

# LEAVES OF ABSENCE

*Presented by:*

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## Agenda for Today

- Regulatory and Legislative Developments
- Recent Developments in the FMLA Case Law
- Recent Cases Regarding Leave as an Accommodation Under the ADA



# Leaves of Absence

## *How We Got Here*

- Leave is still a fairly new concept relative to other areas of L&E
- FMLA
  - Seems driven first by Regulations and commentary
  - Then the DOL and the case law
- ADA
  - Seems driven by the EEOC and the case law
  - Regulations seem secondary?
- State and local law counterparts

## Regulatory Developments

- **Recent DOL Publications RE: FMLA (pp. 1-2)**
  - FLSA2018-19: the compensability of short, intermittent FMLA breaks throughout the workday
  - *Employer's Guide to FMLA*
  - Updated forms and poster
  - Fact Sheet #28N: Joint Employment and primary and secondary employers under FMLA

# More Regulatory Developments

## ▪ EEOC and the ADA

- EEOC’s Resource Document: *Employer Provided Leave Under the ADA* (May 2016)
- Continued, active area of systemic and individual litigation by the EEOC
- Moving into the arena of attendance policy scrutiny—is there a difference?

# Mandatory Paid Sick Leave

*We Can’t Get Stuck Here, But...*

- **General trend and volume (and resulting complexity and patchwork)**
- **Texas gets on board**
- **Other issues this may impact**
  - Termination of benefits
  - When to start the interactive process
  - Others?

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## Title search: Leaves of Absence

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25<sup>th</sup> Annual Labor and Employment Law Conference session  
"Leaves of Absence Under the FMLA and ADA"