

Abuse of FMLA/ADA/Workers Comp: Prevention & Investigation

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Why this topic? Why now?



Today's Objective

Elevate Awareness and Preparedness

Agenda

- Foundational Knowledge
- Critical Resources
- Case Studies
- Process
- Pulling it all together



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Foundational Knowledge

Employer/Employee Rights & Obligations

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- Workers Compensation
 - Family Medical Leave Act
 - American Disabilities Act

Workers' Compensation

[LIBC-100 WC & The Injured Worker Pamphlet](#)

If an employee sustains a job injury or a work-related illness, the employee may be eligible for coverage of medical expenses and, in the event the employee is unable to work, wage-loss compensation benefits may be paid until the employee is able to go back to work. Additionally, death benefits for work-related deaths may be paid to dependent survivors.

Typically, benefits are paid by private insurance companies (also includes third-party administrators) or the State Workers' Insurance Fund (a state-run workers' compensation insurance carrier) self-insured employers.

Companies need to confirm what protection is provided in the state(s) in which they conduct business.

Family Medical Leave Act

[Family and Medical Leave Act | U.S. Department of Labor \(dol.gov\)](#)

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Eligible employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
 - to care for the employee's spouse, child, or parent who has a serious health condition;
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**
- Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

American Disabilities Act

<https://www.ada.gov>

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

ADA Title I: Employment

Title I requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.

Religious entities with 15 or more employees are covered under title I.

Reasonable Accommodation

[Accommodations | U.S. Department of Labor \(dol.gov\)](#)

Under [Title I of the Americans with Disabilities Act \(ADA\)](#), a **reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done during the hiring process.** These modifications enable an individual with a disability to have an equal opportunity not only to get a job, but successfully perform their job tasks to the same extent as people without disabilities. The ADA requires reasonable accommodations as they relate to three aspects of employment: 1) ensuring equal opportunity in the application process; 2) enabling a qualified individual with a disability to perform the essential functions of a job; and 3) making it possible for an employee with a disability to enjoy equal benefits and privileges of employment.

- Physical changes
 - Installing a ramp or modifying a rest room
 - Modifying the layout of a workspace
- Accessible and assistive technologies
 - Ensuring computer software is accessible
 - Providing screen reader software
 - Using videophones to facilitate communications with colleagues who are deaf
- Accessible communications
 - Providing sign language interpreters or closed captioning at meetings and events
 - Making materials available in Braille or large print
- Policy enhancements
 - Modifying a policy to allow a service animal in a business setting
 - Adjusting work schedules so employees with chronic medical conditions can go to medical appointments and complete their work at alternate times or locations



Critical Resources

Strategic Partners

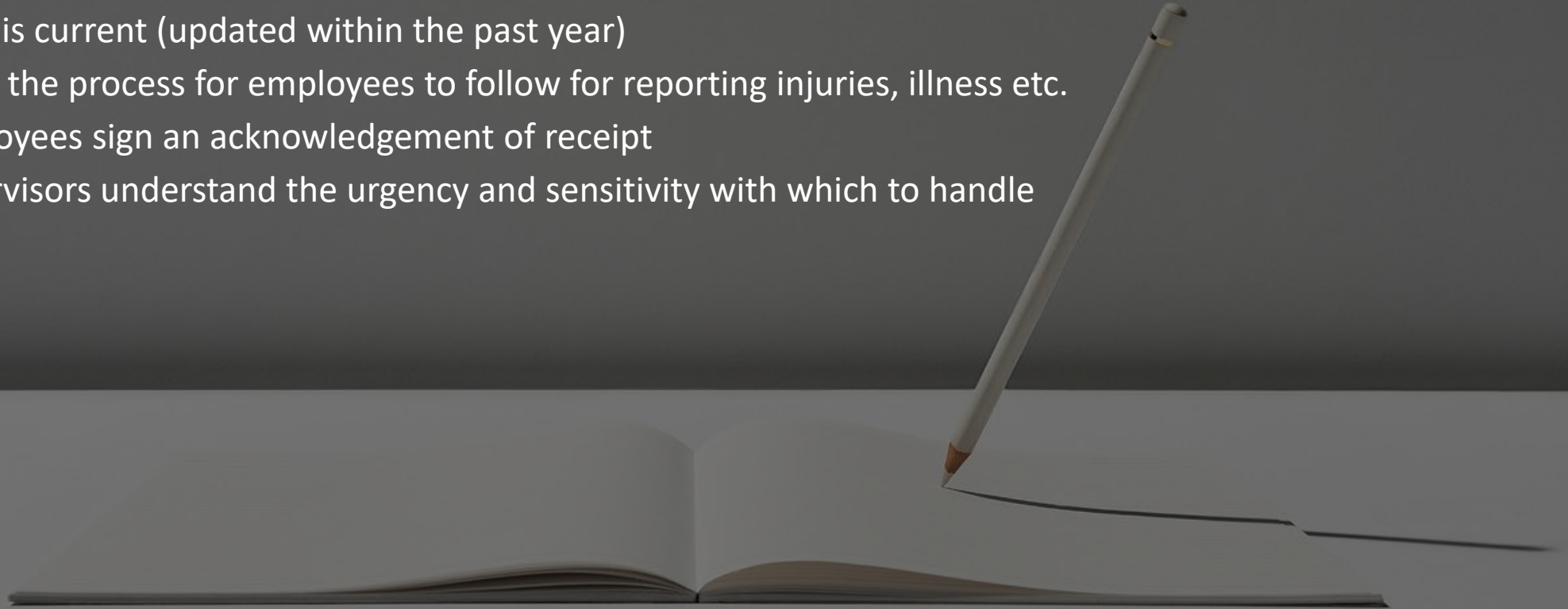
Yes, these are your friends!

- Attorney
- Insurance Broker and/or Provider
- Employee Assistance Program Provider



Employee Handbook

1. Make sure it is current (updated within the past year)
2. Ensure it has the process for employees to follow for reporting injuries, illness etc.
3. Ensure employees sign an acknowledgement of receipt
4. Ensure supervisors understand the urgency and sensitivity with which to handle concerns



Job Description

Name _____

Signature _____

Date _____

Case Studies

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Case Study #1

Employee suffers an injury

- Was it work related?
- Was it a result of an incident or ongoing wear and tear?
- Will surgery be required?
- Will time away from work be needed?
- Will light-duty be needed to return to work?
- Will there be ongoing pain management be needed?

Case Study #2

Employee minor medical condition becomes severe

- Did work impact it?
- Will surgery be required?
- Will extended time away from work be needed?
- Will a modified schedule work restrictions be needed to return to work?
- Will there be ongoing treatment?



Process

Process

- Conduct Investigation
 - Internal or external investigator?
 - Witnesses?
 - Strategic Partner assistance?
- Document every conversation
- Assess level of risk with management
- Monitor the situation by checking in regularly with employees and medical providers

Minimizing Abuse

- Stay current with legislation
- Use reliable resources
- Stay connected to strategic partners
- Consistently follow the process and best practices
- Show compassion, be empathetic but DO NOT let emotions get in the way!



Poll Question

How prepared are you to handle a complex medical or injury related situation?

- a. Good, I have handled situations like this before
- b. Good, but haven't had to handle one yet
- c. Unsure, it may be helpful to assess our process
- d. Not good, I want help setting up a process

Questions or Clarifications?

Presenter:



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Kristi focuses her extensive expertise on helping clients design a workforce that is not only prepared for the future, but one that leverages disruption to thrive and succeed. Weaving together a unique blend of anticipatory tools and insights with practical solutions, providing clients with an organizational architecture that empowers them for the NextGen.

Applying deep workforce knowledge, Kristi helps companies overcome challenges by providing strategic direction, implementing and improving policies and procedures, and skillfully turning human capital management into a competitive advantage.

Professional Highlights

- National AE Industry Presenter
- PhD - Organizational Management
- MBA
- BS - Accounting
- Senior Certified HR Professional