

Today's webinar will begin shortly. We are waiting for attendees to log on.

Presented by:

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Leave Law Compliance: The Intersection of the ADA, FMLA and Workers' Compensation Laws *PLUS an Update on Trump's First 100 Days*



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MADA Partners with Fisher Phillips

Fisher Phillips, a national law firm representing employers in all aspects of labor and employment law, has joined forces with the Mississippi Automobile Dealers Association to provide an exclusive benefit to MADA's automobile dealer members.

The Legal Services Agreement allows you to obtain assistance with labor and employment issues that arise in your workplace. To use the service, call Steve Cupp or Jaklyn Wrigley and identify yourself as a MADA member who is requesting advice pursuant to the MADA Agreement.

If a matter develops into something that cannot be handled under the Agreement, you will have the option to separately engage Fisher Phillips. For instance, if your Dealership needs additional services, such as a handbook review, an FLSA audit, management training on EEO issues, responding to an EEOC charge, etc., we will quote you an hourly rate or a flat rate to resolve the issue or complete the project.

The Trump Administration: There Are Still Questions

- What kind of input will Alexander Acosta, the Secretary of Labor nominee, have on policy decisions?
- How will Justice Neil Gorsuch change the dynamic of the Supreme Court?
- What will be the impact of the replacement to the ACA?
- Will the new Administration “put the brakes” on the National Labor Relations Board?
 - Joint employment
 - Micro-units
 - More employer friendly standard?
- Will the EEOC continue with its agenda?

Uncertainty Over Enjoined DOL Regulations Regarding FLSA's White-Collar Exemptions

- Regulations more than doubled the minimum salary employers are required to pay employees under the FLSA's white-collar exemptions, from \$23,600 to \$47,476 annually.
- On Nov. 22, 2016, a federal judge in Texas issued a nationwide injunction blocking regulations from taking effect. DOL then appealed, asking the Fifth Circuit to overturn the injunction.
- Trump administration recently requested additional time (to June 30, 2017) to allow Secretary of Labor Alex Acosta to provide input on how to proceed. Many predict Acosta will withdraw the appeal and abandon the prior administration's attempt to defend the regulations.
- <https://www.fisherphillips.com/resources-alerts-ot-aftermath-faqs-on-how-employers-should>



Immigration Issues

- Remember, as of January 22, 2017, employers are required to utilize the [new I-9 form](#).
- Employers who fail to properly complete and retain I-9 forms may be subject to civil penalties up to \$2,156 per form, as well as criminal penalties in some cases.
- <https://www.fisherphillips.com/resources-alerts-new-year-new-form-employers-must-use>
- Expect an uptick in enforcement action: increased I-9 audits, raids, cancellation of DACA work authorization, mandatory E-Verify and more!



Landmark Seventh Circuit Ruling Extends Title VII Protections to LGBT Employees

- *Hively v. Ivy Tech Community College of Indiana*
- First federal circuit court ruling that discrimination based on sexual orientation is actionable under Title VII.
- Decision could lead other federal courts to follow suit.
- <https://www.fisherphillips.com/resources-alerts-landmark-appeals-court-ruling-extends-title-vii>



Religious Liberty Executive Order

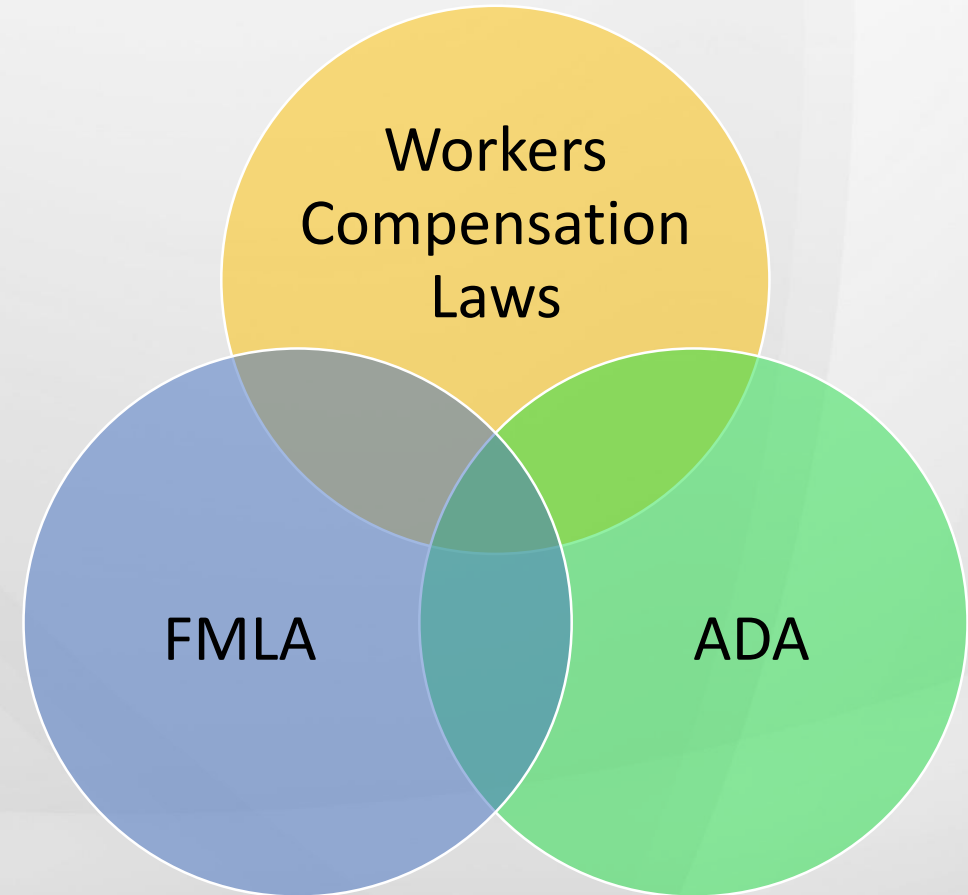
- On May 4, 2017, President Trump signed an Executive Order titled “Promoting Free Speech and Religious Liberty.”
- The EO does not change much for private employers. The EO leaves intact Obama-era protections for the LGBTQ community.
- The EO protects against discrimination and retaliation by the federal government.
- The EO seems primarily directed at the ACA’s preventative-care mandate (the birth control issue) and the rights of person’s to engage in religious and political speech (such as houses of worship).
- Employers should not cite to or depend on this EO in order to deprive someone of employment or a customer of service.
- <https://www.fisherphillips.com/resources-alerts-what-employers-need-to-know-about-trumps-religious-liberty-order>.

U.S. House of Representatives Considering "Comp Time" Law

- ***Working Families Flexibility Act of 2017,***
[H.R. 1180](#):
- Amends the FLSA to allow private employers to offer employees compensatory time off in lieu of overtime pay.
- Employees receive minimum of 1.5 hours of comp time per hour of overtime worked, up to maximum of 160 hours of accrued time off. "Use It or Lose It" policies strictly prohibited.
- Five-year "sunset" provision.
- <https://www.fisherphillips.com/Wage-and-Hour-Laws/temporary-comp-time-provision-under-consideration>



The Intersection of the ADA, FMLA and Workers' Compensation Laws



Statutory Overview of the FMLA, ADA and Workers' Compensation Laws

What's the difference?

- The FMLA and ADA are federal laws. Workers' compensation is governed by state law.
- The FMLA provides protected leave for an “eligible” employee.
- The ADA prohibits discrimination against employees who have a disability. It also has a “reasonable accommodation” requirement, which may include a reasonable extension of FMLA leave.
- Workers' Compensation laws provide compensation to injured workers and covers medical payments for on-the-job injuries. This is the exclusive remedy when employees are injured on the job.

What Employees Are Protected?

- Employees who meet eligibility requirements
- Qualified individuals with a disability
- Those with serious health conditions
- In childbirth/adoption situations
- Employees injured in course and scope of employment



What Are The Employer's Obligations?

Family & Medical Leave Act

- Provide unpaid leave up to 12weeks (and possibly longer).
 - Can make the employee use his or her PTO concurrently
- Complete the paperwork
- Continue the employee's health insurance
- Allow employee to return to work into the same or substantially similar position
- Do not interfere, discriminate or retaliate

Americans with Disabilities Act

- Do not discriminate or retaliate
- Reasonably accommodate
- **State Workers' Compensation Laws:**
 - Medical treatment
 - Compensation replacement

What Is A Serious Health Condition Under the FMLA?

A serious health condition is defined as “an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical facility or continuing treatment by a health care provider.”



ADA Basics

What is a “qualified individual with a disability”?

- Impairment
- Substantially limits
- Major life activity
- Capable, with or without reasonable accommodation, of performing “essential functions” of the job



Injured At Work?



Which Laws Require Leave?

State Workers' Compensation Laws?

The FMLA?

- 12 weeks
- Unpaid
- Continuous or Intermittent?

The ADA?

- Limited duration
- Intermittent
- Indefinite duration

What Employers Should Do While Employees Are On Leave?

- **State Workers' Compensation Laws?**
 - Wage or Medical Benefits
 - Non-worker's compensation benefits?
 - Length of leave?
 - Filling the position?
- **The FMLA?**
 - Health Insurance?
 - Pension Plans?
- **The ADA?**
 - Monitor, Monitor and Monitor
 - Continue Benefits?
 - Use of Paid Leave?



When The Employee Returns To Work

- **What Does the Law Require?**
 - FMLA : Same or Equivalent Position
 - ADA : No Express Requirement
 - Worker's Compensation Laws: No Express Requirement
- **Other Questions to Ask:**
 - When do disability benefits come available?
 - Has the employee's leave been exhausted?
- **Other Ways to Prepare – Be Proactive!**
 - Communicate with the employee
 - Communicate with supervisor
 - Light Duty Policy
 - Job Analysis
 - Disability Benefit Forms

Can You Gather Medical Information?

- **ADA**
 - Information that is job-related and consistent with business necessity
- **FMLA**
 - Medical Certification of Serious Health Condition
 - Re-certification
 - Return to Work Note
- **Worker's Compensation**
 - Information needed to evaluate obligations under worker's comp law
- **Disability Benefits**
 - Application provided by plan and continuing evidence of disability

Light Duty Policies

- Are there light duty tasks that exist within the company that can easily be assigned to an employee with restricted physical limitations not performing a regular job?
- Are available tasks to be performed valuable to the company?
- How easy is it for employees with no training in performing those tasks to come in and perform them efficiently and well?
- What are the limitations?
- What other questions should you ask?

When Is An Adverse Employment Decision Appropriate?

- **Transfer?**

- Only a requirement of the ADA
- Required-but only after efforts to maintain current job are exhausted
- Position must be vacant
- Comparable pay and responsibility?
- Application of normal rules for transfers?

- **Termination?**

- Do you have a policy of ending leave for everyone after a specific period of time?
- The FMLA “return to work” Catch 22
- ADA Issues – do you have an affirmative duty to grant leave?
- Workers’ Compensation Retaliation

Best Practices

- Identify the Problem
- Reevaluate the Benefits
- Consider Paid v. Unpaid Leave
- Personal Time Off Plans
- Create a Maximum Period of Leave
- Coordinate Employee Benefit Plans
- Organize the Process
- Consider Light Duty Policies

Final Questions



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