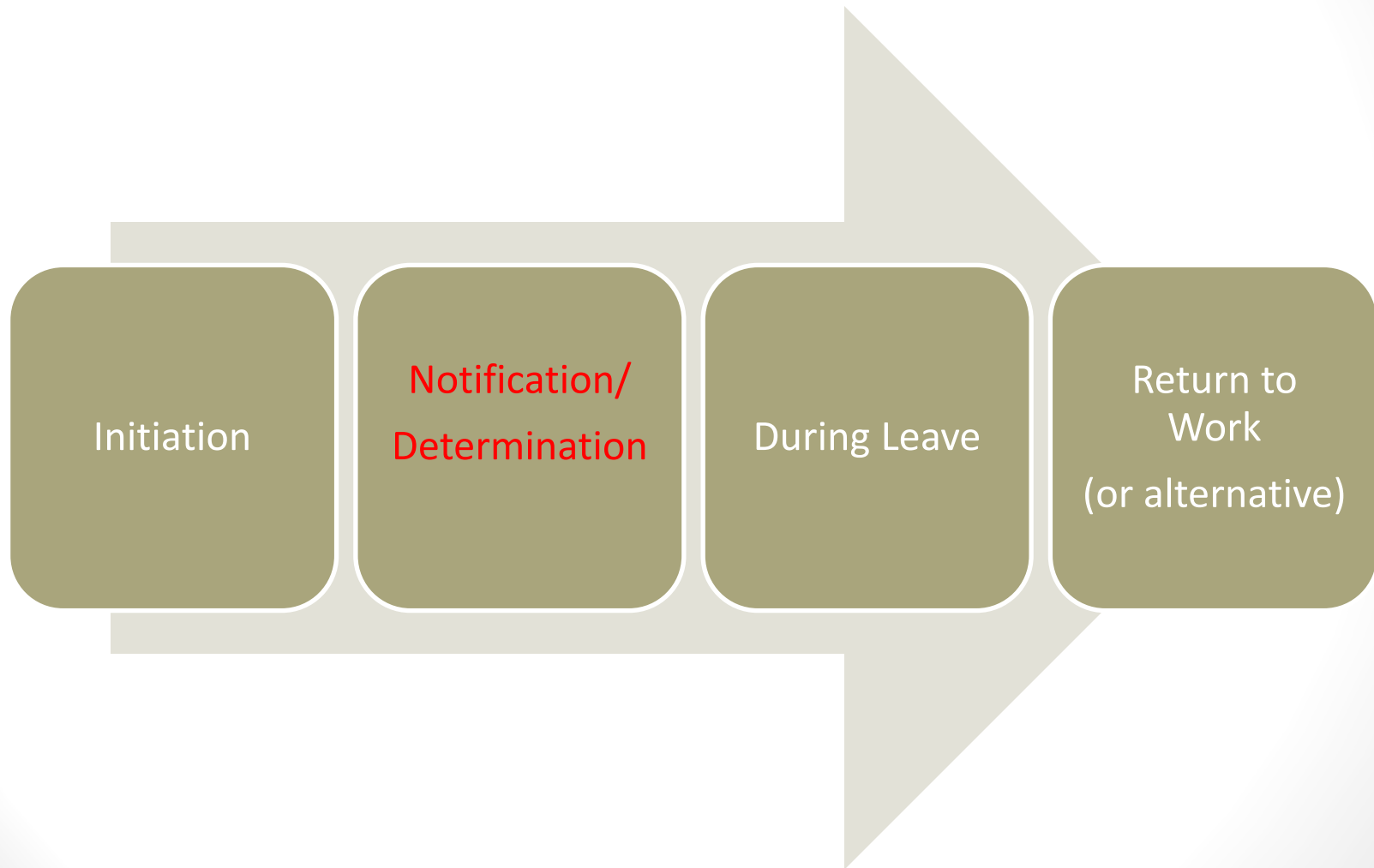
# What Road to Take

You are the HR person for a two location auto parts retailer. Jill is a delivery driver for your company. Jill's supervisor reports that for the past month, Jill has been coming in late, appearing under the influence on two occasions. Jill is a great long term, full time employee and these issues are unprecedented. Jill's supervisor reports she has mentioned how her daughter is suffering from MS and she seems to have too much to deal with some days. A week later, Jill is injured in a motor vehicle accident while on the job.

# Checklist for Step 1

- W/C Reporting by Employee, Employer and Carrier
- Leave of Absence Form
- Precise Start Date
- Eligibility Determined
- Eligibility and Certification or Determination Forms Given
- Notification of Leave Available and Method of Calculation
- FMLA Tentatively Approved or Not
- Notification of Above Items Completed/Not Completed to Employee

# Process – Not “Set and Forget”



# Checklist for Step 2

- Key Employee Determination AND NOTIFICATION
- Complete Certification Documents Received
- Determination Issued
- Calendar End of Leave Date, Advise Employee
- Calendar 2 weeks before End Date
  - To contact employee re: impending end date and intent to return and seek current medical information and fitness for duty information.

# Determination/Notification

- Obtain Completed Certification Form
- Is Qualifying Event/Reason Established? If so, issue Determination Form if not already done.
- If not complete, contact employee or, if necessary, provider (not supervisor)
- If not QE, proceed with request for medical information and fitness for duty and begin reasonable accommodation process.

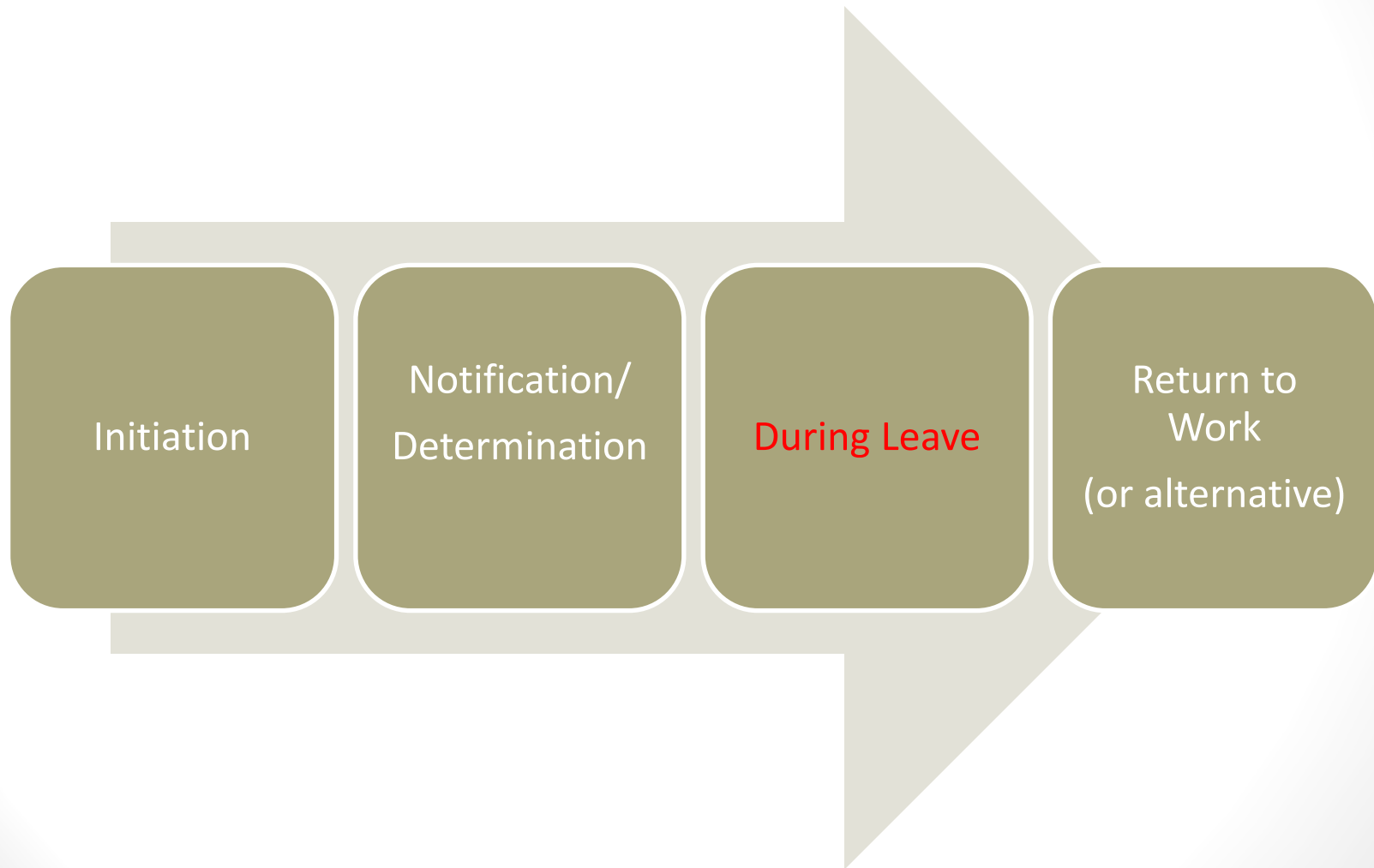
# Leave Analysis

- Intermittent
  - If FMLA event – provide Certification/Determination and Eligibility Forms
  - Determine (initially) if employee can perform essential functions – if not, need to obtain medical information and fitness for duty.
- Block
  - Assumes eligibility and qualifying event – if not, no protection of position – provide Certification/Determination and Eligibility forms.

# Different Priorities

Bob is laborer for a construction company. The company has a voluntary softball team and Bob plays second base. A week ago, Bob sprained his ankle at a softball game. Bob reports his doctor is recommending surgery and he is unable to return to work. He is expected to be out of work for at least three months and is given FMLA leave. One month into his leave, Bob's supervisor sees him working at a farm/feed store. Additionally, the softball team is headed to the league championships and Bob's co-employee has asked Bob to play.

# Process – Not “Set and Forget”



# Checklist for Step 3

- Maintain current information on status
- Incorporate Information received for review of certification where necessary
- Request Clarification from Employee/Medical Provider (NOT SUPERVISOR)
- Maintain accurate tally of leave
- Maintain accurate records of effect of leave

# During Leave (Intermittent)

- Is employee following proper policies (notification, etc.)?
- Is employee providing updated information if requests change?
- Are absences consistent with medical certification?
- How is FMLA leave tracked?
- Important to establish clearly who evaluates/tracks the above and on what information – consistency is mandatory.

# During Leave

- Recertification is typically every six months if there is no change
- Cannot ask for continual or too frequent recertification (30 days seen as too frequent generally)

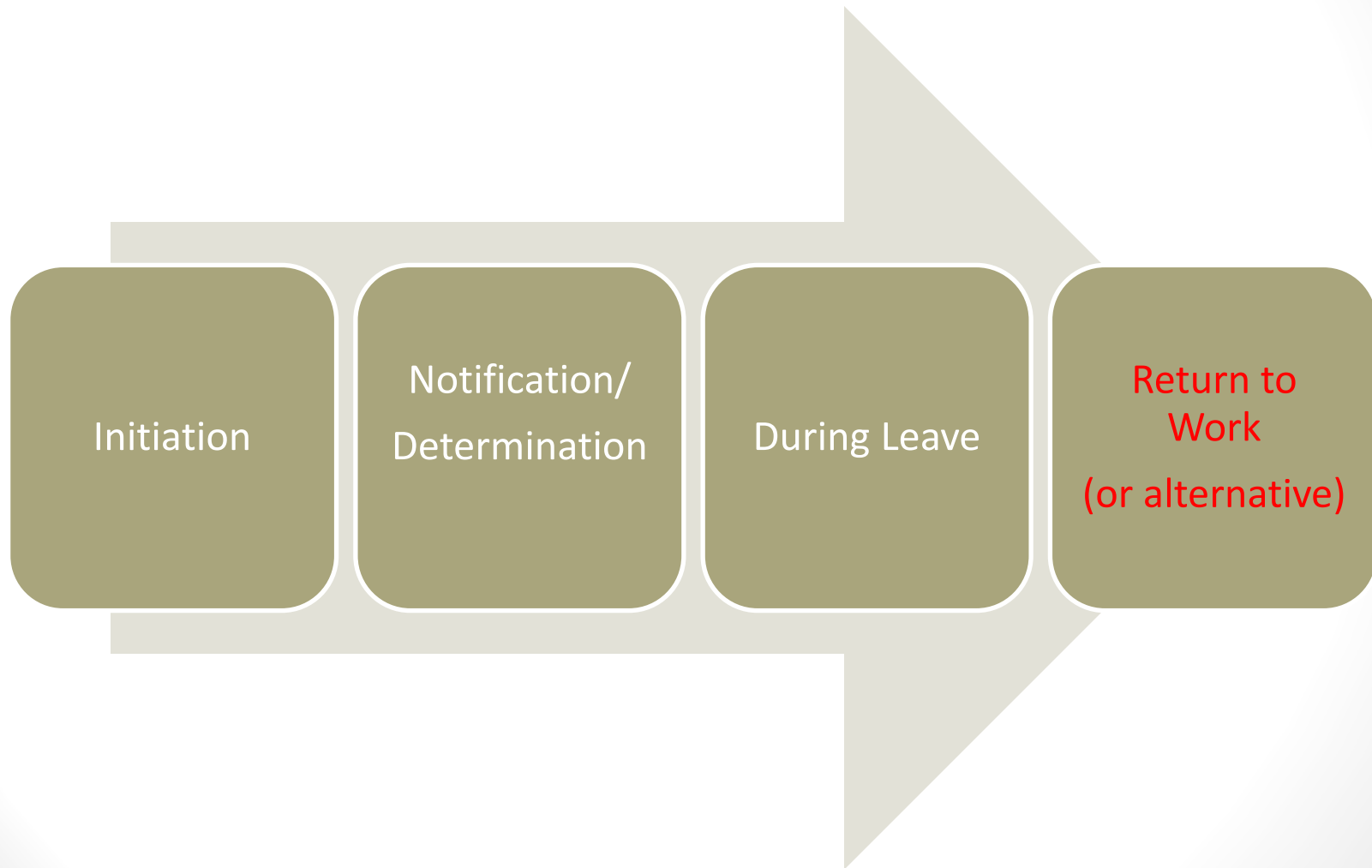
# W/C Monitoring

- Open communication with medical providers, carrier and employee is imperative
- Job description must exist AND match duties for assessment of condition
- Executed medical history is imperative
- Take advantage of conference ability
- Ensure you receive COMPLETE DWC-25 forms consistent with records
- Remember 440.105 and obligations

# The Final Straw

After her accident, Jill admitted having a difficult time caring for her daughter that led to her developing dependence issues. The company sent Jill to its EAP and she requested to reduce her schedule to be able to care for her daughter. The company designated the leave as FMLA and Jill has been intermittently out on a half day basis for a total of 12 weeks over six months. Jill advised she may need to increase her time out of work. In the interim, the company has been sharing Jill's duties between two other employees, one of whom just gave two weeks notice of his resignation.

# Process – Not “Set and Forget”



# Checklist for Step 4

- Establish medical status (fitness for duty, MMI, etc.)
- Establish employee's intent to return
- Determine ability to extend leave based on record of effect of leave
- Determine ability to accommodate job change, alternative position, light duty, etc.)

# FMLA Return to Work

- Two Week (or equivalent) Trigger
- Remind, Request, Receive, Review
  - Remind employee of end date
  - Request intent to return or not
  - Receive current medical certification and fitness for duty
  - Review information and, if employee cannot return to full duty, begin reasonable accommodation process.

# W/C Return to Work

- Need to have medical clearance based on accurate job description
- Review or create policy for return requirements and ensure consistent enforcement
- Be aware of availability of light duty work and how LD work can or cannot transition to regular position or aid in return to former position

# Reasonable Accommodation

- New Position Not Required
- Impetus on Employee to Suggest Reasonable Accommodation - will be sliding scale
- Must have good faith from both sides
- Medical information is helpful, but not always practical
- Consider ADA expert consultation early once condition is stable

# Important Factors

- Communication is Key
- Documentation is Key
- Consistency IS MANDATORY
- Patience and Compassion not bad qualities, but do not allow to override above three concerns.

# Questions

Questions??

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