

# FMLA & ADA Master Class: The 2026 Edition

## Detailed Agenda

### FMLA Trends, Employee Notice and Return to Work Issues

Tuesday, March 3, 2026

12:00 p.m. — 12:30 p.m.

#### FMLA TRENDS IN 2026

In this opening session, Jeff will highlight FMLA trends in 2026, and in particular, the Department of Labor's priorities and initiatives, including its recent enforcement activity and opinion letters, and what we can expect from the DOL in 2026.

12:30 p.m. — 1:15 p.m.

#### THE BUILDING BLOCKS: DETERMINING EMPLOYEE ELIGIBILITY, REASONS FOR FMLA LEAVE AND CALCULATING FMLA LEAVE

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 also cover tricky family leave scenarios that courts addressed by the courts just this past year! For instance, may an employee take FMLA leave to care for a sibling or grandparent? The answer might surprise you!

Finally, Jeff will help you calculate FMLA leave! *We promise, this will be F-U-N!* The reality is that you need to master what courts are saying about how to calculate FMLA leave when an employee's workweek varies from week to week, or when they work overtime. Through the use of real-life examples, including a new DOL opinion letter, we'll help you calculate FMLA leave in a compliant manner.

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 maybe even siblings? Really, siblings? *Yes, well, maybe.*
- How to calculate FMLA leave, whether in a regular workweek, a varying schedule, or when overtime occurs
- Retroactively designating FMLA leave after FMLA leave has begun or ended

1:00 p.m. — 1:40 p.m.

### RECOGNIZING NOTICE OF THE NEED FOR FMLA LEAVE

“My wife has a high-risk pregnancy...and I need to leave work and go home now.”

Is this simple statement enough to trigger FMLA protection?

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 provide 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.

Additionally, what if your employee is requesting what effectively is FMLA leave, but the employee 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
- Whether an employer can require an employee to make two calls to report the absence — one to the employer and another to an absence line or third-party administrator
- How to handle an employee's request that the employer not designate FMLA leave

1:40 p.m. — 2:20 p.m.

### MR. PIP, MEET THE FMLA: WHEN EMPLOYEE USE OF FMLA COMES HEAD-TO-HEAD WITH PERFORMANCE ISSUES

Have you had to address an employee's performance issues at the very time he requests FMLA leave? Been there, done that. The timing of discipline or termination and FMLA use can create a mess for employers.

*But you shouldn't feel powerless!*

Highlighting cases from this past year, we will empower you to skillfully handle these scenarios. As courts make clear, if the employer can show that it would have taken the same action regardless of FMLA leave, it is likely a defensible move. But timing and proper documentation are critical.

In this section, Jeff will address how you safely juggle FMLA leave with performance issues, along with a number of other issues that pop up while an employee is taking FMLA leave. For example:

- Can you contact an employee while they're on FMLA leave? Or ask them to perform work?
- Can you require that an employee make up work missed because of FMLA leave?
- 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?
- How to navigate the timing of Performance Improvement Plans (PIPs) and FMLA leave

- 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?

There is plenty of ground to cover here. But Jeff’s got your back!

2:20 p.m. — 2:45 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.

2:45 p.m. — 3:00 p.m.

#### **SNEAK ATTACK — DO I NEED TO PAY MY EMPLOYEE DURING MILITARY SERVICE?**

Tucked away on Page 67c of your employee handbook sits a generic military leave policy. It’s not been updated in years, perhaps decades.

Of course, you gladly communicate in your personnel policies an employee’s right to take military service as required by federal law (and many state laws). *But do you pay an employee for the military leave?* In an under-the-radar development, courts have called into question whether an employer has an affirmative obligation to pay for at least some portion of an employee’s military leave where they pay for other leaves like jury duty and bereavement leave. In this section, Jeff will navigate the current legal climate regarding military leave policies and whether you have an obligation to pay for the time away.

# Mastering FMLA Medical Certification and Effectively Managing Intermittent Leave

Wednesday, March 4, 2026

12:00 p.m. — 1:00 p.m.

## EFFECTIVELY ADMINISTERING MEDICAL CERTIFICATION

Your employee submits medical certification indicating that she will need FMLA leave twice each week (one day each time) for a chronic bad back. As the story goes, she ends up taking a whole more FMLA leave than indicated. Can you lawfully deny all the leave in excess of the amount indicated on the certification? In a noteworthy 2025 decision, a federal appellate court answered loud and clear: NO!

In this section, Jeff will explain how you can use medical certification to effectively manage your employee's FMLA leave. Jeff will walk through 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. 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?
- Whether to provide extensions because the employee is making diligent, good faith efforts to return the certification.
- 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

The reasons for (suspicious use of) FMLA leave get more creative each year. Like the guy who said he was helping his wife at home with IVF treatments...but the employer knew his wife wasn't at home. We'll tell you about him and how they knew he was fibbing — you're not gonna believe it. Or the truck driver who injured himself by crashing his company car...only there was no evidence of a crash. We'll tell you about him, too. And most importantly, Jeff will provide every bit of reassurance that you shouldn't feel helpless when dealing with suspected FMLA and ADA fraud!

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.

Through the use of the latest case law (and always a bit of humor), Jeff will cover the following:

- Identify and understand the most common forms of FMLA fraud

- Effectively use certification and recertification to respond to a pattern of misuse or suspected FMLA or ADA misuse
- Manage intermittent FMLA leave — a main culprit of FMLA misuse
- Implement an “expectations meeting” — that is, a meeting where you discuss with your employee your expectations during FMLA leave so as to combat FMLA misuse
- Conduct effective investigations into potential misuse of FMLA and ADA leave
- Implement must have personnel policies to prevent FMLA fraud
- Learn how to use the “honest belief” tool to protect your organization against misuse of FMLA and ADA leave
- Navigate whether you can assess attendance points or issue discipline for an absence protected by the ADA
- 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 4, 2026

1:30 p.m. — 1:45 p.m.

### HIGHLIGHTING ADA TRENDS

Several years post-COVID, there are a number of ADA trends emerging in today’s workplace. Remote work in some form or another is here to stay, employee mental health concerns are an increasing part of the HR professional’s workload.

1:30 p.m. — 1:50 p.m.

### DEFINING DISABILITY AS THE FOUNDATION FOR THE ADA

As we transition to the ADA, we’ll highlight facts from court cases over the previous year to give us a quick refresher on the definition of “disability.” For instance, does the ADA require an employee to be entirely unable to perform a major life activity? Could they have good days and bad days? A court gave us the answer in fall 2025! In this section, Jeff will address when an impairment rises to the level of a disability and whether particular conditions are considered a disability so that we have a foundation as we begin discussing your ADA obligations.

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, “Colin Insik,” has had ongoing performance problems, and a history of productivity and behavioral issues, resulting in a performance improvement plan. After he disclosed personal struggles, prompting HR reports of “talks of suicide,” the PIP was revised to require counseling as a condition of continued employment.

Can you require counseling as a condition of employment? Naturally, you are concerned about Colin’s well-being and his fitness to work. What kind of questions can you legally ask and can you require that he undergo a fitness for duty examination?

Highlighting Colin’s situation, which comes straight out of a recent court case, Jeff will cover a wide range of issues when it comes to assessing an employee’s fitness to work:

- Under what circumstances can you obtain a fitness for duty?
- Can you inquire about medication the employee is taking?
- May you require counseling or specific treatment as a condition of employment?
- When do you work with the employee’s physician versus retaining your “own” physician to conduct a fitness for duty exam?
- 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 5, 2026

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

Heard this one before? Your employee asks for their 9<sup>th</sup> extension of medical leave, but the employee provides no estimate of when he might return. Do we need to extend leave yet again? This scenario and other tricky leave of absence issues were addressed by courts just this past year. Of course, indefinite leave is not reasonable under the ADA, but where do employers draw the line?

Highlighting the latest and greatest court decisions from the previous year, 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.

Heck, we'll even cover a case from this past year in which a remote employee fought to work in the office instead of continuing their remote work arrangement!



In this section, Jeff will address:

- What 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**

Over the past several years, employers have increasingly received requests from employees dealing with ADHD, executive function deficits, dyslexia/dysgraphia, and other neurological differences.

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.

This is a must attend for this session! Using recent court decisions, Jeff will guide you on how to approach reasonable accommodation considerations for neurodiverse employees.

**2:15 p.m. — 2:30 p.m.**

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

An employee requests yet another extension of his leave of absence. Instead of granting additional leave, you offer him a reassigned position that meets all his restrictions. Does the employee have to take it? Or can he just remain on leave? A court told us the answer this year, and we’ll use it as a case study when discussing reassignment as an ADA accommodation.

Job reassignment is a common — but often forgotten — reasonable accommodation. In this session, Jeff will cover:

- What is the timing to offer reassignment as an ADA accommodation?
- 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**

Managing employee accommodation requests is among the most difficult for any HR professional and in-house counsel. The job is even more challenging now, as the Pregnant Workers Fairness Act (PWFA) requires employers to provide reasonable accommodations due to an employee's limitations associated with pregnancy, childbirth or related medical conditions. Jeff will tackle the most common and difficult pregnancy accommodation scenarios that employers face and provide practical suggestions on how employers can address these situations.

In this section, Jeff will address the following:



- How broad is the PWFA? Does it cover in vitro fertilization and related conditions and treatments outside of pregnancy? What about menopause?
- Can I require a particular process or a form for requesting pregnancy accommodation?
- I hear I can't use the standard ADA medical certification form. What questions can I ask my employee and the physician about the need for a pregnancy accommodation?
- When can we place an employee on a leave of absence instead of providing an on-the-job accommodation?
- When can an employer seek medical documentation to support the need for an accommodation?
- For how long is a pregnancy accommodation reasonable and required?

# FMLA and ADA Crossover Issues

Friday, March 6, 2026

12:00 p.m. — 2:00 p.m.

## ARE ACCOMMODATIONS REQUIRED TO CARE FOR A FAMILY MEMBER?

We know FMLA allows an employee leave from work to care for a family member. And we also know that ADA requires us to provide reasonable accommodations to employees who (because of their own disability) need help performing essential job functions. But are we ever required to provide accommodations to an employee because of a *family member's* disability?

In this section, Jeff will address a growing area of accommodation law — whether federal or state law requires employers to provide accommodations when a family member's health condition is at issue. In our discussion, we will focus on a recent court decision (from the 11<sup>th</sup> Circuit) that addresses this issue...for now.

## MORE CASE STUDIES AND QUESTIONS

In this Friday bonus session, Jeff will tie together 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 time to cover your remaining questions.

## BONUS: An FMLA and ADA Update

Wednesday, September 16, 2026

12:00 p.m. — 2:00 p.m.

### WHAT'S HAPPENED THE LAST SIX MONTHS?

For those of you who just can't get enough FMLA and ADA (*we can so relate!*), we will convene six months later, on September 16, for Day 5 of our Master Class.

During this two-hour session, Jeff will highlight any FMLA and ADA developments since March, including key court decisions in these areas, to tide you over till we meet again in spring 2027!