

# Employment Liability Review



# The “NEW” ADA

- ▶ Goal remains the same: Prohibits discrimination on the basis of disability
  - ▶ Individual must have a disability or have a relationship with an individual with a disability to be protected.
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# The “NEW” ADA (con’t)

- ▶ Old ADA – “Disability” was defined narrowly due to interpretation of the law by the US Supreme Court.
  - A disability “substantially limits major life activities” – but narrowly defined
  - “Mitigating Measures” could prevent plaintiffs from being found disabled

# The “NEW” ADA (con’t)

- ▶ “NEW” ADA – rejects US Supreme Court decisions that narrow the definition of disability.
- ▶ So what does it mean today?
  - Disability is a physical or mental “impairment”
  - “Major life activities” explicitly broadened
  - “Mitigating measures” do not count

# The “NEW” ADA (con’t)

- ▶ Likely outcome: Many more individuals considered disabled and therefore protected by ADA

# The “NEW” ADA (con’t)

- ▶ The Good News: Employer implementation of ADA should not change that much
  - Interactive process
  - *Reasonable* accommodation
  - Best Practices: Help your employees do the best job they can.
  - Call your attorney

# New FMLA Regulations

- ▶ Purpose: 12 weeks of leave for
  - Birth, adoption, foster care placement
  - Serious health condition including family members
  - Military family leave
- ▶ Job and Insurance *Protection*
  - How leave is paid is a separate issue

# New FMLA Regulations (con't)

## ▶ Complicating factors:

- Eligibility – 1250 hrs. in previous 12 mos.
  - “Serious health condition”
  - Family member
  - Calculation of leave
  - Notice Requirements
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# New FMLA Regulations (con't)

## ▶ What you need to know:

- You must review your agency's policy
  - Employee must give notice
  - Physician Certification preferred
  - Fitness for Duty certification preferred
  - Consistency is key
  - Military families require special attention
  - Call me
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# HR Policy

## ▶ Consistency is Preferred

- OMB Policy Manual – Use as sample
- [www.nd.gov/hrms/docs/HrPolicyManual.pdf](http://www.nd.gov/hrms/docs/HrPolicyManual.pdf)
  - Current
  - Consistent
  - Attorney Reviewed
  - Familiar to other decision makers (ALJs, Judges)

# Open Records & Retention

- ▶ If you put pen to paper it becomes an open record.
  
  - ▶ Employment Concerns:
    - “Supervisor Files”
    - Non-state webmail
    - Email & voicemail
    - State use of personal devices
    - Correspondence with attorneys
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# Thank You!



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