



NATIONAL EMPLOYMENT LAW INSTITUTE

*Twenty-Eighth Annual*

# ADA & FMLA COMPLIANCE UPDATE

*The nation's most comprehensive program on new legal developments  
and practical advice on questions regarding ADA & FMLA compliance.*

**San Francisco, CA**

April 12-13, 2018

Westin St. Francis

**Washington, DC**

April 19-20, 2018

W Washington DC

**Chicago, IL**

April 26-27, 2018

The Gwen

**DAVID K. FRAM, Esq.**

*Program Chair • Director, ADA & EEO Services  
National Employment Law Institute • Golden, Colorado  
For information on ADA in-house training, contact NELI.*

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### REGISTRATION FEE INCLUDES:

- 2018 ADA & FMLA Compliance Manual (*in both print and downloadable PDF formats*).
- **12 - 14.5 CLE / PDC / CEU hours, depending upon the jurisdiction**, and CLE filing in all states where you're licensed for no additional charge.
- Continental Breakfast both mornings.
- Luncheon hosted by NELI, an opportunity to network with other participants and faculty.

### 2018 ADA & FMLA COMPLIANCE MANUAL

*(print & downloadable PDF formats)*

A definitive research and reference workbook, containing papers and supporting documents written and compiled exclusively for this program. The Compliance Manual is available for purchase by those who cannot attend the Update. Please fill out the Registration/Order form and return it to NELI.

For rush orders: phone, fax, or e-mail NELI. Purchasers of the Manual will receive their orders following the program series.

## REGISTRATION AND ORDER FORM

Please accept my registration for the:

### 2018 ADA & FMLA COMPLIANCE UPDATE

- San Francisco, CA, April 12-13 • Westin St. Francis  
 Washington, DC, April 19-20 • W Washington DC  
 Chicago, IL, April 26-27 • The Gwen, A Starwood Hotel

Registration Fee: .....\$995.00

Early Registration Fee: .....\$945.00

(Paid Registration received by March 21, March 28 and April 4, respectively.)

- I am unable to attend. Please send me the:

### 2018 ADA & FMLA Compliance Manual

Print \_\_\_ copies @ \$189.00.....

Downloadable PDF @ \$169.00.....

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Do you require any accommodation, due to a disability, to attend this program?  No  Yes

(Describe) \_\_\_\_\_

CLE CREDIT: Provide state and bar numbers.

### REGISTRATION INFORMATION

**Early registration is advised.** Registrations will be confirmed by e-mail. On-site registrations are subject to space availability. **Payment in full is required prior to the program.**

Registration Fee: \$995.00 • Early Discounted Fee: \$945.00

#### Early Registration Cut-Off Dates

San Francisco - March 21

Washington, DC - March 28 • Chicago - April 4

**Group Rates, Discounts and Substitutions** are available and permissible. Email [neli@neli.org](mailto:neli@neli.org) for more information.

**Cancellation Policy:** Cancellations must be confirmed prior to the program. Registrations cancelled more than ten business days prior to the program may elect to receive a full fee credit, or a refund, less a \$150.00 administrative fee. Those cancelled ten or fewer business days prior to the program will receive a fee credit, less a \$250.00 administrative fee. Transfers between cities must be pre-approved. Fee credits may be applied during the next 12 month period to any of NELI's programs or publications. Paid no-shows will receive the program Manual upon request in full consideration of fees paid. Unpaid cancellations and unpaid no-shows are liable for the registration fee. Any refunds will be processed after the conclusion of the program series.

### CONTINUING EDUCATION

This program will provide between **12-14.5 CLE / PDC / CEU credits, depending upon the jurisdiction.** NELI applies for credit from all MCLE states. Contact us for approval status. To apply for CLE credit, please complete box on registration form. NELI will provide the necessary forms and proof of attendance. NELI is a State Bar of California MCLE approved provider, is recognized by most professional associations as an approved CEU/CPE provider, and is an approved provider of HRCI and SHRM for recertification credit.

As always, **NELI will file in as many jurisdictions/states as you are licensed for no additional fee**, although registrants need to file for credit on their own behalf in jurisdictions that require it.

### REGISTRATION PROCEDURE

**MAIL: NELI, P. O. Box 1189, Golden, Colorado 80402**

**PHONE: (303) 861-5600**, 8:00 a.m. - 4:30 p.m. Mountain Time

**FAX: (303) 861-5665**

**INTERNET: [www.neli.org](http://www.neli.org)**

**EMAIL: [registrar@neli.org](mailto:registrar@neli.org)**

### HOTEL ACCOMMODATIONS

For NELI's group rate, reservations must be made directly with the hotel (not through a travel agent). Room blocks are limited and group rates cannot be guaranteed after the listed cut-off dates, and may be fully booked before then. Reserve early and state that you are attending NELI's *ADA & FMLA Compliance Update*. If you experience difficulty, please call NELI. After the cut-off date, reservations at the group rate are on a space available basis.

#### San Francisco - Westin St. Francis

335 Powell Street, San Francisco, CA 94102

(415) 397-7000 or (888) 627-8546

Traditional - \$325.00; Deluxe - \$355.00 (plus tax)

**Reservation cut-off date: March 21, 2018**

#### Washington, DC - W Washington DC

515 - 15th Street, NW, Washington, DC 20004

(202) 661-2400 or (888) 627-7816

"Spectacular" Room (exterior) - \$395.00 (plus tax)

"Wonderful" Room (interior) - \$375.00 (plus tax)

**Reservation cut-off date: March 28, 2018**

#### Chicago - The Gwen, A Starwood Hotel

521 North Rush Street, Chicago, IL 60611

(312) 645-1500 or (866) 716-8136

Run-of-House - \$279.00 (plus tax)

**Reservation cut-off date: April 4, 2018**

- Lower rates may be available on hotel websites •

## 2018 AGENDA

### DAY ONE

#### 7:45 Program Check-In & Continental Breakfast

#### 8:30 Trends in the Law: The ADA After 28 Years

- Our experts review trends in disability law 28 years after passage of the ADA, including thoughts on the direction of the ADA under the Trump Administration
- Panelists*

#### 9:00 Update on the Definition of “Disability”

- Exciting new cases on the definition of “disability” under the ADA, new cases on “substantially limits,” including seriousness and duration issues, and practical tips on how to avoid “regarding” an individual as disabled
- Whether an employer can or should simply “assume” disability (and, if so, how to document practices)

*San Francisco - Sabrina Shadi*

*Washington, DC - David Fram*

*Chicago - David Fram*

#### 10:15 Refreshment Break

#### 10:30 Whether an Individual is “Qualified”

- Considerations and decisions on the meaning of “qualified,” evidence courts use to determine what is “essential,” importance of up-to-date job descriptions and examining the amount of time spent on the function, whether handling job stress, regular attendance, and lifting are considered “essential,” EEOC’s controversial decisions on shifts, and overtime, and whether positions may change under the Trump Administration’s appointments
- Important evidence concerning whether an individual is “qualified,” including the danger of inflated performance evaluations, inconsistent doctors’ notes, and statements made in another forum

*San Francisco - David Fram*

*Washington, DC - Joshua Stein*

*Chicago - Paul Buchanan*

#### 12:00 Luncheon (Hosted by NELI)

#### 1:00 Direct Threat Issues

- Why and when employers should avoid arguing direct threat, how courts and the EEOC have analyzed whether an individual poses a “direct threat,” handling conditions such as mental disabilities, and whether employers can “balance” risk against harm, especially when the harm is to co-workers or the public

*San Francisco - Sabrina Shadi*

*Washington, DC - Joshua Stein*

*Chicago - David Fram*

#### 1:30 Understanding Conduct Rules

- Analysis of particular conduct rules, such as policies on drugs (including state-legalized marijuana), alcohol, violence, safety, co-worker courtesy, and tardiness
- Whether discipline must be rescinded if an employee breaks a conduct rule because of a disability

*All Locations - David Fram*

#### 2:00 Practical “Reasonable Accommodation” Issues

- Latest cases and EEOC decisions on practical reasonable accommodation questions, such as whether “preferential treatment” is required, the importance of training first-line supervisors on how to recognize “triggers” to the accommodation process, how supervisors and HR personnel should document the process, and what medical information may be obtained

- Current cases on leave (including repeated leave extensions) and how this interplays with the FMLA, schedule adjustments, changing supervisors, and more.

- **There will be a 15 minute break at 2:45 p.m.**

*San Francisco - Sabrina Shadi & David Fram*

*Washington, DC - Joshua Stein & David Fram*

*Chicago - Paul Buchanan & David Fram*

#### 5:00 Adjourn

### DAY TWO

#### 7:30 Continental Breakfast

#### 8:00 Requesting Medical Information Under the ADA

- Latest cases and EEOC’s policies concerning the ADA’s restrictions on medical questions and exams
- Emerging developments on fitness-for-duty exams, permissible questions when an applicant or employee requests reasonable accommodation, and critical new confidentiality issues, including EEOC’s extremely broad crackdown on employers in cases involving allegations of supervisors’ disclosure (or co-mingling) of medical information

*All Locations - David Fram*

#### 8:45 Update on Complex FMLA Issues

- Enforcement measures from DOL and how they might change with the Trump Administration, proposed federal and state family and medical leave legislation, how the various paid sick leave laws affect FMLA administration, guidance on DOL audits and on-sites, cases on the importance of clear and accurate communications, coverage and eligibility issues, notice requirements of the employee and employer, such as whether employers must send FMLA notices so receipt is verifiable, how far employers can go when requiring employees to provide notice of intermittent absences according to specific employer procedures, whether an employer can still designate FMLA-qualifying leave if the employee refuses, guidance on what qualifies as leave to care for a family member and updates on eligible adult children, “equivalent position,” the risks of eliminating the job of an employee on FMLA leave, and how to avoid employer conduct that defeats summary judgment

- Best practices in managing the medical certification process including how to handle an employee who states that the return to work date is “unknown” or the certification is otherwise vague, the duty to return an employee to work when the employer disagrees with the doctor’s fitness for duty certification, whether any leave is FMLA protected if the certification is turned in late, the standard for employees being relieved of meeting medical certification deadlines because they are making diligent, good faith efforts, effectively using recertifications if intermittent leave abuse is suspected, and whether/how an employer can require a medical exam upon return to work
- Tips for managing intermittent leave abuse including fraudulent use of leave and the honest belief defense

- **There will be a 15 minute break at 10:15 a.m.**

*San Francisco - Martha Gates & Dan Grinfas*

*Washington, DC - Megan Norris & Darrell VanDeusen*

*Chicago - Ellen McLaughlin & Jeff Nowak*

#### 12:00 ADA/FMLA Case Study

- Interactive session analyzing factual scenario likely to arise in the workplace, including practical strategies for managing the employee on a medical leave

*San Francisco - Gates, Grinfas, Fram*

*Washington, DC - Norris, VanDeusen, Fram*

*Chicago - McLaughlin, Nowak, Fram*

#### 1:15 Adjourn

#### EEOC Participation:

**On Day One, EEOC Faculty will provide commentary on the latest EEOC regulations, cases, positions, and practical guidance for employers, where applicable.**

*San Francisco & Washington, DC - Sharon Rennett*

*Chicago - Jeanne Goldberg*

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