

# Council's Certificate Program in FMLA and ADA Compliance and Best Practice

## Program Agenda

### Day 1

8:00 am: **Registration**

8:30 am: **Moderator's welcome and delegate introductions**

### Part I: The ADA

8:45 am – 9:45 am

#### **Understanding the Legal Prohibitions on Discrimination Against Disabled Individuals**

- The Rehabilitation Act
- Veterans and disability rights: USERRA
- The American with Disabilities Act: Titles I, II, and III
- Taking a look at Title I: Covered employers and employees
- Employment practices that are prohibited by the ADA: Discrimination, intimidation, exclusion, and unfair testing or qualification standards
- Discrimination based on association or relationship with an individual with a disability
- Ensuring your medical exams and inquiries comply with the law: Applicants, postoffer, and employees
- Confidentiality of medical information
- Meeting employer posting requirements

9:45 am – 10:00 am: **Break**

10:00 am – 12:00 pm

#### **What Constitutes a “Disability” Under the ADA?**

- Defining the term “disability”
- What is an impairment?
- Characteristics that are not impairments
- Psychiatric impairments: Mental illness and personality traits
- Substantial limitation: Analyzing the nature, severity, duration, and long-term impact of an impairment
- Temporary or intermittent conditions
- Major life activities: General activities that are commonly accepted as major, such as walking, breathing, hearing, etc.
- Can a person be substantially limited in working? Job ranges, geographic areas, training, and skill
- Avoiding the danger zone: When a person is regarded as disabled or has a record of a disability
- Limitations that arise from fears and stereotypes of a disability: Taking a look at genetic profiling, cosmetic disfigurement, obesity, and more
- Defining mitigating measures: The positive and negative effects of measures used by the individual
- Contagious disease and the ADA: Looking at HIV and tuberculosis
- Statutory exceptions to the term disability: Illegal drug use, kleptomania, and sexual behavior disorders
- *Interactive Exercise*: Determining what a substantial limitation to a major life activity is in real-life situations

12:00 pm – 1:00 pm: **Lunch**

1:00 pm – 2:00 pm

### **Determining if a Disabled Individual Is “Qualified” Under the ADA**

- Looking at job prerequisites and requirements
- Using job descriptions as evidence of essential functions
- Defining job functions as essential or marginal: Avoiding stereotypes or generalizations
- Can safety be an essential job function? Resolving the questions on risk and direct threats
- The impact of rotating duties among several positions on essential functions
- The ramifications of seeking medical advice to determine if an individual is qualified for a position
- Avoiding the dangers of light-duty modifications to an employee’s full-time essential job duties

2:00 pm – 3:00 pm

### **Navigating the Often Perplexing Reasonable Accommodation Discussion**

- Establishing what constitutes a request for accommodation
- Ensuring an interactive discussion to minimize liability
- Disability and confidentiality in accommodation discussions: What can you ask, what can you tell, and who needs to know?
- Responding when an individual refuses an offered accommodation
- Options on medical exams to aid in information-gathering during the discussion
- Beating the clock: Pacing your discussion to ensure you meet any time requirements from other leave and absence situations
- Implementing accommodations once they have been agreed upon

3:00 pm – 3:15 pm: **Break**

3:15 pm – 4:30 pm

### **Determining Reasonable Accommodations and Undue Hardships**

- Modifications to job applications or interviewing process for a disabled applicant
- Job restructuring or additional training as a reasonable accommodation
- Making changes to existing facilities or equipment
- Looking at light- or modified-duty and leave of absences as accommodations
- Changes in location, schedule, or work process
- How your collective bargaining agreement may impact accommodations and hardships
- Correctly defining an undue hardship for your organization
- Cost as a factor in accommodations: Looking at tax credits, deductions, and outside funding
- Determining the impact of a proposed accommodation on other employees
- What is the burden of proof for the employer?
- *Interactive Exercise:* Role-play an accommodation discussion with a disabled employee

4:30 pm: **Day 1 concludes**

## **Day 2**

8:00 am: **Refreshments and networking**

### **Part II: The FMLA**

8:30 am – 9:30 am

#### **Employer Coverage and Employee Eligibility Requirements in the FMLA**

- Who is a covered employer: Fifty employees for 20 or more calendar workweeks

- Determining if an employee is entitled to leave: What constitutes 50 employees within 75 miles of a worksite and other business dilemmas
- Joint employment, co-employment, and shared employees
- Twelve months and 1,250 hours: Calculating time correctly to avoid costly mistakes
- Coverage of public agencies
- Posting and notification requirements for covered employers

9:30 am – 10:45 am

### **Leave Entitlement for Eligible Employees**

- What leave is an employee entitled to?
- Military family leave to care for an injured service member or for a qualifying exigency
- Defining a “serious health condition” for an employee or family member
- We are all family: Determining who is a “family member”
- When is an employee “needed to care for” a family member
- Leave entitlement for birth, adoption, and foster care
- When spouses work for the same employer: Can both spouses take leave at the same time, and how much leave can they take?
- Employee notification: What is adequate notice that an employee needs FMLA leave?
- Paid and unpaid leave eligibility options
- What special rules apply to school employees?

10:45 am – 11:00 am: **Break**

11:00 am – 12:00 pm

### **Obtaining Proper Medical Certifications to Ensure Employee Entitlement to Leave**

- Watching the clock: Certification timing issues that can get employers into hot water
- Incomplete paperwork, uncooperative employees, and other documentation problems
- Alternative medicine and questionable providers: Who is a “health care provider”?
- The employer and the medical provider: Requirements for legal communication between your organization and the employee’s doctor
- Designating who receives an employee’s certification paperwork
- Taking a look at your organization’s sick leave and vacation policies to ensure they comply with FMLA notification requirements
- Using second and third medical certifications to answer questions or contradictions
- When can an employer request recertification?

12:00 pm – 1:00 pm: **Lunch**

1:00 pm – 2:00 pm

### **What Your Organization Should Know About FMLA Job and Benefits Restoration Protections for Employees**

- Job restoration: What is an “equivalent” position?
- Correctly using the “key employee” exception to job restoration
- Health insurance, benefits, bonuses, and incentive plans
- Situations when an employer may recover costs incurred for benefits during FMLA leave
- Ending protected leave for employees who do not intend to return to work
- Fitness-for-duty testing and release to return to work
- Interference with return to work: Time is of the essence in returning employees cleared for work

2:00 pm – 3:00 pm

### **Managing Intermittent and Reduced-Schedule Leave**

- Tracking intermittent and reduced schedule leave
- Temporary position transfers to accommodate leave schedules

- Scheduling and intermittent leave: What can an employer legally require?
- Ensuring compliance with FLSA regulations for exempt, part-time, and flexible schedule employees

3:00 pm – 3:15 pm: **Break**

3:15 pm – 3:30 pm

### **Avoiding the Common Employer Mistakes That Lead to Expensive Liability**

- Preventing recordkeeping and documentation mistakes
- Determining what constitutes employer interference with FMLA rights
- Understanding and preventing discrimination and retaliation
- Navigating around privacy issues and medical information traps
- Protecting yourself from individual liability for FMLA violations

3:30 pm – 4:30 pm

### **You Be the Judge: Looking at Real-Life Cases Involving the ADA and the FMLA**

In this session, you will take a look at some of the most current cases involving the ADA and the FMLA. Hear the facts and make the decisions, then see how the cases actually came out to avoid making the same mistakes.

4:30 pm: **Day 2 concludes**

## **Day 3**

8:00 am: **Refreshments and networking**

### **Part III: Best Practices in Managing the ADA and FMLA**

8:30 am – 9:45 am

#### **A Comprehensive Approach: Integrated Disability and Health Management**

- Using coordinated case management to maximize efficiency and reduce duplication of effort
- Coordinating HR technology to produce a common platform for all areas of leave and absence
- Ensuring your tracking and documentation policies minimize administrative inefficiencies
- Looking at the ROI of an integrated disability and health plan

9:45 am – 10:00 am: **Break**

10:00 am – 11:15 am

#### **Reducing the Risk of Litigation with Employees on Leave**

- Ensuring communication with employees who are out of work
- Documentation strategies that protect your organization
- Disciplining protected employees for misconduct while protecting your organization
- Designing a return-to-work plan for each employee
- Investigating and resolving complaints before they end up in court
- Handling intermittent and reduced-schedule leave successfully
- Managing a reduction in force involving protected employees

11:15 am – 12:30 pm

#### **Managing Employee Leaves While Minimizing the Risks**

- Writing attendance and leave policies that reduce costly employee misunderstandings
- Auditing HR handbooks and documentation to ensure compliance
- Designing training programs to teach managers and employees their rights and responsibilities

- Developing a file system and record-access procedure that safeguards employee records: Who needs to know what and when?
- Successful strategies to minimize employee abuse of leave policies
- *Interactive Exercise:* Create a checklist for a training program on leave and absence listing what are the most important items you need to cover

12:30 pm – 1:30 pm: **Lunch**

1:30 pm – 2:30 pm

### **Minimizing Absenteeism and Productivity Challenges**

- Increasing employee health and productivity with wellness and safety plans
- Avoiding the legal landmines that can develop in a wellness plan
- Telecommuting as an alternative to leaves of absence
- Getting the most out of light-duty and return-to-work programs
- Determining options for refilling positions while an employee is out

2:30 pm – 2:45 pm: **Break**

2:45 pm – 3:45 pm

### **Answering Employee Benefits Questions**

- Managing insurance and other benefits for absent employees
- Correctly calculating bonuses and incentives during an employee leave
- Taking a look at the best ways to recoup the costs of employee paid benefits
- Handling seniority issues that can arise when an employee returns

3:45 pm – 4:00 pm

### **Question and Answer Session**

4:00 pm: **Program concludes**