

Slide 1

The Intersection of ADA, FMLA, and Workers' Compensation

will begin at 2 pm ET

Audio and Visual are provided through the on-line webinar system. This session is closed captioned. Individuals may also listen via telephone by dialing 1-857-232-0476
Access Code: 368564 This is not a toll-free number.

Slide 2

Webinar Platform Keyboard Shortcuts

Full list – Keyboard shortcuts from the help menu on the Menu Bar.

Chat: Move cursor to the Message text box

Windows: Ctrl+M Mac: Command-M

Speaker level Up:

- Windows: Ctrl+Alt+Up Arrow
- Mac: Command-Option-Up Arrow

Speaker level Down:

- Windows: Ctrl+Alt+Down Arrow
- Mac: Command-Option-Down Arrow

Slide 3

Captioning Keyboard Shortcuts

Open Closed-Captioning window

- Window: Ctrl+F8
- Mac: Command-F8

Close Closed-Captioning window

- Windows: Alt+F4 or Ctrl+W
- Mac: Command-W

Slide 4

Captioning

Real-time captioning is provided during this webinar.

The caption screen can be accessed by selecting the “CC” icon in the AUDIO & VIDEO panel.

Once selected you will have the option to re-size the captioning window, change the font size, and save the transcript.

Slide 5

Listening to the Webinar

Online:

Please make sure your computer speakers are turned on or your headphones are plugged in

Control the audio broadcast via the AUDIO & VIDEO panel

If you have sound quality problems, please go through the AUDIO WIZARD by selecting the microphone icon within the AUDIO & VIDEO panel

Slide 6

Listening to the Webinar (cont.)

To connect by telephone: 1-857-232-0476, Pass Code: 368564

This is not a toll-free number

Slide 7

Submitting Questions

In the webinar platform:

You may type and submit questions in the CHAT area text box or press Control+M and enter text in the CHAT area; your questions and comments will only be visible by session moderators

If you are connected via a mobile device you may submit questions in the CHAT area within the app

Questions may also be emailed to:
ADAtraining@transcen.org

Slide 8

Answering Quiz Questions

In the webinar platform:

Within the PARTICIPANTS panel select the fourth icon “a” and make your selection.

- **Keyboard shortcuts:**

Selection	Windows	Mac
A	Ctrl+1	Command+1
B	Ctrl+2	Command+2
C	Ctrl+3	Command+3

Slide 9

Customizing Your View

Resize the whiteboard where the presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard; the default is “fit page”

Slide 10

Customize Your View continued

Resize/Reposition the CHAT, PARTICIPANT, and AUDIO & VIDEO panels by “detaching” and using your mouse to reposition or “stretch/shrink”

Each panel may be detached using the icon in the upper right corner of each panel

Slide 11

Technical Assistance

If you experience technical difficulties

Use the CHAT panel to let us know

E-mail ADAtraining@transcen.org

Call 301-217-0124

Slide 12

Archive

This webinar is being recorded and can be accessed within a few weeks

You will receive an email with information on accessing the archive

Slide 13

Certificates of Participation or CRCC - HRCI - SHRM credit hours:

Credit hours or Certificates of Participation can only be awarded for those participating during the original broadcast of the webinar.

Requests must be received by 5:00 PM ET on Wednesday, January 23, 2019.

Please consult the reminder email you received about this session for instructions on obtaining a certificate of participation for this webinar. This information is also listed in the event page.

You will need to listen for the continuing education code which will be announced during this session.

Slide 14

About Your Hosts...

TransCen, Inc.

Mission Statement: Improving lives of people with disabilities through meaningful work and community inclusion

Mid-Atlantic ADA Center, a project of TransCen, Inc.

Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services

Slide 15

The Intersection of ADA, FMLA, and Workers' Compensation

Slide 16

Disclaimer

The information presented does not reflect the policies, procedures, or opinions of Amazon and this is not being presented on behalf of Amazon

The following presentation is intended as educational and is for general information purposes only.

Applicability of the information presented may vary by state and by employer.

Consult with your legal counsel and employer prior to acting on or relying upon the recommendations in this presentation.

Slide 17

Agenda

Brief review of each law

Comprehensive overview of each intersection

Group quiz

Final review

Questions and Answers

Slide 18

Why this Matters

Slide 19

Americans with Disabilities Act (ADA)

- Federal law
- Applies to employers who have 15 or more employees
- Title I (Employment) prohibits discrimination against applicants and employees on the basis of a disability
- Three prong definition:
 - 1) A physical or mental impairment that substantially limits one or more major life activities
 - 2) Has a record of such impairment
 - 3) Is regarded as having such an impairment

Slide 20

Family and Medical Leave Act (FMLA)

- Federal and state law

- Applies to covered entities
 - Employers with 50 or more employees within 75 mile radius
- Leave entitlement for own medical condition or family member's medical condition
 - 12 weeks of unpaid job protection
 - Intermittent leave
 - Block leave
- Eligibility criteria
 - Must have a qualifying condition*
 - Worked for employer for 12 months and at least 1,250 hours over last 12 months

Slide 21

Workers' Compensation (WC)

- Federal and state laws
 - Federal law applies only to federal employees
 - Each state sets its own workers' compensation law
- Applies to
 - Most businesses, even those with few employees

- Occupational injuries and occupational illnesses (notification of incident varies per state)
- Provides
 - Wage-loss benefits
 - Medical coverage related to injury/illness

Slide 22

Additional Considerations

What else should you know?

Slide 23

Governed by Separate Entities

- Americans with Disabilities Act
 - Equal Employment Opportunity Commission
- Family and Medical Leave Act
 - U.S. Department of Labor
- Workers' Compensation
 - State Workers' Compensation Commission

Slide 24

Protections

- State laws may provide greater protection than federal laws

- Protection under one law does not remove protection under another
 - Common mistake – Failing to run FMLA concurrently with WC
- Termination can occur while on workers' compensation claim
 - Ensure reasons are not retaliatory in nature

Slide 25

Policies to Avoid

- Maximum leave policies
 - Requests for additional leave should be evaluated case by case
- 100% healed policies
 - Mandating employees be “restriction free” could be a failure to engage in interactive process

Slide 26

Areas of Intersection

ADA, FMLA, Workers' Compensation

Slide 27

Three Laws, Six Intersections

- Medical Documentation
- Temporary Modified Duty
- Leave
- Benefits
- Fitness to Return
- Reinstatement (Return to Work)

Slide 28

Medical Documentation

ADA:

- Medical inquiries and exams must be job related and consistent with business necessity
- Limited to how the disability limits individual's ability to perform essential functions
- Should only be requested when impairment and limitations are not readily apparent

FMLA:

- Documentation is not to exceed what is required by DOL to complete Medical Certification
- Employer can require clarifying information (2nd and 3rd opinions, case by case)

- Certification to be returned by employee to employer within 15 business days

WC:

- Should only relate to employee's occupational injury or illness
- May include injury report, appointment and progress updates, physician's summary, functional capacity evaluation
- Most states have standard forms

Slide 29

Temporary Modified Duty

ADA:

- Required by employer to provide if it is a reasonable accommodation – temporary basis only
- Should always be considered if non-disabled employees receive light duty
- Clearly outline the modification and the duration

FMLA:

- Employee has right to FMLA
- Employer cannot require TMD in lieu of leave

WC:

- Should be offered; may reduce entitlement to wage replacement benefits
- Employee has right to reject TMD if FMLA eligible, but may risk losing WC wage benefits
- Clearly outline the modification and duration

Slide 30

Leave

ADA:

- Unpaid leave time is unspecified and is usually based on provider's opinion and job duties
- Could be used if employee is not FMLA eligible or when employee exhausts FMLA
- Intermittent leave in limited circumstances

FMLA:

- 12 weeks of unpaid leave within a 12 month period.
- Leave can be used in a block period or used intermittently
- Considered an absolute right; cannot deny

WC:

- Amount of leave injured worker receives will vary per state laws

- May be partially paid through wage replacement benefits
- Some employers have leave policies for WC

Slide 31

Benefits

ADA:

- General rule; continuation of benefits should be the same as others on similar leave
- Avoid discriminatory practices

FMLA:

- Health insurance must continue
- Additional benefit continuation is determined by employer's policies

WC:

- Generally not required to continue unless FMLA is run concurrently (don't forget employer policies!)
- Medical coverage for injury/illness will be provided through the claim
- Designating FMLA with WC will provide greater protection to employee

Slide 32

Fitness To Return (FTR)

ADA:

- Request if there's reason to believe ability to perform essential functions will remain limited due to condition
- Case by case assessment

FMLA:

- Employee needs to be notified of FTR requirement (designation notice)
- Can only relate to the condition for which the employee used leave
- FTR under FMLA might result in need for interactive process

WC:

- Typically required by the employer
- Should only relate to the occupational injury/illness
- Be cautious of 100% healed requirements and consider interactive process as appropriate

Slide 33

Reinstatement (return to work)

ADA:

- Return to previous position unless doing so causes undue hardship
- Consider accommodations that will enable employee to return

FMLA:

- Required to return employee to same or equivalent position
- Undue hardship analysis does not apply

WC:

- Varies by state – most don't require job to be held
- Consider if ADA applies to engage accommodation process including reassignment
- If terminating, ensure it is because all other options were exhausted and not due to retaliation

Slide 34

Review

Applying what we have learned

Slide 35

Answering Quiz Questions

Answering Quiz Questions

In the webinar platform:

Within the PARTICIPANTS panel select the fourth icon “a” and make your selection.

- **Keyboard shortcuts:**

Selection	Windows	Mac
A	Ctrl+1	Command+1
B	Ctrl+2	Command+2
C	Ctrl+3	Command+3

Slide 36

Quiz Question 1

Sarah, who has been with her company for two years, broke her wrist after slipping on ice at work. She is going to require surgery and will be out of work for 4 weeks.

What course of action should be taken following Sarah’s injury?

- A. Have Sarah file a workers’ compensation claim.
- B. Tell Sarah that she can remain out of work on FMLA, but there’s no need to file a claim because she has health insurance to cover her injury.
- C. File a workers’ compensation claim and follow FMLA guidelines to designate Sarah for block leave under FMLA.

Slide 37

Quiz Question 2

When providing temporary modified duty for an occupational injury, it's best to do the following:

- A. Allow the employee to tell you what duties they can do – they know their injury best!
- B. Establish a TMD based on the work restrictions from the WC provider and include a specific duration for the length of time the TMD will be provided.
- C. Don't offer TMD regardless of recommendations – why risk having the employee hurt themselves further?

Slide 38

Quiz Question 3

Jason has been out of work under FMLA for cancer treatment. He is nearing leave exhaustion and provides updated medical documentation stating he will need be out for 6 more weeks and can then return to full duty.

What steps should be taken?

- A. Thank Jason 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.

Slide 39

Quiz Question 4

Alex, who has been with the company for 4 years, sustained a concussion at work. After taking two weeks to recover, his provider releases him to temporary duty, working 4 hours/day 3 days/week for the next month and will then re-evaluate. You're able to accommodate the TMD but Alex declines, stating he doesn't agree he can work yet.

- A. Inform Alex of his rights to take leave under FMLA and that he can refuse TMD, but that it might impact his WC benefits.
- B. Tell Alex that the WC provider is the one who makes the decisions and he has to take the TMD in order to not be terminated.
- C. Allow Alex take his leave but terminate him once it exhausts for refusing to work.

Slide 40

Quiz Question 5

Ashley has been employed with the company for four months. She recently learned 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 Ashley her appointments will have to fall outside of work hours because she isn't covered under FMLA and hasn't accrued enough time to miss work.
- B. Take Ashley at her word; don't request documentation and allow her to miss work whenever needed.
- C. Engage in the interactive process to assess intermittent leave as an accommodation and encourage Ashley to discuss with her provider additional accommodations that may be effective for her.

Slide 41

Quiz Question 6

Medical documentation received for ADA accommodations can also be used for assessing and designating FMLA.

- A. Correct. Medical documentation is all the same – there's no need to duplicate paperwork.
- B. Incorrect. Department of Labor has different requirements for determining FMLA eligibility and documentation for accommodations will not be sufficient.

Slide 42

Quiz Question 7

Dan is returning to work after being on block FMLA for 8 weeks due to depression. He submits an FTR stating he needs attend weekly appointments for 1 hour/day. How should Dan's FTR be handled?

- A. Engage in the interactive process to determine if there's an alternative to Dan attending his appointments – he's missed a lot of time already.
- B. Dan has 4 weeks remaining of FMLA. He should be transitioned to intermittent FMLA for his appointments. If his FMLA exhausts, engage in the interactive process to assess accommodations including leave.
- C. Mandate Dan's appointments be with the internal EAP so he doesn't have to miss too much time.

Slide 43

Quiz Question 8

Rachel is receiving leave as an accommodation for a mental health disorder. Since she hasn't been with the company long enough, she isn't eligible for FMLA. She contacts HR and asks what will happen to her health insurance and other benefits while she is out. HR tells her...

- A. Only employees under FMLA continue to receive benefits.
- B. She will continue to receive benefits but only if she has enough PTO and other accruals to cover lost time.
- C. She continues to receive her benefits while on leave.

Slide 44

Quiz Question 9

Jack, an FMLA eligible employee, has a WC injury that results in a permanent condition. The condition qualifies as a disability under ADA. Jack submits an FTR identifying he cannot return to his previous position due to his restrictions. What happens to Jack when it's determined he can't return?

- A. Jack will be terminated because he was unable to return to work.
- B. The interactive process should be engaged to assess reassignment as a reasonable accommodation.
- C. Jack can remain on his TMD as a long-term accommodation.

Slide 45

Quiz Question 10

Molly has worked for her company for 11 months and needs leave for 8 weeks. After engaging in the interactive process, she receives leave as an accommodation and is told it will transition to FMLA at one year of employment, as she has already met the hour requirement. Following Molly's leave, what requirement is her employer expected to follow?

- A. Return Molly to any position with a current vacancy.
- B. Return Molly to the same position or an equivalent position.
- C. Return Molly to the same position, absent any undue hardship.

Slide 46

Best practices

Ways to ensure compliance

Slide 47

Getting it Right

- Successfully applying and complying with each law can:
 - Reduce turnover
 - Increase productivity

- Improve morale
- Reduce costs
- Lessen potential legal claims and fees \
- Formal process
 - Enhances consistency across an organization
 - Allows for policy development with concrete steps and timelines

Slide 48

Creating Compliance

- Define roles with your stakeholders
 - Establish and communicate responsibilities
 - Outline objectives and expectations
- Develop communication tools
 - Templates for case trigger points
 - Methods to inform employees of rights and resources

Slide 49

Training

- Supervisors and front line managers are often first to know of employee's concerns. Train on:

- What they can and can't ask
- How to refer and who to refer to
- In person
 - New Hire
 - Annual
- Compliance notices
 - Annual notice on obligations and requirements
 - Clearly identify the overlap and interplay with each law

Slide 50

Return to Work Considerations

Don't wait! Engage employee prior to leave exhaustion

Rely on stakeholders

Utilize communication templates

Evaluate and consider all potential accommodations

Will vary case by case but could include

Modified duty

Telework

Modified schedule

Ergonomics

Reassignment

Slide 51

Remember to:

Assess all applicable laws in a case – often more than one

Begin with the law(s) that provide the greatest level of protection

Avoid 100% healed policies and consider accommodations that can help employee return

Maintain accurate job descriptions and provide a copy with request for medical information

Slide 52

And Don't Forget –

ADA may not apply first. Although it's always case by case, consider it when:

Employee is not eligible for FMLA

Employee exhausts all of their FMLA

Fitness to return from FMLA or Workers' Compensation includes restrictions

Reasonable accommodation may enable employer continue working or return to work

Employee cannot return to prior position with or without accommodations – evaluate reassignment

Slide 53

Questions?

Slide 54

Submitting Questions

In the webinar platform:

You may type and submit questions in the CHAT area text box or press Control+M and enter text in the CHAT area; your questions and comments will only be visible by session moderators

If you are connected via a mobile device you may submit questions in the CHAT area within the app

Questions may also be emailed to:
ADAtraining@transcen.org

Slide 55

Sources

EEOC Litigation Statistics

US Department of Labor, Wage and Hour Division

Slide 56

Mid-Atlantic ADA Center

TransCen, Inc.

12300 Twinbrook Parkway, Suite 350

Rockville, MD 20852

Toll Free: 800-949-4232 (DC, DE, MD, PA, VA, WV)

Telephone: 301-217-0124

Fax: 301-251-3762

TTY: 301-217-0124

ADAinfo@transcen.org

www.ADAinfo.org