



J. J. Keller®

**COMPLIANCE NETWORK**

# QUARTERLY REVIEW

HUMAN RESOURCES

## FMLA: 12 WORKWEEKS ISN'T ALWAYS 480 HOURS

A recent court case explains the math - page 3



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Our compliance experts are leading authorities in their fields, and every issue of **COMPLIANCE NETWORK Quarterly Review** features a special message from one of them on recent hot topics.

Sometimes the news we share provides a lesson in what *not* to do. Such is the case with the story in this issue about a federal court awarding \$35.8 million to 6,000 workers in one of the nation's largest ever wage recovery judgments.

We also help you make sense of the nitty-gritty, such as FMLA leave administration and occasions when 12 workweeks don't equal 480 hours. Our articles let you know what's on the horizon — like the update to the Form I-9. We knew you'd want to know when and why you need to switch to the new form. Whether it's what to do, or what *not* to do, to stay in compliance, **COMPLIANCE NETWORK** has you covered.

- The HR Expert Help Team at J. J. Keller & Associates, Inc.



### Terri Dougherty

Terri Dougherty, PHR, SHRM-CP, has been an Editor with J. J. Keller & Associates, Inc. since 2011. She's driven by a heartfelt dedication to assisting others and finding solutions. Terri edits *The Health and Wellness Training Advisor/LivingRight*, is co-editor of the *Everyday Drug & Alcohol Program Management* manual, and stays on top of labor law poster compliance. She also speaks at industry events on human resources topics.

Check out our other experts and learn how they can help solve your compliance problems!

**VISIT EXPERT HELP**



## EXPERT INSIGHTS

### CREATIVE ADA SOLUTIONS FOR VISUALLY IMPAIRED INDIVIDUALS

by Terri Dougherty

Whenever I read a book or see a movie and don't like the ending, I make up my own. In my world, for example, there's room for Leonardo DiCaprio on Kate Winslet's piece of driftwood at the end of Titanic.

This tactic can be applied in real-life situations as well. I recently read about an employer charged by the Equal Employment Opportunity Commission (EEOC) with failing to accommodate a blind employee and thought about all the ways this could have been resolved without a lawsuit.

In the case, a new call center employee asked for a reasonable accommodation for a visual impairment that would allow him to access information to perform the job. A vocational counselor from the state's health and human services department offered to do an assessment of the company's computer system and help purchase supportive equipment.

The company opted to handle the accommodation request internally and put the new employee on unpaid leave while it did so. Ultimately, the company said it did not have a suitable job for the employee.

The EEOC claimed that the employer did not consider or offer other accommodations that would have helped the employee in doing the job's essential functions. This violated the federal Americans with

Disabilities Act (ADA), which protects employees and applicants from disability discrimination.

Employers might be surprised at the array of assistive technology available for employees with visual impairments. Options include:

- Low-vision optical devices.
- Digital apps or recorders with transcription options.
- Smartphone and tablet apps with screen readers and text-to-speech capabilities.
- Computer screen magnification tools.
- Wayfinding tools and tracking devices.
- Anti-glare shields and light filters.
- Talking products, including talking calculators.
- Accessible maps for navigation.



In this case, the state even offered to help the employer find and pay for the technology that would have allowed the employee to do the job.

Yes, it would have taken some time and effort on the company's part to look into the technological options, but these steps would likely have cost less than a lawsuit. ↻



## TOP NEWS



### FMLA: 12 WORKWEEKS ISN'T ALWAYS 480 HOURS

Victor was an exempt supervisor who worked 60-70 hours per week.

One year, in late March, Victor began taking time off for a chronic condition. Under the federal Family and Medical Leave Act (FMLA), Victor needed planned medical treatments 1-4 times per month, resulting in him working only five days (i.e., 40 hours) per week.

The employer used a 40-hour workweek in calculating Victor's FMLA entitlement. By the following January, the employer calculated that Victor had used his 480 hours of FMLA leave and would have no more FMLA leave available until late March.

Because Victor still needed the treatment, he took paid time off (PTO), which he also exhausted.

In early March, Victor was given a new work schedule that required him to work nine hours per day, six days per week. Victor e-mailed Brian, his boss, and Stephanie, the company leave administrator, saying that per his FMLA certification, he couldn't work that schedule.

Brian replied that he would contact Stephanie to confirm Victor's FMLA accommodations. Stephanie responded that Victor didn't have any more FMLA leave available at that time.

On April 1, Victor tried to use FMLA leave. Stephanie told him he would need to provide a new certification, and that his request would be in "pending status" until she received the certification.

Victor responded to Stephanie's message saying that he needed to use FMLA leave that day. Stephanie replied that his FMLA request wasn't yet approved. Stephanie also e-mailed Brian to inform him that while she was processing Victor's FMLA leave request, Brian shouldn't approve any PTO requests from Victor. Later that day, Victor left work before the end of his scheduled shift and missed a meeting.

The employer felt that Victor violated the company's code of conduct and violated its policy that supervisors were to remain at work until their subordinates finished their shifts.

#### EMPLOYEE PARTS WAYS AND FILES SUIT

After further leave kerfuffle, Victor and his employer parted ways, and Victor filed suit, arguing that he was entitled to more than 480 hours of FMLA leave based on his workweek of 60-70 hours. His added time off, therefore, should have been protected.

The employer tried to argue that, because the certification showed that Victor could work 40 hours per week, that was the basis for the 480 hours of leave calculation. The court did not buy the employer's arguments.

*Owens v. The Dufresne Spencer Group*, Northern District of Illinois, No. 22-c-2801, June 17, 2024. ↻

**CHECK OUT MORE TOP NEWS ON COMPLIANCE NETWORK THIS MONTH:**

- 3 things supervisors need to know about the PWFA
- Check yourself before ordering a background check
- Employees need not "apply" for FMLA leave

**GET FREE NEWS**



FEATURED QUESTIONS

J. J. Keller's experienced subject matter experts answer more than 16,000 compliance and best practice questions just like this one each year.

**QUESTION:** A few of our employees aren't as productive as others. Can we insist that these employees return to work onsite, even if they have been working remotely for three years?

**ANSWER:** Since most employment is "at will," you typically have the right to change the working arrangements of your employees at any time, including where employees must perform their work.

However, an exception exists if an employee is unable to work onsite due to health reasons and requests to work from home as a medical accommodation. In such a case, you should engage the employee in the discussion to determine if remote work can be an accommodation. If the condition or need for accommodation isn't obvious, and you don't already have enough information, you may require the employee to provide supporting documentation from a health care provider to confirm the need for the accommodation.



QUESTION:

Does our employee, who's out on workers' compensation, still have FMLA rights?

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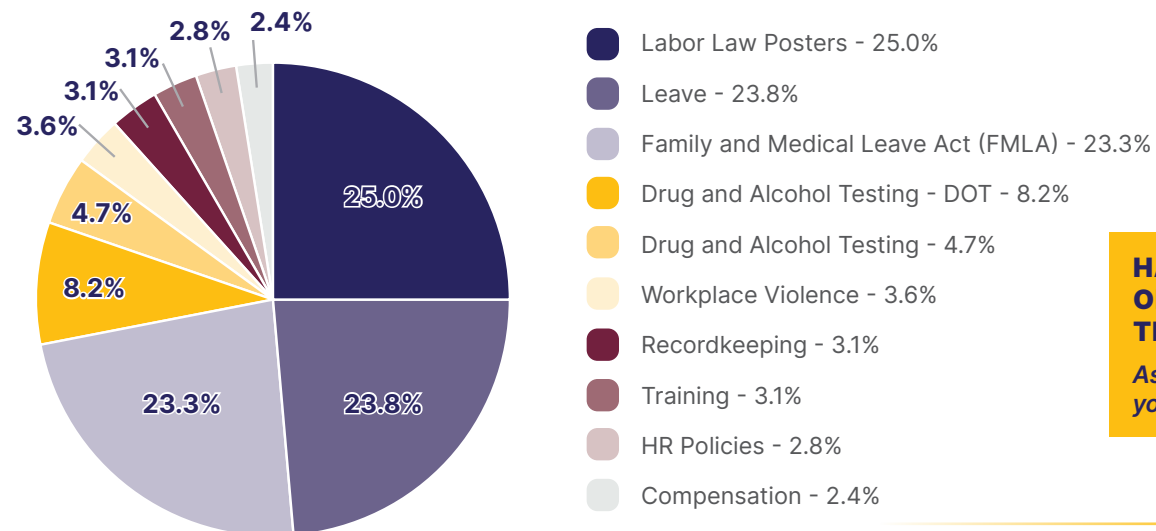


Need help with a complex issue?

SUBMIT A RESEARCH REQUEST

TOP 10 EXPERT HELP TOPICS OF THE QUARTER

J. J. Keller experts field thousands of questions each quarter. Here's a breakdown of the top 10 HR topics you asked about most in the last quarter.



HAVE QUESTIONS ON ANY OF THESE TOPICS?

Ask our experts when you take a free trial!



THE DOL CONTINUES TO LOOK AT PAID LEAVE

On June 26, 2024, the U.S. Department of Labor (DOL) held a conference to discuss the latest research on paid family and medical leave and its equitable implementation. The current federal Family and Medical Leave Act (FMLA) provides for only unpaid leave.

During the conference, former Secretary of Labor and current White House Senior Advisor Tom Perez highlighted the current administration's commitment to paid family and medical leave.

In his 2025 budget proposal, the President announced his plan to establish a national paid family and medical leave program. Administered by the Social Security Administration, the program would provide eligible employees up to 12 weeks of leave to:

- Care for and bond with a new child;
- Care for a seriously ill loved one;
- Heal from their own serious illness;
- Address circumstances arising from a loved one's military deployment; or
- Find safety from domestic violence, sexual assault, or stalking.

In early 2024, the DOL put together legislative framework on paid leave that included the creation of an "Interstate Paid Leave Action Network (I-PLAN)" that would push for improvements in coordination and harmonization of paid leave benefits across the growing number of states with their own paid leave programs — and do so in a way that works for states, employers, and employees.

Part of the plan would create equivalency standards so that multi-state employers could design paid uniform, nationwide leave programs that would satisfy the elements of each state's employer-based plan requirements.



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QUARTERLY SPECIAL REPORTS deliver in-depth looks at timely, complicated topics.

When employees are working remotely all or some of the time it adds a new layer of challenges to managers' duties. This QUARTERLY SPECIAL REPORT looks at eight keys to being a successful manager when teams are remote or hybrid.

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## TOP NEWS

### COMPANY FACES HISTORIC SMACKDOWN FOR STOLEN WAGES

A federal court recently awarded \$35.8 million in overtime back wages and liquidated damages to 6,000 current and former workers in one of the nation's largest wage recovery judgments.

The employer, whose actions the court deemed willful, operated 15 residential skilled nursing, rehabilitation, and assisted living facilities in western Pennsylvania. The award included \$17,902,219.10 in back wages and another \$17,902,219.10 in liquidated damages.

U.S. Department of Labor (DOL) investigators discovered the employer violated the federal Fair Labor Standards Act (FLSA) for years by doing the following:

- Willfully not paying employees for all hours worked, including work done during meal breaks.
- Failing to incorporate all promised compensation, including non-discretionary bonuses and shift differentials, when calculating overtime pay.
- Avoiding paying overtime by incorrectly treating employees as exempt ("salaried") from the FLSA's overtime requirements.
- Not keeping accurate records of hours employees worked and compensation due for those hours.

### WHAT SHOULD EMPLOYERS DO TO AVOID RISKING WAGE VIOLATIONS?

Courts take strong issue with willful violations. Employers that do not want to experience the same costly fate as the one in the case above need to pay nonexempt employees for all hours worked.

Under the FLSA, employers may classify executive, administrative, and professional employees as exempt from minimum wage and overtime rules only if the employees are:

- Paid on a salary basis,
- Paid a minimum salary (currently \$844 per week — equivalent to \$43,888 per year), and
- Perform certain job duties.



Employers must also keep certain wage and hour records for each nonexempt worker. These records must include certain information about the hours worked, and the wages earned for nonexempt employees.

### FORM I-9 EXPIRATION DATE EXTENDED TO 2027

The U.S. Citizenship and Immigration Services (USCIS) has updated the Form I-9 with a new expiration date of 05/31/2027 and is giving employers almost two years to switch to the latest version of the form.

Through July 31, 2026, employers can use either the Form I-9 with an expiration date of

07/31/2026 or 05/31/2027. After July 31, 2026, only the form with the 05/31/2027 expiration date will be compliant.

The USCIS released the new version on August 2, 2024. The agency is encouraging employers to update their electronic Form I-9 systems now and to begin using the updated form as soon as possible.



## POLL RESULTS

[VIEW CURRENT POLL](#)  
ON COMPLIANCE NETWORK HOMEPAGE

Each month, we present our members with a new poll question. It's a great way to find out what your fellow compliance professionals are thinking on a specific topic.

### HOW WILL YOU RESPOND TO SALARY THRESHOLD INCREASES FOR EXEMPT EMPLOYEES?

50%

WILL INCREASE EMPLOYEE PAY TO KEEP THEM EXEMPT.

20%

WILL RECLASSIFY EXEMPT EMPLOYEES TO NONEXEMPT AND LIMIT/ELIMINATE OVERTIME (OT).

10%

WILL REDUCE PAY ALLOCATED TO EMPLOYEES' BASE SALARY TO OFFSET OT.

20%

WILL USE A COMBINATION OF THESE METHODS.



## RECENT EVENT

### DRIVING EMPLOYEE ENGAGEMENT

Exclusive to **COMPLIANCE NETWORK** subscribers, our virtual conferences give you the chance to hear directly from our experts and your peers on in-demand topics.

The September event, "Driving employee engagement," discussed trends seen in today's workplace that create speed bumps on the road to greater engagement. These trends include a multi-generational workforce, increased diversity in all jobs, a growing number of remote and hybrid workers, and an increased demand for improved work-life balance. By acknowledging the challenges that accompany these trends, employers can boost employee engagement by improving workplace culture.

The virtual conference began with presenters sharing their ideas for best practices for improving workplace culture. Then, attendees had an opportunity to learn from each other as they shared their mistakes, challenges, and successes regarding employee engagement and workplace culture.



## UPCOMING EVENTS

[VIEW UPCOMING EVENTS](#)



### Accommodations in the workplace

**Date:** Thursday, Oct. 03, 2024  
**Time:** 1 p.m. (CST)  
**Duration:** 60 min.



### Get the safety training buy-in you need

**Date:** Thursday, Nov. 14, 2024  
**Time:** 1 p.m. (CST)  
**Duration:** 60 min.



### Cargo security and theft prevention 101

**Date:** Thursday, Dec. 12, 2024  
**Time:** 1 p.m. (CST)  
**Duration:** 60 min.

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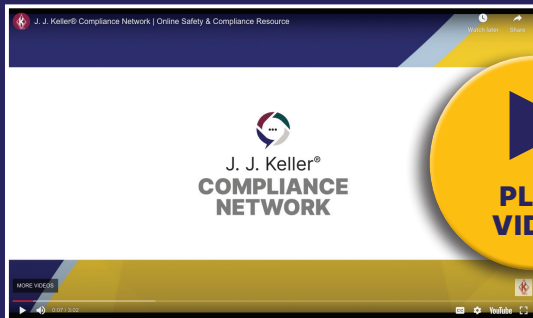
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