

LEAVES OF ABSENCE

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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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"Leaves of Absence Under the FMLA and ADA"