

The Bermuda Triangle Of Leaves

Attendees will learn about The Family Medical Leave Act (FMLA), ADA, Workers Compensation and how to successfully navigate through these and avoid the top mistakes and missteps that can occur.

This presentation is to be informative and not to promote specific products, services companies, etc. Illinois ASBO Sponsored Programs are permitted to promote products and services in accordance with the Service Associate Ethics Policy and Code of Conduct.

Introductions

Joy Duce, Presenter
Partner-in-Charge, Sikich LLP



Brian O’Keeffe, Moderator
Assistant Superintendent
Arbor Park School District #145

ILLINOIS ASBO ETHICS STATEMENT

This information is for the presenters only, please remove this slide before your presentation.

- The Moderator will help ensure the Illinois ASBO Code of Ethics is adhered to throughout the presentation and ensuing audience discussion.
- Moderators are given the authority to ask any attendee to leave if they become combative with presenters.
- This presentation is to be informative and not to promote specific products, services, companies, etc.
- If a vendor is a presenter and uses the presentation as a platform to “sell” their product or services, the Moderator has the authority to stop the presentation if the presenter refuses to modify their content.
- Any vendor presenter who violates these regulations may be excluded from presenting at future presentations.

Understanding the Interplay Between FMLA and ADA



Basic Statutory Obligations

ADA

- Disability discrimination by employers prohibited
- Reasonable accommodation required



Basic Statutory Obligations (cont.)

FMLA

- 12 weeks' job-protected leave for family or medical reasons
- 12 weeks' job-protected leave for a “qualifying exigency” arising out of a family member's covered active duty
- 26 weeks' job-protected leave to care for a family member who is injured or aggravates an injury while on active duty

Covered Employers

ADA

- Private employers and employment agencies with 15 or more employees
- State and local governments, but not the federal government

FMLA

- Private employers with 50 or more employees
- State and local government employers and most federal government employers

Qualifying Events

ADA

- Qualified individual must have a physical or mental impairment that substantially limits a major life activity;
OR
- A “record of” such impairment; OR
- Be “regarded” by others as having an impairment

Qualifying Events (cont.)

FMLA

- The employee's own serious medical condition; OR
- A serious medical condition of the employee's spouse, child, or parent; OR
- The birth, adoption, or foster care placement of a minor child; OR
- Qualifying exigency arising from a family member's call to active duty; OR
- Family member's injury or illness incurred or aggravated while on active duty military service

Qualifying Events (cont.)

ADA and FMLA compared:

- ADA and FMLA must be analyzed separately
- Some disabilities may also be serious health conditions
- However, some FMLA-covered serious health conditions do not qualify under ADA

Employee Eligibility

ADA

- Individual with a disability who is qualified for the job in question
- Can perform the job with or without reasonable accommodation

FMLA

- Worked for 12 months and a total of 1,250 hours



Notice and Posting Requirements

ADA

- Notice posted describing protections of the ADA
- Put in posters and employee handbooks

FMLA

- Notice posted describing protections of the FMLA
- Employee handbooks
- Eligibility
- Rights and responsibilities
- Designation notice

Preemployment Inquiries

ADA

- May ask about reasonable accommodation when:
 - Applicant is told what the hiring process involves
 - Applicant has an obvious disability
 - Described or demonstrated how applicant would perform job

FMLA

- No requirements
- Not advisable to ask about previously taken leave

Post-offer Inquiries and Examinations

ADA

- Reasonable accommodation and documentation
- Preemployment physical
- Medical exams and disability inquiries

FMLA

- No specific requirement for postoffer inquiries
- Returning employee may be required to provide a fitness-for-duty certificate

Genetic Information Nondiscrimination Act (GINA)

Prohibits employers from:

- Requesting, obtaining, or using genetic information
- Genetic information includes:
 - Information about an individual's genetic tests
 - Genetic tests of family members
 - Family medical history (diseases or disorders of family members)

GINA Notice - ADA

Employers requesting medical information:

- *Must* direct the healthcare provider *not to provide genetic information*
- Should include the “safe harbor” notice



GINA Notice - FMLA

- When requesting medical information about an employee, use the standard safe harbor notice
- When requesting medical information about a family member, add “Please note that information about the health condition of your patient may be provided as needed to complete the certification request.”

Employee Notice

ADA

- Employee must self-identify if disability is not obvious
- Eligible employee and employer must discuss reasonable accommodation

FMLA

- Where leave is foreseeable, the employee must give at least 30 days' notice or reasonable notice
- If leave is not foreseeable, employee must follow procedure for such leave
- For qualifying exigency leave, notice must be provided as soon as practicable

Medical Certification

ADA

- If the employee requests an accommodation and the disability is not obvious



Medical Certification (cont.)

FMLA

- For a medical condition, the employer may require that the employee provide certification from a healthcare provider

Independent Medical Examinations

ADA

- When disability documentation is insufficient
- Conducted at the employer's expense

FMLA

- When employer has reason to doubt medical certification
- Conducted at the employer's expense

Disqualifying Events

ADA

- Failure to provide necessary medical information
- Refusal of a reasonable accommodation

FMLA

- Delay in returning completed medical certification (delays FMLA leave)
- Failure or refusal to return certification

Undue Hardship

ADA

- Accommodation not required
- Consider the nature and cost of the accommodation

FMLA

- No undue hardship provision

Substance Abuse

ADA

- Alcoholism covered as a disability
- Current illegal drug use not covered
- Drug tests not prohibited

FMLA

- Current drug or alcohol addiction covered if condition qualifies as a “serious health condition”
- Employee must be receiving treatment or rehabilitation

Other Exceptions

ADA

- Direct threat to health or safety

FMLA

- Spouses in the same workplace

Attendance Policies

ADA

- “No-fault” leave policies not allowed

FMLA

- Disregard FMLA leave for disciplinary purposes



Leave Requirements

ADA

- No paid or unpaid leave requirement
- Depends on reasonable accommodation and accrued leave

FMLA

- 12 weeks of unpaid leave for birth of a child, adoption or foster placement, a family member's serious health condition, the employee's serious health condition, or a qualifying exigency
- 26 weeks of unpaid leave for servicemember caregiver leave
- May substitute accrued paid leave

Benefits Issues

ADA

- Same as benefits for other unpaid leave

FMLA

- Employer must maintain group health insurance during leave
- Other benefits follow employer policies for other unpaid leave

Intermittent Leave

ADA

- May be a reasonable accommodation
- Compensation

FMLA

- Available for employee's serious medical conditions, a family member's medical conditions, qualifying exigency leave, or for servicemember caregiver leave

Part-Time Employees

ADA

- Covered by the ADA

FMLA

- Covered if they have worked for 1,250 hours in the past 12 months



Reinstatement

ADA

- Entitled to same position
- If the position is no longer available, must place in a vacant position at a lower level
- Not required to promote or “bump”

FMLA

- Entitled to same or equivalent position
- Exceptions
 - Certification
 - Termination
 - Intent to return
 - Fraud
 - Policy violations
 - Key employee

Light Duty

ADA

- May provide a light-duty position as a reasonable accommodation
- Not required to create light-duty position

FMLA

- For nonintermittent leave, employer cannot insist on light duty
- Light-duty hours do not count as FMLA leave

Termination

ADA

- Permitted if employee cannot perform job and no reasonable accommodation can be made

FMLA

- Permitted if an employee fails to return to work and if the ADA does not offer additional protection



EMPLOYEE TERMINATION

Name	Occupation	Address	Age	Date	Location
					Zip

Write your idea

ome

Recordkeeping and Reporting

ADA

- Recommended to record requests for accommodation, attempt(s) to accommodate, and reason(s) that attempts to accommodate were not successful
- Medical information is confidential

FMLA

- Keep records for at least a 3-year period
- Medical information is confidential

Retaliation

ADA

- No discrimination or retaliation against any person (disabled or not) who has exercised rights under the ADA, taken action, or assisted in any action under the ADA, regardless of whether the person has a covered disability

FMLA

- No discrimination or retaliation against any person (eligible for leave or not) who has taken action or assisted in any action under the FMLA

Employer Liability

ADA

- Acts of employer, supervisors or agents, co-workers, third-party nonemployees
- Back pay, reinstatement, front pay, attorney's fees, and other equitable relief, if appropriate

FMLA

- Acts of employer, supervisors, or agents
- Wages, reinstatement, promotion, lost benefits, attorney's fees, and interest
- For willful violations, double damages may be awarded

Points to Remember

- Check coverage
- Document
- Monitor
- Be aware

Workers' Compensation



Objectives

You will be able to:

- Recognize the benefits of workers' compensation
- Complete reports and help workers file claims
- Maintain contact with employees on leave and ease their return to work
- Help prevent workplace accidents and keep workers' comp costs down

Outline

- Workers' comp, what it covers, and when it applies
- Costs and special provisions
- Claims and reporting requirements
- Contact during leave and the return to work
- Dealing with permanent disabilities
- Preventing workplace accidents

Benefits of Workers' Comp

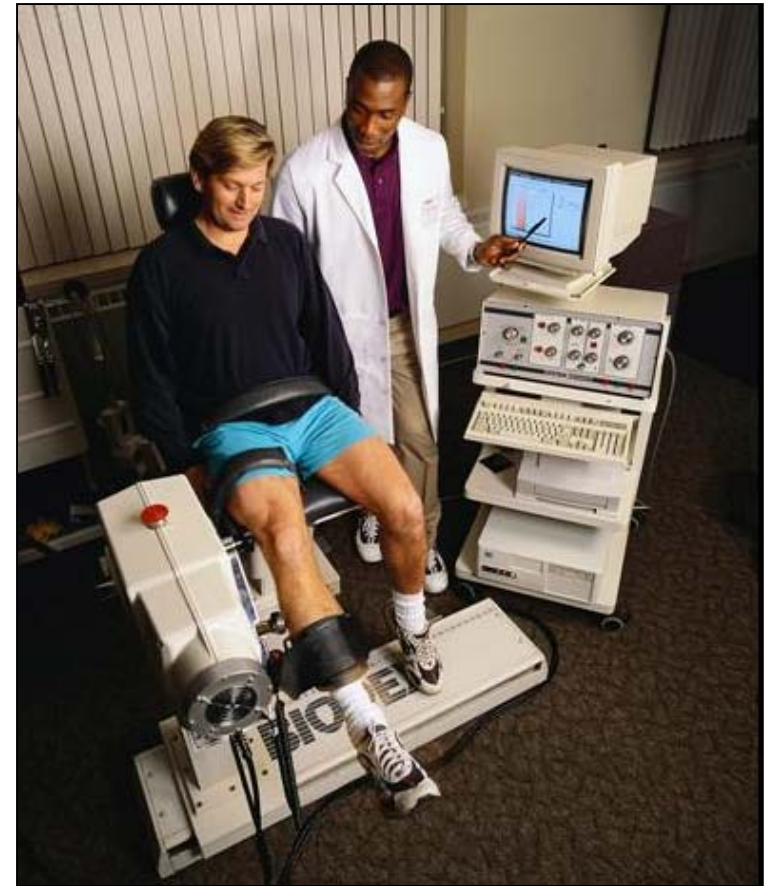
- Workers' comp is good for our company and our employees
- It ensures prompt and proper care for work-related injuries and illness
- It provides income while workers recover and eases their return to work

What Is Workers' Comp?

- Accident insurance program
- State mandated
- Compulsory
- Company funded

What Does It Cover?

- Medical and rehabilitation expenses
- Lost wages
- Death benefits



When Does It Apply?

- Work-related injuries
- Work-related illness
- Exceptions

Cost of Workers' Comp

- State formula
- Risk factors for specific jobs
- Employer's claims history



Special Provisions

- No lawsuits
- No retaliation

Filing Claims

- Normal claims
- Fraudulent claims

Reporting Requirements

- Accident reports
- Medical reports
- OSHA forms



Workers' Comp Basics

Questions?



Maintaining Contact

- Keep up employee's morale
- Encourage employees to maintain treatment
- Demonstrate that the employee is expected back at work
- Alert claims manager to any problems
- Show concern for employee's well-being

Easing the Return to Work

- Rehabilitation and therapy
- Consultation with medical professionals
- Alternate duty work
- When no alternate duty work is available



Alternate Duty

- Transitional phase
- Way for a recovering employee to make a productive contribution
- Temporary
- Monitored



Alternate Duty (cont.)

- Chance for employee to rebuild strength
- Opportunity for employee to learn prevention techniques
- Morale booster



What Alternate Duty Isn't

- Make-work
- An excuse to goof off
- A task that could re-injure the worker or aggravate an illness

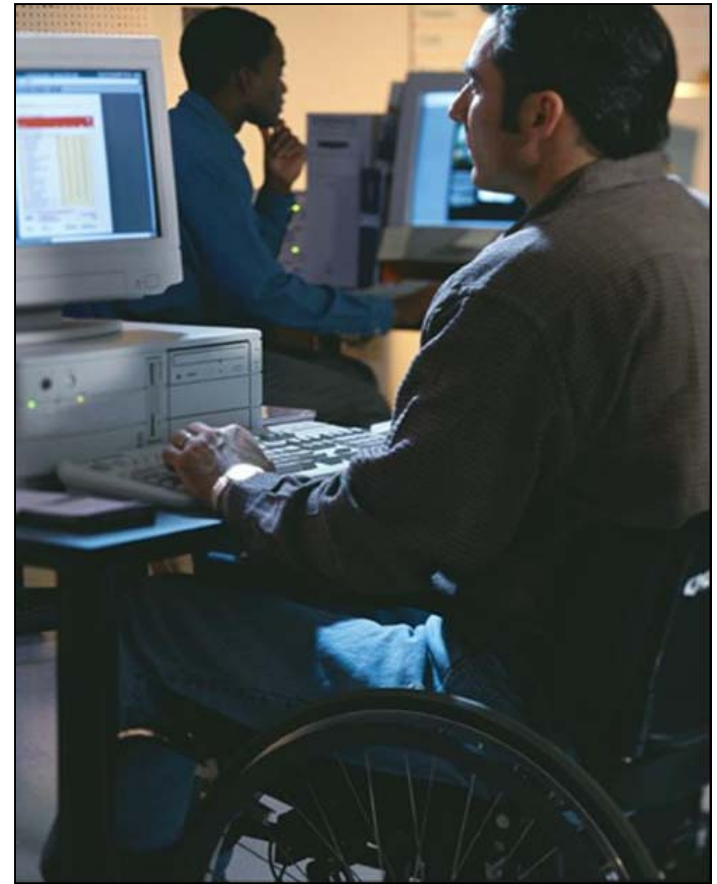


Alternate Duty Suggestions

- Less strenuous parts of normal job
- Normal job tasks performed part-time or at a slower pace
- A combination of less strenuous or stressful parts of several jobs
- A special project without a tight deadline

Permanent Disability

- Some disabilities prevent any work
- Others may require an employee to do a different job



Return to Work

Questions?



Key Points to Remember

- Report all injuries and illness promptly
- Help workers file claims
- Maintain contact with workers on leave
- Help them make the transition back to work
- Help reduce claims and keep down costs by promoting safety and preventing accidents

Questions and Answers

We thank you for your time!

Presenters:

MODERATOR INFO:

Brian O’Keeffe, Assistant Superintendent; Arbor Park School District #145
(708) 687-8040; bokeeffe@arbor145.org

PRESENTER INFO:

Joy Duce, SPHR, Partner-in-Charge; Sikich LLP
(630) 566-8454; joy.duce@sikich.com