



## FMLA & ADA MASTER CLASS

### *Detailed Agenda*

#### Mastering FMLA Eligibility, Notice and Return to Work Issues

Tuesday, March 4, 2025

12:00 p.m. — 12:05 p.m.

##### **SPEAKER INTRODUCTION AND WHERE WE'RE HEADING ON THIS FMLA & ADA ODYSSEY**

Littler Shareholder and *FMLA Insights* author Jeff Nowak will help you master the critical components of the Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA) and become more comfortable with managing an employee with a medical condition. Dare we say, the content might even get you a wee bit excited about implementing leaves of absence and ADA accommodations in the workplace!

12:05 p.m. — 1:00 p.m.

##### **THE BUILDING BLOCKS: DETERMINING EMPLOYEE ELIGIBILITY, REASONS FOR FMLA LEAVE AND UNDERSTANDING YOUR FMLA LEAVE YEAR**

In this opening session, we'll analyze employee FMLA eligibility, which has become a far more difficult terrain given that many of our employees work remotely today. In answering the question, Jeff will highlight key developments from recent court cases that will help you make compliant decisions on employee eligibility, which is a critical initial decision in your FMLA administration.

Then, we'll tackle the definition of a serious health condition for an employee or a family member, since this sets the foundation for FMLA leave. For instance, are ordinary headaches different from migraines? Is elective surgery covered by the FMLA? Jeff will help you decipher the medical conditions covered by the FMLA.

We'll wrap up this section by covering tricky family leave scenarios that are increasingly prevalent in today's workplace. For instance, may an employee take FMLA leave to care for a sibling or grandparent? The answer might surprise you!

Finally, we'll take a deeper dive on your FMLA 12-month period. Do you use calendar year? Rolling year? What are the advantages and disadvantages? And what are the best practices when you change FMLA leave years?

In this section, Jeff will cover:

- Assessing FMLA eligibility, particularly in a remote work environment
- Definition of a serious health condition – what conditions are covered by FMLA
- Family relationships – FMLA coverage of spouse, child and parent, and anyone else?
- How to Establish your FMLA 12-month period and best practices for modifying the leave year



1:00 p.m. — 1:40 p.m.

### RECOGNIZING NOTICE OF THE NEED FOR FMLA LEAVE

The FMLA process doesn't start until the employee says it does. The employee's notice of the need for FMLA leave gets it all started. But why is it so difficult for employers to determine when an employee has put the employer on notice? Every year, courts give us a ton of guidance on what constitutes notice, and this year is no exception. Through a series of case studies and discussion of the latest case decisions, Jeff will guide attendees through your obligations under the Act begin once your employee notifies you of the need for a leave of absence.

What if your employee is requesting FMLA leave, but doesn't want the FMLA to apply? Jeff will cover this topic, too.

In this section, Jeff will cover:

- Identifying when an employee has put the employer on notice of the need for FMLA leave
- Creating an effective call-in procedure for reporting the need for leave
- Correcting inconsistent call-in procedures or practices
- How to handle an employee's request that the employer not designate FMLA leave

1:40 p.m. — 2:20 p.m.

### EMPLOYEE RIGHTS WHILE ON FMLA LEAVE AND RETURNING THEM TO WORK

Can you contact your employee while they're on FMLA leave? Or ask them to perform work? What if they do so without your permission?

Given that FMLA, by definition, is protected time away from work, is the employer required to adjust performance standards? At times, yes. But how does this work in practice?

Finally, the FMLA tells us that the employer must return the employee to the same or equivalent position when FMLA leave ends. What does "equivalent" mean and what guidance have the courts provided?

Plenty of ground to cover here. In this section, Jeff will address:

- Whether an employee can work (or whether the employer can require them to work) during FMLA leave
- Whether an employee can "make up" FMLA leave later in the work week
- Returning an employee to the same or equivalent position after FMLA leave ends – what does this exactly mean?
- Whether and to what extent an employer must adjust performance standards because of an employee's FMLA leave

2:20 — 2:50 p.m.

### PRORATING OR DENYING EMPLOYEE BONUSES DUE TO FMLA LEAVE

Each year, employers award bonuses and create incentive programs to reward employees for superior attendance, production and even the organization's success. Under these programs, employees are downgraded for any tardiness or absences (even for FMLA or ADA-covered leave), which, in turn, disqualifies an employee from receiving the bonus.



Can an employer deny or prorate a bonus for an employee who failed to meet the incentive program goals simply because they took FMLA leave? Let's find out, and then implement some changes to your incentive programs to FMLA-proof them.

2:50 — 3:00 p.m.

#### **CASE STUDIES!**

You can't master the FMLA without putting these concepts into practice, right? To end our first day, Jeff will address a number of real-life case studies that will help solidify what you learned on day one and provide practical steps you can take to stay compliant.

## **Mastering FMLA Medical Certification and Effectively Managing Intermittent Leave**

Wednesday, March 5, 2025

12:00 p.m. — 1:00 p.m.

#### **EFFECTIVELY ADMINISTERING MEDICAL CERTIFICATION**

FMLA Medical certification is designed to help employers better understand an employee's medical condition and their need for time off from work. So, why does such a helpful tool tend to create angst, confusion and frustration within the employer community?

For one full hour, Jeff will walk through example after example of real-life medical certifications so that you are better equipped to issue-spot vague/ambiguous information and to identify the opportunities for follow-up with the physician and employee. In this section, Jeff will cover topics such as:

- Analyzing the key parts of the medical certification form, and what sections you should focus on to ensure you have the information you need?
- Best practices for employers when an employee fails to return medical certification or turns it in late – can you deny some or all of the leave?
- Common employer questions and missteps in the medical certification process
- Contacting the employee's physician – can you get permission in advance to contact the doc?
- Effectively utilizing the FMLA's second/third opinion process: when should it be employed and how long can a third opinion be enforced?
- How to effectively use fitness for duty certification when an employee seeks to return to work.

1:00 p.m. — 1:30 p.m.

#### **HOW TO PROTECT YOUR ORGANIZATION FROM FMLA MISUSE**

FMLA elicits audible grunts largely because a small portion of your workforce misuses medical leave. And employers often feel helpless to do anything but approve leave requests.

*But we shouldn't feel helpless!* In this final FMLA section, Jeff will provide practical suggestions on how you can manage intermittent FMLA leave and address suspected FMLA misuse in your workplace, focusing on the steps you can take to root out and minimize FMLA misuse.

In this section, Jeff will help you learn how to:



- Effectively use certification and recertification to respond to a pattern of suspected misuse
- Implementing an “expectations meeting” – that is, a meeting where you discuss with your employee your expectations during FMLA leave so as to combat FMLA misuse
- Document FMLA effectively to curb FMLA misuse
- Manage intermittent FMLA leave – a main culprit of FMLA misuse
- Conduct effective investigations into potential misuse
- Implement must-have personnel policies to prevent FMLA misuse
- Review recent employer-friendly court cases that provide some best practices in fighting fraudulent use of FMLA leave

## Mastering the ADA Interactive Process, Fitness for Duty and Reasonable Accommodation

Wednesday, March 5, 2025

1:30 p.m. — 1:50 p.m.

### DEFINING DISABILITY AS THE FOUNDATION FOR THE ADA

As we transition to the ADA, we'll start with a quick refresher on the definition of “disability,” so that we all have a foundation for the ADA topics that follow. Jeff will address when an impairment rises to the level of a disability, and whether particular conditions are considered a disability. In answering these questions, Jeff will highlight key developments from recent court cases that will help you better understand this threshold issue.

1:50 p.m. — 2:30 p.m.

### GETTING TO “YES” IN THE ADA INTERACTIVE PROCESS

There is so much that can go wrong as you determine whether, why and how an employee needs an accommodation: Did the employee put you on notice of the need for an accommodation? Did your manager respond appropriately? What kinds of questions can you ask your employee and his/her physician about the medical condition and need for an accommodation?

Using recent court cases, Jeff will illustrate several examples when managers screwed up the interactive process, and he'll offer practical advice on how the employer could have (lawfully) handled the accommodation request.

In this session, Jeff will cover:

- Recognizing when an employee has notified you that they need an accommodation (whether through words and/or their behavior)
- What are the limits on information you may obtain from your employee about their condition and need for accommodation?
- How to communicate with managers when discussing the requested accommodation and alternatives
- How to follow up with physicians who provide vague information in response to your inquiries
- *Managers behaving badly*: If these employers could have a “do over,” here's how they should have done it!



2:30 p.m. — 3:00 p.m.

### **MAKING MEDICAL INQUIRIES AND ASSESSING YOUR EMPLOYEE'S FITNESS FOR DUTY**

Your employee, “Johnny,” has had ongoing performance problems, followed by his recent comments that he’s begun taking medication for a “psychiatric condition,” and culminating in increasingly strange behavior and an abrupt leave of absence after he storms off the job, mumbling some incoherent comments on his way out the door.

The following week, your manager reports that another employee, “Susie,” has suffered another seizure at work, to which you respond, “Another seizure? You didn’t tell me about the last one.” During the back and forth, you learn that this is Susie’s fourth seizure in the past six months.

Naturally, you are concerned about your employees’ well-being . . . and their fitness to work.

Do these situations sound familiar?

How do you handle Johnny’s and Susie’s situations? What kind of questions can you legally ask and can you require that they undergo a fitness for duty examination? Through the above case studies and a few extra facts for good measure, Jeff will cover the following:

- Under what circumstances can you obtain a fitness for duty?
- When do you work with the employee’s physician versus retaining your “own” physician to conduct a fitness for duty exam?
- When the employee’s physician submits a vague or incomplete medical documentation, how should you respond?
- What kind of communication can you have with a physician to assess an employee’s fitness for duty?
- How to assess whether an employee is a direct threat to themselves or others in the workplace

## **Mastering ADA Reasonable Accommodation**

Thursday, March 6, 2025

12:00 p.m. — 12:20 p.m.

### **MASTERING REASONABLE ACCOMMODATION**

An employer’s reasonable accommodation obligation arguably is the most important ADA skill to master. Why? Managing reasonable accommodation issues is difficult, and it has the potential to create costly ADA liability. You add tremendous value to your organization by gaining an understanding of the legal requirements of the ADA’s reasonable accommodations obligations and practically applying these concepts to your own workplace accommodation decisions.

We’ll start by providing a foundation on reasonable accommodation and then applying this concept to some of the most common issues you face, such as extended leave as an accommodation, remote work, pregnancy limitations and reassignment.

12:20 p.m. - 1:00 p.m.



### **LEAVE AS A REASONABLE ACCOMMODATION**

Let's assume your employee has exhausted FMLA leave or perhaps they're not eligible for FMLA in the first place. But they still can't return to work. Now, you must decide whether and to what extent you're obligated to provide "ADA leave" to your employee. It's even more difficult when you've granted extension after extension, or worse, you've forgotten about them. In this session, Jeff will provide guidance on how to practically address an employee's need for extended or intermittent ADA leave.

Jeff will address:

- Handling the transition from FMLA leave to ADA leave – How to effectively communicate with an employee seeking extended leave from work
- Model communication with your employee and managers to assess the ability to provide additional leave and whether it creates a hardship on your operations
- ADA intermittent leave!?! Do we have to provide it?
- Coordinating FMLA, ADA and worker's compensation issues

**1:00 p.m. – 1:45 p.m.**

### **REMOTE WORK AS A REASONABLE ACCOMMODATION**

As employers increasingly require employees to return to the office, remote work accommodation requests have followed. After having sent many of their employees home to work during the pandemic, employers now face an onslaught of remote work requests. During the pandemic, employers wondered whether the pandemic would make remote work a permanent "thing" required by the ADA. Several years out, we are beginning to see how the courts are treating remote work requests – and it's a mixed bag for employers seeking a return to office.

Jeff will analyze the current remote work landscape, help make sense of where the courts are heading on this issue and offer practical suggestions on how employers should approach remote work requests after the pandemic.

In this section, Jeff will address:

- What precisely is the playing field these days when it comes to remote work arrangements? Did the pandemic change the entire remote work analysis?
- How this data and other anecdotal evidence can bolster the arguments employers make to strengthen their "return-to-office" position and/or refine their expectations for at-home workers
- Dealing with employees who request remote work because they can't commute to work
- Where and when does it end: Can an employee work from home indefinitely?

**1:45 p.m. - 2:15 p.m.**

### **PROVIDING REASONABLE ACCOMMODATIONS TO NEURODIVERSE EMPLOYEES**

Neurodiversity is the idea that no two brains work alike. Neurological differences like autism spectrum disorder, ADHD, and dyslexia are the result of normal, natural variations in the human genome. Being neurodivergent means having a brain that works differently from the average or neurotypical person.



Employers are increasingly facing a major shift in their workforces – a notable increase in the number of neurodiverse employees. Neurodiverse employees tend to request accommodations that restructure the workday, including more frequent and ongoing manager feedback and positive reinforcement, job task restructuring, flexible breaks and workplace modifications to reduce noise and distractions.

In this session, we will analyze how an employer should approach reasonable accommodation considerations for neurodiverse employees.

**2:15 p.m. - 2:30 p.m.**

### **REASSIGNMENT AS A REASONABLE ACCOMMODATION**

You've tried everything, and nothing will work. So, the courts tell us that we look to reassignment to an open position as the accommodation of *last resort*.

Job restructuring is a common ask as a reasonable accommodation. In this session, Jeff will cover:

- Can an employee bump another employee as an ADA accommodation?
- Does an employer have to create a position for the employee?
- Can the employee require that the employee compete for a reassignment?
- How do collective bargaining agreements impact the employer's ability to reassign an employee as an ADA accommodation?

**2:30 p.m. - 3:00 p.m.**

### **ADDRESSING PREGNANCY ACCOMMODATIONS**

The Pregnant Worker Fairness Act is going on two years old, and it sure feels like navigating the terrible twos! Employers remain perplexed about some fundamental issues under this pregnancy accommodation law – e.g., removing essential job functions (really?!?!), establishing undue hardship, what we can request from the employee's physician. In this section, Jeff will walk through several scenarios taken directly from his practice that confirm that life is often stranger than fiction when it comes to employment law!

## **TYING FMLA and ADA ALL TOGETHER!**

Friday, March 7, 2025

12:00 p.m. to 2:00 p.m. CT

### **MORE CASE STUDIES AND QUESTIONS**

In this Friday bonus session, Jeff will tie together these FMLA and ADA concepts and review a few final case studies to ensure you've mastered the FMLA and ADA. Jeff also will set aside the majority of the day to cover your questions.