

**Mid-Atlantic ADA Center**  
**THE INTERSECTION OF ADA, FMLA, AND WORKERS'**  
**COMPENSATION**  
**JANUARY 17, 2019**

\*\*\*

This text, document, or file is based on live transcription. Communication Access Real-time Translation (CART), captioning, and/or live transcription are provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings. This text, document, or file is not to be distributed or used in any way that may violate copyright law.

\*\*\*

.....

>> MAYNOR GUILLEN: And Nancy, you can begin.

>> NANCY HORTON HORTON: Thank you, Maynor. My name is Nancy Horton. I am with the Mid-Atlantic ADA Center and we're very pleased to have Lauren Schipper as our guest speaker today, going to be presenting to us about The Intersection of ADA, FMLA, and Workers' Compensation. With a Bachelor degree in Psychology and Master degree in Human Services Administration, Lauren has focused her professional career on helping individuals with disabilities of all ages and demographics. After spending four years in non-profits, Lauren transitioned to working in higher education, where for the last five years she found her niche overseeing ADA Title I programs and ensuring compliance with intersecting laws. Recently joining Amazon as a Regional Accommodation Manager for New England, Lauren finds excitement in and is passionate about educating others on how to

go outside the box to assist employees with disabilities while remaining compliant with obligations under the ADA.

>> LAUREN SCHIPPER: Good afternoon, and thank you for having me. Welcome to The Intersection of ADA, FMLA, and Workers' Compensation. I'm not sure we would all call this a riveting topic, but it is an area I enjoy speaking on. Thank you so much to everyone who's here today, and taking the time out of your day to be here. You know, I had the opportunity to present on this last summer at the national ADA symposium. I really enjoy speaking on this topic. A huge thank you for having me.

I'm Lauren Schipper, a regional accommodations manager based in Boston. I will say a very quick aside to that, despite living in Boston, I am not a Patriots fan. If I have any fellow New Englanders on the line, I'll say go Patriots. But now that we have that out of the way, I am not a Patriots fan, but I am incredibly passionate about, you know, working in human resources and really in particular, the disability field.

And, you know, I think most of us who do this work, we love our jobs. But I have to go as far as to say that I really consider myself lucky to be in this line of work. I really have spent the bulk of the last five years of my career just so heavily focused on this intersection topic and having opportunities to work with my employers to really bridge gaps in their ADA programs.

So if there's anything that you can take away from today's presentation, it's really going to be to start looking at how can you bridge those same gaps with your respective employers. So, moving on to slide 16, I do want to make a quick note. Obviously I mentioned I work for Amazon. However, in these next 90 minutes I am not acting as a representative of Amazon. Non-of the information is reflective of their policies, procedures, or practices.

Really the same as any sort of presentation that you would hear at a conference that you would go to. It's really meant to be informational, educational opportunity to look at how you can use this information with your own employers. The key thing -- and I'm going to get into this a lot more in the presentation, but I'll put this as a reminder now -- state regulations are going to have a lot of overlap with these areas as well.

So, moving now to slide 17. Just a quick agenda here. I'm going to give a brief review of each law, the comprehensive overview of each intersection. The quiz is going to be interactive. Just to preface this ahead of time, I do have ten questions on there right now. I really want to make sure, though, we have enough time for the intersections as well as the best practices, which we'll do in the final review.

So I may cut that down to five questions. But we'll see when we get to that point. Again, the final review will be our best practices, some takeaways, and then time for questions and answers. If we do not get the opportunity to answer all of your questions, you can connect with me on LinkedIn, or you can find my email through there.

Moving to slide 18. So, I think first and foremost, the question we want to answer is why are we discussing this topic? The easiest answer is that being unaware of our obligations really can be costly and an unnecessary headache for employers. Taking a slightly more in-depth approach to answering that question, I think what it really comes down to is without understanding your obligations, we as employers may not even be aware that we're setting ourselves up to be one of the numbers that's reflected here on the chart in front of us. So we are looking at several years, and I've broken them out for discrimination, claims, and disability claims. I'm not going to go through each of the years specifically. I'd rather focus

on the most relevant numbers here. So let's take a look at the 2017 numbers here for FMLA claims. In total, there were 1,165 claims filed that year.

When we talk about an FMLA claim, there's a few different reasons why a person may file a claim with the Department of Labor trying to say that their employer violated their FMLA rights. So that could be anything from the employer failing to continue their benefits while they were on FMLA, failing to return them to an equivalent position, not even granting the leave in the first place.

As I have on here, FMLA discrimination is obviously another reason as to why somebody could file the claim. And I broke that out just to show -- I thought that was a pretty significant number to look at. Out of those total claims, 314 people in 2017 filed it because they want they were discriminated for their need for FMLA. And I just think that's such a significant impact to look at that people should not be feeling like they can't take their need for leave.

So jumping now down to the EEOC disability claims, obviously these numbers are in the thousands. For 2017, we see on here 26,838 people felt that there was a reason that they were potentially discriminated against because of a disability, or at least had that perception that they were. Obviously not all of these claims were found to have had a violation. But in terms of the claims that were actually settled in 2017, employers had to pay out \$135 million in settlements.

So again, one of my very first remarks is talking about this being costly. You know, I know if we pay attention to case law, the same way I do, we know some employers had a bulk of that settlement number. But, you know, I think really what this comes down to is it's not enough for an employer to know how to designate it, or enough for an employer to know I have to provide individual accommodations. We have to really, thoroughly

understand how these laws interact with one another, and then make sure that we're set up properly to manage an employee's request.

So moving now to slide 19. The Americans with Disabilities Act -- so, I know that most of us are probably familiar with, sort of, the basics of the three laws that we're looking at today. But, you know, I can speak for myself. Certainly, I primarily am on the ADA side. I like to think I have a pretty good handle on all three regulations. I'm sure most of you as well are really, kind of, on a day-to-day basis focused on one law more than the other. So I thought this would be a good opportunity to give a brief overview.

When we talk about the ADA, what we're looking at is Title I of the Americans with Disabilities Act, which is essentially the federal regulation that prohibits employers with 15 or more employees from discriminating against individuals on the basis of a disability in employment. When we talk about that in employment, we're not just talking about once they are employees, but we're also talking about the hiring process as well. So that's going to prevent, you know, in terms of what questions or medical inquiries are allowable during that process, but also making sure that our applicants understand that having accommodations that they need to be able to equally participate in that process.

So for example, if you have an individual who is interviewing for a position and they have a hearing impairment, you want to make sure that you provide equally effective communication that they're going to need to be able to participate in the interview. Generally, once a person is employed, the ADA requires that you're providing reasonable workplace accommodations to an individual with a disability. The accommodation is for central functions of his or her position. So we consider whether or not somebody actually has a disability.

The ADA takes a three-prong approach. I'm sure most of the definition that we work with most often is the first one that's on here. It's really that a person is considered to be an individual with a disability if they have a physical or mental impairment which substantially limits one or more major life activities. Now, I want to stop there before I go on to prongs two and three and really just focus in, kind of, what that means. So the EEOC really cautions that when we're evaluating whether or not somebody has a disability, it's not meant to be, you know, this overly extensive or exhaustive analysis.

And we really should be making a determination through an individualized assessment. Now I want to take that even one step further. And when we look at this idea of substantially limits. Again, we're not meant to be interpreting this from the perspective of, you know, the person being severely or significantly restricted. You know, really, rather our approach to this is, you know, absent any ameliorative effects or mitigating factors, how would this person be impacted in a major life activity.

There's a host of different areas we consider a major life activity. You're thinking hearing, breathing, walking, speaking, thinking, working, learning, etc. So, even though this is a fairly extensive definition and broad definition, not everything is going to cover or constitute a disability. But the key here is to look at it from that individualized perspective and making sure that we're trying to provide broader expansive coverage where we can.

So moving on to parts two and three of the definition, when we look at somebody who has a record of an impairment, this person is also still obviously on a case-by-case basis, may still need an accommodation. The most common example of this is the person who -- they had cancer, they went through treatment. Now they're

cancer-free, but they have an ongoing need for appointments to make sure the cancer doesn't return.

They aren't substantially limited anymore, but they were, and now they need an accommodation to attend appointments. The regarded as prong gets tricky. One key thing I want to point out here where it's different from prongs one and two is under this definition, an employer is not required to provide a reasonable accommodation. The key here is that you still are prohibited from taking adverse action against an employee.

So when we talk about whether somebody has been regarded as having an impairment, really what this means is an employer has engaged in a discriminatory act because of an actual or perceived impairment, whether or not the impairment actually does or is perceived to limit a major life activity. I know that's a lot of words. So to kind of break that down into a simple example, you know, it's really the person, let's say -- I think we probably have all heard this example at conferences before.

But they have a facial disfigurement, and an employer decides not to hire them because of the fear or concerns of how people will interact with them if they're hired for an upfront desk reception position. So they've now been regarded as having a disability and were subjected to adverse action because of it.

Moving to slide 20, family and medical leave, we look at this as a leave entitlement benefit for eligible employees. When we consider the eligibility criteria, really the first thing that we need to look at is does the person work for a covered entity, which is an employer who has 50 or more employees within a 75-mile radius.

Just as sort of a mention to that, on the statistics that I showed a few slides ago, some of those claims are actually dismissed because the employer wasn't a covered entity. So that piece actually has some significant relevance just beyond looking at our

requirements and whether or not we are a covered entity or not. So then we take that, sort of, eligibility piece a step further when we then look at the employee.

The employee, if they work for a covered entity, to be eligible for FMLA, they must have a qualifying medical condition. The reason I have an asterisk down here is for the focus of today's presentation I really just want to focus on the fact of that being the person's own serious health condition. I don't want to dismiss, obviously, that there's other reasons why somebody might be eligible for FMLA, but in terms of this intersect, it's really just for their own serious health condition.

So in addition to having a qualifying medical condition, the person also has to have worked for their employer for one year and at least 1250 hours within that one year. So what does FMLA really look like? Well, it could be a couple of things. I'm going to get more into the nuances of it when we get into the intersection, but just briefly here, essentially, FMLA provides 12 weeks of job protection. Some employees may take this on an intermittent basis, while others may take it on a block leave.

Moving to slide 21. You know, for most of us, we're most commonly familiar with dealing with Workers' Compensation, but there is a federal regulation or law for federal employees. It's important to note that each state sets its own Workers' Compensation laws. And I'm going to talk a little bit more about that and why it's important to pay attention to, you know, what our own regulations are within our respective states.

So, when we talk about Workers' Compensation, obviously it's very different from FMLA and ADA in terms of really what it's there to provide is a wage loss benefit or medical coverage related to an injury or illness. And so the injury or illness is either going to be the person sustained an occupational illness at work, or an

occupational injury at work. I think more commonly we hear that the occupational injury perspective.

You know, it's the person who fell off the ladder and broke their arm, or because of repetitive use they now have a torn ligament. But I actually found it really interesting when I was preparing for this. I was curious what the statistics were behind occupational illnesses. And between 2017 and 2018 alone, for Workers' Compensation claims nationwide, 1.4 million of them actually fell into being an occupational illness.

So the more common ones were asthma, skin conditions, stress-related conditions or mental health. And so I think it's important that when we look at Workers' Compensation that we're keeping in mind that this is not just going to be the broken arm or the torn ligaments. I mentioned on here, too, unlike ADA and FMLA where they set forth this idea of, you know, how many employees must the employer have, under Workers' Compensation it's really going to vary.

In some cases, it may be as few as five employees to where the business is a covered entity. So, moving now to slide 22. This next section here that we're going to go through is just some common things that I think really come up in this realm that we may not always be aware of or really think about. And so I just thought these would be helpful areas for us to cover. Moving here to slide 23, I personally think it's pretty important for us to be aware of who enforces these regulations.

Certainly, you know, from the perspective of we want to be aware of who our resources are. So, you know, for ADA it's going to be the Equal Employment Opportunity Commission. Family and Medical Leave Act is enforced and regulated by the U.S. Department of labor. And Then We've Talked About Workers' Compensation Being Regulated by State Workers' Compensation

Commission. When I Talk About This Idea, being aware of them as resource, I'll call out the EEOC specifically.

Obviously we want to do our best as employers to keep them away from us and not fall into a claim with them. But they have some incredible resources available on their website to help us do that. You know, I think one of the documents is a 2016 document that references, really how to evaluate leave as an accommodation. So I highly encourage you to look at these entities more as resources than, you know, trying to, you know, keep them away from you.

So, moving to slide 24, you know, when I talked about the presentation here or when we brought this up in the beginning, I talked about making sure that we're doing the best that we can for our employees. And so the number may be a little bit off right now, but I want to say it's either 12 or 13 states that have their own family medical leave laws, for example, one of them being Connecticut.

So when I talk about this idea of greater protections, Connecticut actually lowers the hourly requirement for somebody to meet the eligibility criteria and they also take it a step further where an employee is provided 16 weeks of unpaid leave in a two-year period. So again, it's always mindful to look at what's going to provide the greatest protection for our employees, because it's not always just going to be these federal regulations.

One of the most common things that I think that I've seen come up when I've been involved in cases is failing to run family and medical leave concurrently with Workers' Compensation. I'm going to get into that a lot more when we get into the intersection here, but because Workers' Compensation is really just there to provide the wage loss benefits and provide the medical coverage, it's not in most cases providing that leave. If you run FMLA along with it,

you've provided the protection because they have FMLA to cover their time from being away.

I do mention that terminations can occur while a person is on a Workers' Compensation claim. With any of these laws, it's a caveat that you're not doing it for retaliatory reasons. For the person who doesn't have the FMLA coverage, they might run into a termination situation. But make sure as an employer you're not doing it simply because they filed a claim, or the claim ended up costing you more money than what you want to take on the next time.

So moving on to slide 25. You know, I think for those of us who pay very close attention to case law, you know, I think the matter of leave and extended leave is such a controversial and tricky area to navigate. You know, I know that some more guidance has come out in recent years, but I think we're still in this place where we're all trying to figure out how do we handle leave as an accommodation or extended leave.

One thing that I think is incredibly clear that we have learned is that we should not be having maximum leave policies. Even if you have this incredibly generous, you know, six-month, no questions asked, you know, not going to ask about your attendance policy, but your employee comes back after six months and says I'm still trying to recover from, you know, this situation, and they ask for two more weeks and you say no, you're getting yourself into hot water at that point.

You're already failing to engage in the interactive process. You're not treating it as an individualized assessment. So, you know, certainly can't tell you if that additional leave is going to be reasonable or not, but I can tell you to make sure you're engaging in that process to assess whether or not it can be provided.

Another issue that I think we see come up very often is the idea of a 100% healed policy. More commonly where we're going to

see this is in Workers' Compensation. You know, I've got to be honest. I think we're probably a little bit friendlier about it when it falls more in the disability realm to begin with versus a workplace injury. But regardless, you cannot be requiring your employees to be restriction free.

The moment you say nope, sorry, you have to be 100% to come back to your job and work every job duty we have for you and your essential functions you're immediately failing to engage in that interactive process and look at reasonable accommodations. So, again, you know, these are the two significant policies to avoid.

Moving on to slide 26. All right, guys, this is the fun part. This is probably why some of you are spending your lunch hour with me. So, thank you for that. You know, this is -- there is going to be a lot of information in these next couple of slides. I want it to be as comprehensive but also as understood as simply as it can be. So certainly going to strive for that here. But, again, you know, have access to these slides and hopefully you'll refer back to them.

So we're going to dive right into the fun part here. So, moving to slide 27, we have three laws and we have six areas of intersection. Medical documentation, temporary modified duty -- I'll pause there for a second to say that many of you probably refer to this as light duty as well. I'm kind of a stickler on this one, so I'm called it modified duty throughout this presentation. I like it because it's very clear. It's temporary, you're taking duties that are meaningful work and you're just changing them to fit restrictions.

We're talking about leave, benefits, fitness to return, and reinstatement or otherwise return to work. Moving to slide 28. So, when we talk about medical documentation, I'm going to start here with the ADA. Thankfully, the EEOC is pretty clear in terms of its guidance of when we can and can't make a medical inquiry or otherwise ask for medical documentation.

And so the threshold is really that it must be job-related and consistent with business necessity. So how -- when are we going to meet that threshold? There's two different ways. One, that we have reasonable belief based off of objective evidence that an employee's ability to perform their essential job functions are going to be impaired by a medical condition. Or, that the employee is going to pose a direct threat due to that medical condition.

Now, I think more often than not -- I think especially from the case management side, when you're seeking medical documentation it's really going to be following the time that the person comes and maybe they disclosed their condition or talk about a need for an accommodation. That's really when we're going to be getting into this idea of collecting medical information from them.

Now, we need to be mindful that information we're gathering is really just to be focused on, you know, identifying is there a physical or mental impairment and how does that impairment impact that employee's ability to perform their essential functions. So if I go to my employer one day and I say hey, you know, every day that I'm at work these lights in my office are really bothering me, I'm getting really bad headaches and I feel like I can't be at work because of them, one, I've identified that I have an accommodation need.

But it's helping them to talk through the medical information they might need, which is what is it that's impacting you, how is that keeping you from performing and what are some accommodations that may get me back to work. Obviously we're not going to be asking for medical information when it's otherwise obvious. If an employee is in a wheelchair and asks for a desk that's an appropriate height, please don't ask them for documentation, just work through their request.

So when it comes to family and medical leave from a documentation standpoint, there is no specific requirement for an employer in terms of what your forms can look like. However, the Department of Labor has very set criteria of what medical information you are allowed to obtain in that process. And so you want to make sure that even if you decide to use your own forms for this, it's adhering to what those DOL regulations are.

In terms of the documentation and what -- when you're looking at the certification, there are circumstances where you're allowed to collect second and third opinions. So let's say your employee brings their certification back and either the information is really unclear or the documentation -- you're requesting its validity. You can then obtain a second medical justification. The employer is allowed to choose the healthcare provider, but it is cautioned against using a provider that you use regularly.

So if you have, you know, common work comp providers that you use, probably not your best decision to choose them as the person filling out the second opinion. Now, let's say you're stuck in a situation where opinion number 2 is not great or doesn't align to opinion number 1. So at that point you are allowed to ask for a third opinion. When you get to this point, the healthcare provider is going to be chosen in agreement with you and the employee.

Now, the one thing to be mindful of here as an employer is you're paying for that second and third opinion. So that's also including not just getting the documentation, but any travel cost associated with it. If you really don't need that information, please rely on the information that you have from the get-go.

Unlike the ADA where we look at this as an ongoing interactive process meant to occur as expeditiously as possible, ADA doesn't have a set requirement for when documentation needs to be turned in. Obviously you can set those requirements as an employer to

help your process. But FMLA is very clear when documentation or medical justification has to be returned. This is due within 15 business days of the employee getting the FMLA information.

Obviously, absent extenuating circumstances. When it comes to medical documentation or Workers' Compensation, this is actually going to be pretty straightforward. Medical documentation is really probably going to be mostly completed on the standard forms that the states have determined under their work comp regulations. But it's going to look a few different ways. You may have your injuries report. There's going to be progress updates. Most commonly we're looking at a physician summary or disposition summary.

You're also sometimes going to have a functional capacity evaluation. So one of the things I want to point out here is that an FCE is not used in every Workers' Compensation case. But it may be used when you're really struggling to figure out, or the provider is struggling to figure out how the person is restricted, especially when it comes to performing their job duties and returning to work.

I've seen some FCEs that end up including additional medical information, past medical history. For the most part you want to ignore that information if it's not related back to the original injury itself. So, moving on to slide 29. Again, I preface that I'm somewhat referring here to light duty but I really encourage this idea of, whether you call it a transitional work site or temporary modified duty, really getting clear with what you're looking at here.

To when we consider temporary modified duty being required under the ADA, what this really means is that we need to always make sure that we're considering any reasonable accommodation for an employee and in some cases, that is going to include temporary modified duty. Especially if you have already a program set up for your employees who are not disabled and they can

engage in modified duty, then you want to make sure that you're doing the same for your employee who has a disability and has a temporary need.

Now, you're not required to make that modified duty into a permanent position or create a job duty for the person. But if you're in a situation where that's the best reasonable accommodation you can provide at that time, I would make sure to clearly outline what the modification is and what the duration is.

Even though I say on here that modified duty really, as you can kind of see from the slide, doesn't relate to FMLA, obviously I include this from the perspective of showing that modified duty is really rarely coming up under family and medical leave. And the reason being is that an employee absolutely has their right to take their leave entitlement benefits. You can't require the person to take modified duty in lieu of their leave. You cannot penalize them if they decide to take that leave and not take a modified duty, in terms of taking adverse action against them.

Now, I think if you're experienced in this realm and comfortable having these conversation from an accommodation perspective, I don't see anything wrong with modified duty to support the person, especially if it's an employee who it's going to put them on unpaid leave because they don't have leave accruals and you that modified duty will actually help them. Certainly have that conversation, but make sure you're going it from a good faith perspective and you're not trying to persuade them into not taking their FMLA or their leave entitlement.

Workers' Compensation is where this gets a little bit different. It absolutely should be offered under Workers' Compensation. When you have an employee who is able to go onto modified duty following an injury or illness, one, you're helping to support their return to work, which statistically most employees who are engaged

in work after an injury or illness are more likely to come back full time.

But you're also then reducing cost for the employer because you're not having to pay those wage replacement benefits during that time. Caveat to that, we've talked about how FMLA should be run concurrently with Workers' Compensation for eligible employees. They have a right to reject modified duty. If they reject it, while that is their choice and their right to take that leave, it may impact their wage benefits that they would get through Workers' Compensation.

Obviously, I say may because there's going to be different employer policies and state policies that are going to go into that factor. And again, no matter what sort of regulation you're following when you're applying a modified duty, clearly outline the modification and the duration. Another key piece to this -- and really, any aspect of this -- is make sure that when you're getting this information from the doctor, you're giving them a job description.

And not just any job description, but one that is accurate and clearly identifies what those duties are so the medical provider can actually speak to whether or not the person can perform those functions within their restrictions.

So, moving now to slide 30, leave. I know that we talked about the fact that this is a really tricky area. So I'm going to start here with looking at leave under ADA. When we first consider leave in general, we do want to consider whether or not there's any other protections in place. So FMLA would come first, or if there's a state leave that might apply. But when we look at it in terms of ADA it's going to be unpaid leave time.

It's usually going to be specified based off of what the provider is telling us. So similar to FMLA, we're getting this recommendation from a provider. Now, this may come into play, let's say before the

person is eligible for FMLA. So they haven't met that eligibility criteria or they've exhausted all their FMLA and now they need a continuous leave of absence.

Leave as an accommodation can also be in a block period, or it can be intermittent. So I know for those of us who really work with the ADA on a daily basis, you know, when we talk about an accommodation what we really mean is making a modification or an adjustment to the person's work or work space that will enable them to perform their essential functions.

Most of us know that an essential function can be considered regular and reliable attendance. But I do understand that the intermittent piece here is going to get tricky when we look at that attendance factor. I can't give you the best answer in whether or not it's always going to be removing an essential function or not. What I can say is use that individualized case-by-case assessment to make that determination.

Now, moving to FMLA leave, again, we learned earlier on, FMLA is pretty cut and dry for the most part. It's 12 weeks of unpaid leave within a 12-week period. I mentioned earlier I wanted to spend some time talking about this from, you know, the intermittent period perspective. So when we look at a block leave, that's really easy for us to navigate. It's the person who either they take their entire leave entitlement benefit or they're out for four weeks and we know when they're coming back.

Intermittent can look a few different ways. You might have it to where it's a little bit standardized and it's the person who every Tuesday three hours a day for the next six weeks, they need to be on leave for appointments. But then you're going to get the more complex cases that are going to be, you know, the person needs FMLA leave three times per month, eight hours per occurrence. What does that mean, right?

It's so difficult to navigate those situations because we really as an employer don't know when the person's going to be there or not. The key here is to really ensure that the medical certification clearly identifies the amount of leave that the person needs to include the frequency and the duration and be able to include in your policy the way that you're going to track this accordingly.

No matter how burdensome, so to speak, that intermittent leave may end up being in terms of tracking and the person's attendance. Again, we cannot deny their use of it. So we have to figure out a way to navigate it instead. You know, the issue of leave really doesn't come up as often under Workers' Compensation, from the perspective of there being, sort of, a set statute or regulation of how much leave a person may have.

But, again, take into consideration FMLA might be run concurrently, so we're looking at their FMLA leave when they're on Workers' Compensation, they're out for their injury or illness. Some employers may also have their own additional injury insurance that's going to have leave considerations attached to it. So it's just this idea of being mindful of what are your leave policies and what's going to be allowable under Workers' Compensation when a person is out or recovering.

So moving now to slide 31, benefits. As we talked about on one of the first slides, when we talked about those specifics, I had put on there the total number of claims. And I think just for reference here, in 2017, 11 of those claims were actually found that the employer had -- was in violation because they failed to continue the person's health insurance while on FMLA. So FMLA is really cut and dry on this one. If the person is out, regardless of whether they have, you know, paid time to cover their absence or not, health insurance must continue.

When we look at this from the perspective of ADA, you're really going to say, okay, what are my other leave policies that I have? What do I apply under them, and make sure you're applying the same to ADA so you're avoiding any discriminatory practices. Workers' Compensation, again, that one, sort of, area that's so much different than ADA and FMLA in some respects. There's no set standard here.

Really, again, your key is making sure you're not engaged in discriminatory practices. Obviously the person's going to have their medical coverage for their injury or illness through their claim. Now, again, if they're under FMLA, I think I've said this now 20 times. But if they are under FMLA, they're having greater protection and because that FMLA is running concurrent with their work comp claim and time out, their health insurance will continue.

So, moving now to slide 32, fitness to return. You know, a fitness to return form, you know, simply put is really obviously just another kind of medical documentation that's going to tell us, you know, can this person come back to work and what does it look like when they're going to return. So as we spoke about a little bit earlier under the ADA we're going to be collecting medical documentation when we have reasonable belief to do so and when it is job-related, consistent with business necessity.

So your best approach to deciding, you know, when my employee was out on ADA leave, do I need something to say they can come back. Do a case-by-case assessment. You can always engage in an interactive process and determine if your employee is going to need something upon that return and use your best judgment during that process. Family and medical leave, in terms of the regulation, does not have a set standard saying that you must require a fitness to return or a certification to return..

It does say if you're going to do this it must be a uniformly approached or applied policy across your organization. So if you decide that you need an FTR or certification for the person to return, make sure that you have that in your policy, but also make sure that you're including that in the employee's original designation notice so that they know that it's a requirement. Obviously, the information is only going to relate for the condition for which they went out during that time.

One of the things -- and I'm going to point this out here for both FMLA and Workers' Compensation, when we're getting a fitness to return or a certification to return, the moment we see restrictions on there you want to start thinking about interactive process. You don't want to blow it off and say, you know what, they had nothing to do with ADA when they first started. The moment we see restrictions, start thinking about do I need to partner with somebody else on this to look at are there accommodations necessary for this person's return.

In terms of Workers' Compensation, in general how the Workers' Compensation process works, you're going to have that final notice of, you know, the person's met maximum medical improvement and here's their restrictions, either permanent or temporary. Again, we need to be mindful that we're not holding them to a standard of being 100% healed when we look at what that final information provides. And if there are restrictions, we're engaged in an interactive process.

Moving to slide 33, reinstatement or return to work. So, this can get a little nuanced, especially with ADA and FMLA combined where you might have an employee who, they started on ADA leave but then met the eligibility criteria and switched to FMLA, or they were out on FMLA and then they switched over to ADA leave. And so really, just being mindful of what is the leave that they're

returning from and what is my requirement when they come back to work.

So the ADA requires that if a person was out on leave under ADA accommodations, returning them to their previous position absent undue hardship. I'm not going to move into an undue hardship analysis, but what I will caution with that is if you are ever using that as your reason for not providing something, I highly recommend going to your legal counsel.

And again, always considering what accommodations might be available that's going to enable the employee to return. Under FMLA, you're required to return the employee to their same position or to an equivalent position. So we talked about an equivalent position. This is going to mean that it's virtually identical to the original job in terms of pay, benefits, and any other employment terms or considerations such as their shift or rotation.

Now, there are going to be exceptions to this. For example, if the employee was out on FMLA and that entire shift just went away, or you can show the employer that at the time of the person's reinstatement they wouldn't have been employed, then there are going to be some exceptions to returning them. And unlike ADA, an undue hardship analysis doesn't apply.

Workers' Compensation, you know, for most states it actually does not require that a position be held. And so termination is certainly a possibility. But again, making sure that it's not being done because of an adverse action or because you're frustrated with the amount of time the person was away, or money that the claim cost you. I put on here this idea of, you know, considering if ADA applies.

So we've talked at length now about this idea of 100% healed. What do you do if your employee is -- they come back, they've met maximum medical improvement, they have a permanent restriction

or impairment and now they can't go back to their original job? Consider ADA, look at the interactive process and think about do I need to engage in reassignment or reasonable accommodation.

Slide 34. Okay, I know I gave you guys a lot of information. That was a lot to cover. It was very nuanced regulation. So hopefully there are some good takeaways from that. We're going to move now to the quiz section. I do have five -- I'm sorry, ten questions on here. I think right now from a time perspective, because I want enough time for best practices, we're just going to do five. I encourage you all of course to finish the quiz on your own and hold yourself accountable to, you know, what the right answer is.

But -- so I'm going to head now into the quiz. Again, you'll have the opportunity here on slide 35, it'll show you again how you can submit your answer.

>> MAYNOR GUILLEN: And for those of you on the webinar platform, on the left-hand side within the participants panel you'll have the option to make your options by selecting the lower-case a where you can make your selections. Using your keyboard, you can also make your selections. To select A, you can press control one or command one. To select B, you can press control two or command two. To select C, control three or command three. And now we're starting the quiz, moving on to slide 36. And Lauren, you can begin.

>> LAUREN SCHIPPER: Okay. So, quiz question one. I'm going to read it and then read the answers and give you about five seconds to respond. Sarah, who has been with her company for two years, broke her wrist after slipping on ice at work. She's going to require surgery and will be out of work for four weeks. What course of action should be taken following Sarah's injury? A. have her file Workers' Compensation, B. tell her she can remain out of

work on FMLA, C. file a Workers' Compensation claim and follow FMLA guidelines to designate Sarah for block leave under FMLA. Okay. Awesome job.

C is the answer. So we had about -- let's see, 145 responses there for C. So, good job, all of you. Moving on now to slide 37. Question two, when providing temporary modified duty for an occupational injury, it's best to do the following -- A. allow the employee to tell you what job duties they can do, they know their injury best. B. establish a temporary modified duty based off of work restriction from the work comp provider and include a specific duration for the length of time TMD will be provided. C. do not offer temporary modified duty regardless of recommendations, what's the point of risking having the employee injuring themselves further?

All right, B is the correct answer. Moving on to quiz question three, slide 38. Jason, who has been out of work under FMLA for cancer treatment, he is nearing leave exhaustion and provides updating documentation stating he'll need to be out for six more weeks and then can return to full duty. What steps should be taken? A. thank him for the update and terminate employment at the end of his FMLA. B. tell Jason he has to return to work before the end of his FMLA or you cannot guarantee he will have a job. C. Engage in the interactive process to assess leave as a reasonable accommodation.

Correct answer is C. I cannot R.

Correct answer is C. We need to look at additional leave. Simply engaging in that process, I want to preface, does not mean we're approving it. We're just looking at what our options are.

Moving on, Alex sustained a concussion. He now has temporary modified duty and then will reevaluate. You're able to accommodate the temporary modified duty but Alex declines,

stating he doesn't agree he can work. A. Inform Alex of his rights to take leave under FMLA, and that he can refuse TMD. B. Tell Alex that the work comp provider makes the decision and he has to take the TMD in order to not be terminated. C. Allow Alex to take his leave but terminate him for refusing to work.

All right. We have A as our answer. And final quiz question, if there ends up being time we'll jump back to the other five, but want to make sure we get to best practices here. Question five, Ashley -- slide 40. Ashley had been employed with a company for four months. She recently learned that she is diabetic and will require several appointments over the next few months to establish an appropriate treatment regiment. As her HR, you should A. Tell her her appointments have to fall outside of work hours because she isn't covered under FMLA and hadn't accrued enough time to miss work.

B. Take her at her word and allow her to miss work whenever needed. C. Engage in the interactive process to assess interment leave as an accommodation and encourage her to discuss with her provider additional accommodations that may be effective for her. All right. We have C as our final answer. So, thank you, guys, for entertaining me there with that quiz. I think hopefully it definitely showed we had a lot of good takeaways from the intersection, so thank you for that.

I'm going to skip through the next slide here, so I am going to get to slide 46. So, best practices. All right. So, we now know everything there is to know about the intersections. I'm just going to say we aced our entire quiz. I trust all of you will get 100% on the last five questions. Now we have to figure out how to implement this. As we go through these next few slides, the main thing I want to encourage you to be thinking about is who are your stakeholders,

how are you currently working with them and what areas you need to strengthen or develop.

So moving to slide 47, you know, regardless, I think, of your employer size of your type, I'm sure one of the first questions that all of us ask ourselves and are seeking to implement any kind of change within our organization is what's going to be the overall benefit. We've talked about this a lot from the perspective of making sure we're adhering to federal and state regulations, but I really want to take this a step further and dive into the direct impact.

So on here I have five key factors. I'm sure these are not the first time you're seeing these. They're very common within, you know, sort of, this return to work and accommodation realm. But I want to give a very basic example of how one simple change can target each of these areas. So for reference we have on here reduced turnover, increased productivity, improved morale, reduced cost, and less potential legal claims and fees.

So, let's take our Alex from quiz question four. Alex had sustained a concussion at work and was released to modified duty after a few weeks of leave. So in this particular scenario, Alex decides he's going to accept the modified duty and he returns to work four hours a day, three days a week. And he's expected to make a full recovery within one month. So even though Alex is on the reduced schedule, because he's working, we're now not paying part of those wage loss benefits because he's at work.

So ultimately we're reducing some of the cost that we have to pay associated with his Workers' Compensation claim. Alex is also now getting to be engaged in meaningful work. So we're increasing productivity, right? When Alex was out, what was happening to all those jobs that he had or all those tasks? Either they weren't getting done or they were being shifted to somebody else. Ultimately that means other job duties are being left undone.

Alex is also now engaged with his employer and his colleagues. From a morale perspective, he feels supported. He knows the company cares about him remaining employed and coming back to work on a full-time basis. You know, this increase in morale is also likely to be seen among his colleagues. If they have had to take on some of the work that Alex had when he was absent now it's been re-shifted back to Alex.

You know, I think we have all been in that boat before where colleagues are out and we're having to shift job duties around. And I think most of us because we genuinely care about the work are on board to do that, but it can take a toll and can have a decline in morale when we're having to do that. So having that person back to their job really has a significant, positive impact for everybody.

From a colleague morale perspective, too, I think one of the areas we don't talk about as often is this idea of colleagues seeing that what's one done for one may be done for another, right. And so certainly I would hope that, you know, any of us who were ever in a situation needing leave or needing an accommodation, that we can trust that we're going to have that provided to us because we can see what our employer's already doing for our colleagues.

One of the other key factors here is from a turnover perspective. You know, we mentioned in the quiz that Alex had been with his company for four years. Now that we have him reengaged at work, we're less likely to see turnover and losing an employee who has such probably valuable institutional knowledge from his time with the company. You know, more importantly, too, if Alex is at work he has more immediate access to HR.

Especially with a concussion, he may not know what that return is actually going to look like until he's there. And so he has access to his HR and resources if he needs additional supports to help in his return. Now, in terms of legal cost, obviously Alex could

certainly file a claim. But from the looks of it I would say that we got everything right.

We gave him the leave that he needed. We supported his reduced schedule, engaged in an interactive process to assess if he needed more support. I am by no means an attorney but I would like to say it would probably lower legal claims here, too. I know I just gave a simple example, an ideal world example. Not all of our cases go that way. I know that they can be much more nuanced than that. I wanted to give an idea of how following these regulations can have such a significant impact.

I will give a real life example. At a prior employer, I had an employee who had a pretty substantial injury and had to use all of their FMLA. We then engaged in an interactive process to provide additional leave. And because we remained engaged with that employee we were able to figure out what other resources and supports would they need, ultimately realizing that they needed ergonomic support to help continue when they got back to work.

And we were able to -- even after a lengthy process, create a successful return for that employee and really met all these five key factors. So I'll provide another, sort of, broad example here because I do want to take the Workers' Compensation piece out of this. I don't want us to just get so, you know, caught up in thinking this is only return to work in terms of injury perspective.

So I'm going to go back to ergonomics here for a second. I apologize to my prior employer, because I do know I have some colleagues listening in today. But full transparency, managing ergonomic issues is not my favorite thing to do. This has nothing to do with thinking that ergonomics weren't needed. It's on the contrary, I think they're incredibly important to the workplace. If I had one thing that I could do as a wish list for every company it would be that we just have ergonomics built in.

I'm going to get off my soap box and get back to my point. If you have an employee who has a chronic back impairment or an employee who has carpal tunnel, creating a workspace for them that's going to reduce or mitigate their pain is going to make them more productive because they can focus on their work and not their pain. It's going to keep them from potentially needing to go out on leave or have more absences so, therefore, it's going to increase productivity.

Likely reduce any sort of turnover, because they were able to support them at work to where they don't feel they have to go to an employer that's going to support them more than we are. And obviously, potential reduction in legal claims. So, you know, I know, especially having handled ergonomic cases more than I can probably recount, the upfront cost can be a lot sometimes, right, when we look at these chairs and desks.

But your upfront cost in comparison to your long-term impact greatly outweighs the negative results that you're going to have if you don't provide those sort of things. So, you know, now that we have an idea of where we are making some impact by getting this right, we have to talk about how we do that. So, I'm sure -- and you can imagine, you know, as somebody who clearly enjoys talking about laws and regulations, kind of a stickler for policies as well. Real shocker there, I'm sure.

You know, while there's a lot of benefits to having a formal policy or process in place, I think two of the key factors that can really bring the most value with a strong policy is it can create enhanced consistency in how your practices and processes are applied. It can include concrete steps and timelines that, you know, are set forth with expectations of both the company and its employees.

And also, really can help ensure that as new people come in, they're able to have a document that reflects, you know, what are our standards, how is this work going to be done with the resources that we have in place. So the core of it is really looking at the less we have standardized the larger the room for error. So writing or putting into writing an approach that we know is going to work well is just going to hold us accountable to adhering to our regulations.

And it can be so easily applied across our organization. So moving on to slide 48, you know, I think a policy is only as strong as the people behind it. You know, both in its development and its implementation. You know, this is why when we're adopting a policy that's going to enable us to adhere to these regulations, we really want to make sure that we have established and effectively communicated with our stakeholders what their roles and responsibilities are and that it's clear to them why we have these efforts in place.

You know, for example, at a prior employer we had a process where we assessed return to work cases, whether that was return from Workers' Compensation, or from FMLA leave. To make this process work successfully, there were essentially four key stakeholder groups involved. If one of the members didn't know what their role was in the process, there was -- that process for the entire cause, it would cause delays that had to be remedied by somebody else.

So by clearly establishing and communicating what each group was responsible for, it really allowed for a more seamless process that then created consistency in how return to work cases were assessed and it ensured that an interactive process was always engaged because stakeholders knew that that was going to be an expectation.

Obviously this is going to look very different across all employers based off your size and your type and resources. But I think the key here is that no matter what you design to meet these regulations you need to remain engaged with your stakeholders for it to be effective. You know, when I talk about communication tools what I'm wanting us to think about is now that your stakeholders know what's expected of them, how are your stakeholders who you're supporting going to know?

So while you can defer your policy or your procedures, you know, I think most of us really don't pay attention to this stuff until we need it, right? In terms of, you know, paying attention to what the FMLA regulations are or ADA. So what it comes down to is really find an effective way to get them to know what their rights are, what their resources are, when it's going to matter the most. You know, one concept that I mention on here is this idea of a template for a case trigger point.

So, you know, regardless whether it's ADA, FMLA, or Workers' Compensation, most of the time there's going to be a point in each of those active cases when an action is created. So not only can you save yourself time by having templates built out but it's really going to reinforce that level of consistency that we spoke about before. You can also potentially enhance regulatory compliance.

So for example, once this trigger point may be, if the employee requests block leave, we know they're entitled to that leave. Could you also be letting them know of potential ADA protections when they return by including a brief letter with the confirmation of their approved FMLA. Or perhaps maybe you want to send this information one or two weeks before the return date.

So think about what are some of these ways that you can make it easier for yourself but also make sure that your employees know of their resources. Also consider who is your actual employee

audience. Are they on email more often? Do you have multiple places across your website where you can provide this information to them? So again, think of just the way that you're able to reach them to get this message across and reinforcing to them what's available.

So, moving on to slide 49. You know, if I were able to see all of you right now, I would ask for a show of hands how many of you have heard the response from a manager or supervisor, "I didn't know I was supposed to do that." Obviously I can't see you, so I'm just going to assume at least half of you are raising your hands right now. You know, I think many of us are fully aware that our employees talk with their supervisors. You know, they're often sharing much more than they really need to.

But the bottom line is, you know, those front line people are who our employees are going to most often. You know, I think with all good intentions our supervisors are doing the best that they can to support their employees. But they may easily make a misstep, you know, or make a situation actually worse by not knowing, you know, the information that we're supposed to be responsible for.

You know, so as HR professionals, really, we should be out there ensuring that we're providing training for our front line, you know, on these areas, even if it is just a very basic level, to create awareness of these obligations and who they can partner with when their employees are facing one of these situations. You know, obviously I have on here this idea of in-person. I know that can take a lot of time, especially depending on the size of your organization.

But having that face-to-face connection can be so huge for so many employees. You know, to the best that you can, you know, doing -- once there's a new hire orientation, and also doing this on an annual basis. Again, because of some of these larger employer groups it can be hard to get in person. But you can also use, sort of,

some compliance notices, you know. Each year looking at, you know, if you were to send a brief summary of the policy, what is this going to look like so people can see it simply.

I put on here this idea of clearly identify the overlap and the interplay of each law. Certainly by no means am I meaning give them all the detail that we just talked about today. But a very simple chart that says, you know, it might sound silly, but did your employee just return from family and medical leave? Here's a resource that might be available and referring to your ADA resources. Obviously maybe you do a little better than how I just explained that, but the core is looking at ways to get creative to send this information out on a regular ongoing basis.

Moving on to slide 50, one of the most common mistakes that I think I have seen since being engaged in this kind of work is the failure to engage an employee before their leave exhausts. We can do so much more for our employees if we are communicating with them before the end date. You know, I've seen cases where the leave exhausts and the person tells us I can't come back, but we're scrambling to figure out what to do because we expected them to come back on a certain date and they're not here and they're now just telling us on their final day that they need more time or they need an accommodation.

We can be so much more proactive when we, you know, when we engage with our employees before that leave is ending. So, you know, again, I mentioned the employee who had been on FMLA and then ADA leave and needed ergonomics to be able to return. We were able to be successful in that because of that early communication.

You know, obviously I have here a couple of different ideas of accommodations that are going to come up. Again, these are all going to be -- really, a case by case. But to give an idea of what

that might include when you're looking at engaging that employee early on to talk about what their needs might be.

So now, moving to slide 51. You know, I think it's probably fair to say that if we learned anything today it's really that this area is complex. But I also don't think that it has to be overly burdensome or difficult. I think there's a lot of ways that we can make this easier on ourselves as well as on our employees. So, you know, one of the things that I say to remember in every case is to ask yourself if you looked at and applied each relevant law, did you start with the one that gives the most protection.

So for example, you know, if the person was coming to you saying they needed ADA accommodation, but maybe leave under FMLA was more applicable or even vice versa. You know, again, making sure we're not holding employees to this unrealistic standard of being 100% healed and not engaging in the interactive process. I think as we saw a couple of slides ago, there's so many benefits to getting the person back to work, even if it's not in the way that they were at work before their injury or their illness.

I put on here -- and I referenced this a few times -- maintaining job descriptions. And I can't speak about this enough. You know, I think it's probably fair to say most of us don't have, sometimes, the best job descriptions or the most up-to-date ones. And this is really going to be key, not only in identifying, you know, truly what are the essential functions of the person's position, but when you're getting that medical information from a medical provider, they can really look at what does the person do.

You know, sort of a silly example here, I had an employee who works within a library. But they were not a librarian. And I'm not quite sure what the conversation was with their medical provider but I got their documentation back and the provider wrote it as if the person sat behind a desk and checked in book every day. Clearly

that was not helpful for us. So having these accurate and updated job descriptions will really go a long way when you're getting that documentation.

Moving to slide 52, obviously, you know, I work with each one of these laws on a pretty regular basis. The core of what I focus on is really ADA. And so I certainly like that because if we look at this slide, we get -- almost in the majority of cases, and really look at all this from a proactive approach and doing the best for our employees to get them back to work. So ADA may certainly not be the first applicable law, but I think in most cases, and especially ones that I've seen, it really is going to apply at some point or another.

So I think with that final remark, I'm going to get back off the ADA soapbox. And we have just a little bit less than 15 minutes here for questions, so I'm going to turn it back over to Nancy. Thank you all so much for your time today and being here, and again to the Mid-Atlantic ADA Center and TransCen. So, slide 53, questions.

>> NANCY HORTON: Thank you so much, Lauren. That was just a tremendous amount of information, great information. Again, by way of reminder about how to submit questions, in the webinar platform, you can submit questions in the chat area text box, which you can enter with control M. And you can type your questions in there. You can do pretty much the same thing if you're using the app.

You could also email us questions at [ADAtraining@transcen.org](mailto:ADAtraining@transcen.org). We do have a couple of questions already. First of all, Lauren, this is something that you did touch on, but if you could maybe revisit this issue. The scenario is an employee has exhausted FMLA. And they need to be out longer, so they've been granted some additional leave. Then, later, they're

cleared to return to work, but with some restrictions that are clearly going to impact their ability to perform at least some of the essential functions of their job. So the question, does the FMLA's requirement for reinstatement to the same or equivalent position still apply, or does it not apply at that point?

>> LAUREN SCHIPPER: Thank you. That's a great question. So, we had talked about this, you know, in I think one of the quiz questions. And, you know, looking at, you know, which leave came first or second. So in this circumstance, you know, the employee as you mentioned had gone out on FMLA but they were not able to return. Now, thankfully the employer seems to have done the right thing here and they provided the additional leave.

But essentially, they didn't return when that FMLA ended. And so we're looking at it then from the perspective of they're returning from that ADA leave, what we're going to look at to return them to the same position that they had prior.

>> NANCY HORTON: Excellent. Thank you, Lauren. We have another question here. This is an interesting question from an organization that is not covered by FMLA, is not required to provide FMLA. They don't have that number of employees. But if they want to have an FMLA policy, essentially, to provide that sort of a benefit for their employees, does that then really mean that they would have to comply with the provisions of the FMLA and, sort of, analyze all their situations in light of all three laws, the ADA, workers' comp, potentially, and FMLA, even if they are not technically covered in the first place?

>> LAUREN SCHIPPER: So, my first recommendation there is to look at -- depending on what state you're in, first make sure if your state has a leave law. I would imagine based off your question that you're probably one of the states that doesn't. It's a small number right now that actually provides that state leave. But, you

know, obviously anytime you're looking at providing or building any sort of a leave policy you certainly want to consult legal counsel on what those implications are going to be.

But there's nothing that holds -- that is going to impact the employer from developing a leave policy. It doesn't have to mirror FMLA. I would say broadly from company policies that I have seen that decide to provide some sort of company medical they try to mirror the FMLA closely because it's already designed in a way that it's easier to build that policy.

Now, just because you don't -- your employer who's not subjected to FMLA because of your employee size, those other ADA regulations are potentially going to apply. So also, from that perspective, especially with ADA, keeping in mind that while you may not have to provide FMLA leave, ADA leave might come in if it's a qualifying disability.

>> NANCY HORTON: Thank you, Lauren. We have another question here about light duty. If an employee has an occupational injury but you can create light duty, but it isn't directly associated with their position, is that something that should be done?

>> LAUREN SCHIPPER: You know, I mean, that's a great question, and certainly a tricky one. There are employers out there who I think have programs that, you know, they have the employee at work and, you know, doing simple tasks or tasks that really aren't associated with their job to try to help get them reintegrated into work. When we look at it from the perspective of providing modified duty, it's trying to make sure they're engaged in meaningful work.

And a significant part of this, if we remember back so that slide I had talked about if you do something for your employee who has an occupational injury, you're going to want to make sure you're providing that same sort of light duty, so to speak, to the person who has a disability. So, you know, for me personally, I caution

against that idea, simply because you don't want to enter this realm then that you have people at work who they're not really engaged in meaningful tasks, or meaningful work that's really, you know, adding value to the company, but really is helping them get back to their original full-time position.

So I think, you know, that's kind of my personal perspective. I would certainly encourage, you know, to try and do some research on employers that are similar to yours and see what they have out there. You know, I had an opportunity at an employer to redevelop with a team of colleagues a temporary modified duty policy. And a huge part of that was to get away from this sort of meaningless work or, you know, tasks that weren't directly associated with the person's position.

And we, at that time, used a lot of higher education -- or some of our other colleges and universities within our region to look at how they were doing that. So my best advice is to look at that from the approach of what are employers similar to yours doing for that.

>> NANCY HORTON: Thanks, Lauren. I think we may have time for maybe just one more question. We have a question here about -- a conversation about potential accommodations when a worker is ready to return to work. Should we be discussing accommodations every time a person returns to work after they've been off, or only if they are returning saying now they have restrictions?

>> LAUREN SCHIPPER: So I would really look at this more from the perspective of if your employee is coming back and they have restrictions or they're identifying a need for an accommodation, then that's when you're going to engage in that conversation. Certainly if the person has a full duty release, they clearly can come back to their job. One of the things that I think can be helpful,

though, is an employee may not know that ADA or accommodations could be an option when they're returning.

And so that's why I kind of like this idea of, you know, finding ways to have resources that are out there that let them know that this could be an option if they need it. You know, the ADA is pretty clear in that. Obviously we as employers have to be mindful of when our employee is asking for an accommodation. But the employee really is responsible for coming to us and letting us know that they have that need. So if they're coming back on a full-time return or coming back and we have nothing that indicates there's a need for an accommodation then no, I don't necessarily think you need to every time engage in that discussion.

>> NANCY HORTON: Thanks so much, Lauren. I know you have -- you want to talk about some resources. So I think I will let you move on to that right now.

>> LAUREN SCHIPPER: Yes. So, just some final things. Obviously, you know, when we looked at the statistics earlier that was on the U.S. Department of Labor website as well as the EEOC litigation statistics, I did have an opportunity this week actually to look back to the DOL's website and their 2018 specifics are out there. And so those might be some good resources to look at just in case you're interested in those. And again, in terms of both of these websites or agencies, rather, they have such valuable resources that can help you with getting this information right.

You know, I certainly didn't learn any of this through my higher education, you know, trainings and conferences. It was really just paying attention to the resources and case law that's out there. So I highly would encourage you all to be doing the same. And again, just a huge thank you to all of you who took your time to be here today, fully aware that I made some corny jokes. I appreciate for

you all putting up with those as well. But again, feel free, please, to reach out to me on LinkedIn, my email as well is in there.

So I'm always happy to, you know, engage in these sort of dialogues and discussions, answer any questions I might be able to. While I get made fun of for it pretty often, I do love talking about this stuff, so do not hesitate to reach me. Huge thank you to Mid-Atlantic ADA Center and TransCen for having me. And thanks again, all of you, for being here.

>> NANCY HORTON: And thank you, Lauren, for a really, very informative session. I'm sure we all learned some things today. I know I did. We just really, really appreciate you taking your time to share your expertise with us. We do want to give the code. The code word, for those of you who need that for credit, is intersection. Today's code word is intersection. Again, consult your email that you received about this session for instructions on how to follow up with that. We do need to receive requests by 5:00 p.m. eastern time on next Wednesday, January 23rd.

And again, we just want to thank everyone for joining us. We want to thank Lauren for a wonderful presentation. Do look for a followup email. We will be asking for evaluation and feedback on today's session. We do appreciate that. And we hope that everyone enjoys the remainder of your day.

>> Recording stopped.

\*\*\*

This text, document, or file is based on live transcription. Communication Access Real-time Translation (CART), captioning, and/or live transcription are provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings.

\*\*\*