

# Agenda

## Littler



## Mastering the FMLA Building Blocks

**February 7, 2023**

10:00 a.m. – 1:30 p.m. PT | 11:00 a.m. – 2:30 p.m. MT | 12:00 p.m. – 3:30 p.m. CT | 1:00 p.m. – 4:30 p.m. ET

\*Agenda listed in Central time zone

**12:00 p.m. – 12:05 p.m.**

### Speaker Introduction and Where We're Heading on This FMLA Odyssey

Littler Shareholder and [FMLA Insights](#) author [Jeff Nowak](#) will help you master the critical components of the FMLA, and dare we say, the content might even get you a wee bit excited about administering the FMLA. You read that correctly: Get ready to be FMLA-energized!

**12:05 p.m. – 1:00 p.m.**

### Eligibility for FMLA Leave and Reasons for Leave

We'll start with the critical building blocks of FMLA leave – who is eligible and for what reasons? Why? Because this area creates so many compliance issues for employers!

In this opening session, we'll analyze employee eligibility issues, which has become a far more difficult terrain given that many of our employees work remotely these days. For instance, are your remote employees living outside a 75-mile area eligible for FMLA leave? In answering the question, Jeff will highlight key developments from recent court cases that will help you make compliant decisions on employee eligibility.

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. From every day "achy bones" to cosmetic surgery, Jeff will help you master what conditions are 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!

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?
- Should we still worry about COVID-19 as a serious health condition?

1:10 p.m. — 1:45 p.m.

## FMLA Entitlement and Calculating FMLA Leave

FMLA leave can be taken continuously, intermittently or on a reduced schedule. But how do you calculate all this leave time? Is it workweeks? Can you break the time down into hours? And what if you're calculating FMLA leave for an exempt employee – does this change the equation?

In this section, we'll help you master all the ways in which you calculate FMLA leave, particularly where an employee's work week varies or includes overtime, during holiday weeks or when your workplace is closed.

In this section, Jeff will cover:

- Understanding your employer's 12-month FMLA leave period
- Understanding different increments of FMLA leave
- The unique challenges posed by intermittent FMLA leave
- Calculating FMLA leave in a normal and varying work week
- Calculating FMLA leave when an employee takes a short increment of time off at the beginning of their shift or leaves work early
- Calculating FMLA leave around overtime, holidays and during workplace shutdowns
- Substituting paid leave for FMLA leave – can an employer force the use of paid leave in conjunction with FMLA leave?
- Whether an employee can "make up" FMLA leave later in the work week
- Whether an employee can work (or whether the employer can require them to work) during FMLA leave

1:45 p.m. — 2:30 p.m.

## FMLA Notice Requirements

Determining when an employee has put the employer on notice of the need for FMLA leave is one of the most difficult compliance issues for employers. Over this past year, the courts have given us a ton of guidance in this area: Can an employer use Facebook or instant messaging to report the need for FMLA? Does an employee's care of a dying parent excuse the need to report their FMLA absence? What happens when your written communications about call-in procedures are inconsistent? All of these questions were addressed by the courts in this past year, and we're going to tackle them!

To master the FMLA, you need to have an eye (and ear) for assessing when the employee has put you on notice of the need for FMLA leave, since your obligations under the Act begin once you receive notice.

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

2:40 p.m. — 3:30 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. Jeff also will cover your day one questions.

# Mastering Medical Certification and Return to Work Issues

February 8, 2023

10:00 a.m. – 1:30 p.m. PT | 11:00 a.m. – 2:30 p.m. MT | 12:00 p.m. – 3:30 p.m. CT | 1:00 p.m. – 4:30 p.m. ET

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**12:00 – 1:00 p.m.**

## Effectively Managing 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?

In this section, Jeff will cover FMLA medical certification in detail and employ case studies throughout to help you deal with the most confusing and maddening medical certification conundrums.

To heck with the basics about medical certification. We're going to dig into some difficult medical certification issues. Using real life situations from our own experience in dealing with the FMLA, we 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
- Fighting the "Friday-Monday Leave Act" – how employers should use recertification when they see a pattern of misuse or suspect FMLA abuse
- Contacting the employee's physician – can you get permission in advance to contact the doc?
- Is a second/third opinion really worth the cost and time?
- How to effectively use fitness for duty certification when an employee seeks to return to work.

**1:00 p.m. – 1:20 p.m.**

## Complying with the FMLA When Your Employee is Dealing with a Mental Health Condition

Employers are increasingly managing employees who suffer from mental health conditions such as depression, stress, and panic attacks. Studies show that these mental health conditions are leading to increased use of FMLA leave. Administering FMLA leave and ADA accommodations in these situations can be particularly frustrating. Unlike an easy-to-notice need for maternity leave or even a knee replacement, mental health conditions often are silent and manifest themselves on a moment's notice. As a result, these situations lend themselves to FMLA abuse and increase the risk of FMLA and ADA violations if they are not handled properly. In this section, we will help you identify when FMLA is triggered by employee mental health issues and initiate a conversation with your employee to provide the help they may need.

1:30 – 1:50 p.m.

## Maintaining Benefits During FMLA Leave and Restoring an Employee Upon Return from Leave

The FMLA tells us that you have to maintain group health benefits as if the employee had continued working. When the employee is ready to return to work, the FMLA regulations then tell us that we have to return an employee to the same or equivalent position – that is, a “virtually identical” position – after FMLA leave ends.

Is there any wiggle room when it comes to a “virtually identical” position? What if the employee’s replacement is doing a better job than the employee taking FMLA? Or you’ve uncovered performance issue while the employee was on leave?

In this section, we’ll cover maintenance of benefits requirements and help you avoid liability when returning an employee to work.

In this section, Jeff will cover:

- Can an employer dock a bonus or incentive program after the employee takes FMLA leave?
- Returning an employee to the same or equivalent position after FMLA leave ends – what does this exactly mean?
- Cancelling group health benefits and requiring that employees repay health premiums
- Addressing performance issues uncovered while the employee is on FMLA leave

1:50 p.m. – 2:30 p.m.

## Stop the Madness! Effective Ways to Protect your Organization from FMLA Leave Misuse

The Family and Medical Leave Act is generally considered to be an employee-friendly law, and employers have often felt helpless to do anything but approve leave requests under FMLA and similar laws.

**But we shouldn’t feel helpless!** In this final portion of the day, we 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:

- Identify and understand the most common forms of FMLA misuse
- Effectively use certification and recertification to respond to a pattern of suspected misuse
- Document FMLA effectively to curb FMLA misuse
- Manage intermittent FMLA leave—a main culprit of FMLA misuse
- Conduct effective investigations into potential misuse
- Implementing an “expectations meeting” — Meet with the employee to discuss expectations during FMLA leave so as to combat FMLA misuse
- Implement must-have personnel policies to prevent FMLA misuse

2:40 p.m. – 3:30 p.m.

## More Case Studies and Questions

You’ll realize from day one that this is the fun part of the day. Jeff will hit head on a few real-life scenarios to help you master medical certification, identify and deal with FMLA misuse and follow the law in restoring an employee from FMLA leave.

Still have questions at the end of day two? We’ll cover those, too!

# Creating your Own FMLA Training Program

February 9, 2023

10:00 a.m. – 12:00 p.m. PT | 11:00 a.m. – 1:00 p.m. MT | 12:00 p.m. – 2:00 p.m. CT | 1:00 p.m. – 3:00 p.m. ET

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**12:00 – 12:30 p.m.**

## Ten Problems with your FMLA Policy and Suggestions on How You Fix Them

It's the beginning of the year! And it's the FMLA's 30th Birthday! There is no better time to review and update your FMLA policy. In this section, Jeff will identify the ten (or so) problems he commonly finds when reviewing employers' FMLA policies, along with his recommended fixes. We'll cover eligibility language, FMLA 12-month period, call-in procedures (i.e., what happens when the employee doesn't follow the procedure!), substitution of paid leave, failure to pay health benefit premiums, and much, much more!

**12:30 p.m. – 2:00 p.m.**

## Six Ways Your Managers are Causing FMLA Lawsuits, and How to Train Them to Stop

Over the past year alone, employers have been forced to defend FMLA lawsuits due simply to an inappropriate comment from a manager after an employee requests time off or an accommodation in the workplace.

A snide comment about an employee in an email . . . Discussing an employee's medical condition with others in a meeting . . . Telling an employee that the Company "can't afford" for him to take time off. Despite an employer's best policies (and intentions), all it takes is a new or untrained manager to cause an FMLA or ADA-related lawsuit.

In this section, Jeff will use a case-study format to show how your managers undermine otherwise compliant corporate policies and HR practices. More importantly, Jeff then will give you the content to create your very own FMLA training program. Yep, you read that correctly: *Jeff will give you the actual content to create your own FMLA training program.*

In this session, Jeff will focus on:

- How managers are increasingly undermining an employer's defense of an FMLA lawsuit, and how to identify the risk factors
- Where to look for the most common pitfalls in how managers handle FMLA leave – through in-depth discussion of scenarios and related cases
- Constructive methods you can use to train managers in the process of FMLA leaves. Did we mention that Jeff will provide much of the actual content you should use in your FMLA training sessions? *Ahem*, yes, he will.