DMEC 2026 COMPLIANCE CONFERENCE

MAN VERSUS MACHINE: AI EDITION

How Code and Compliance Approach Absence Management Challenges

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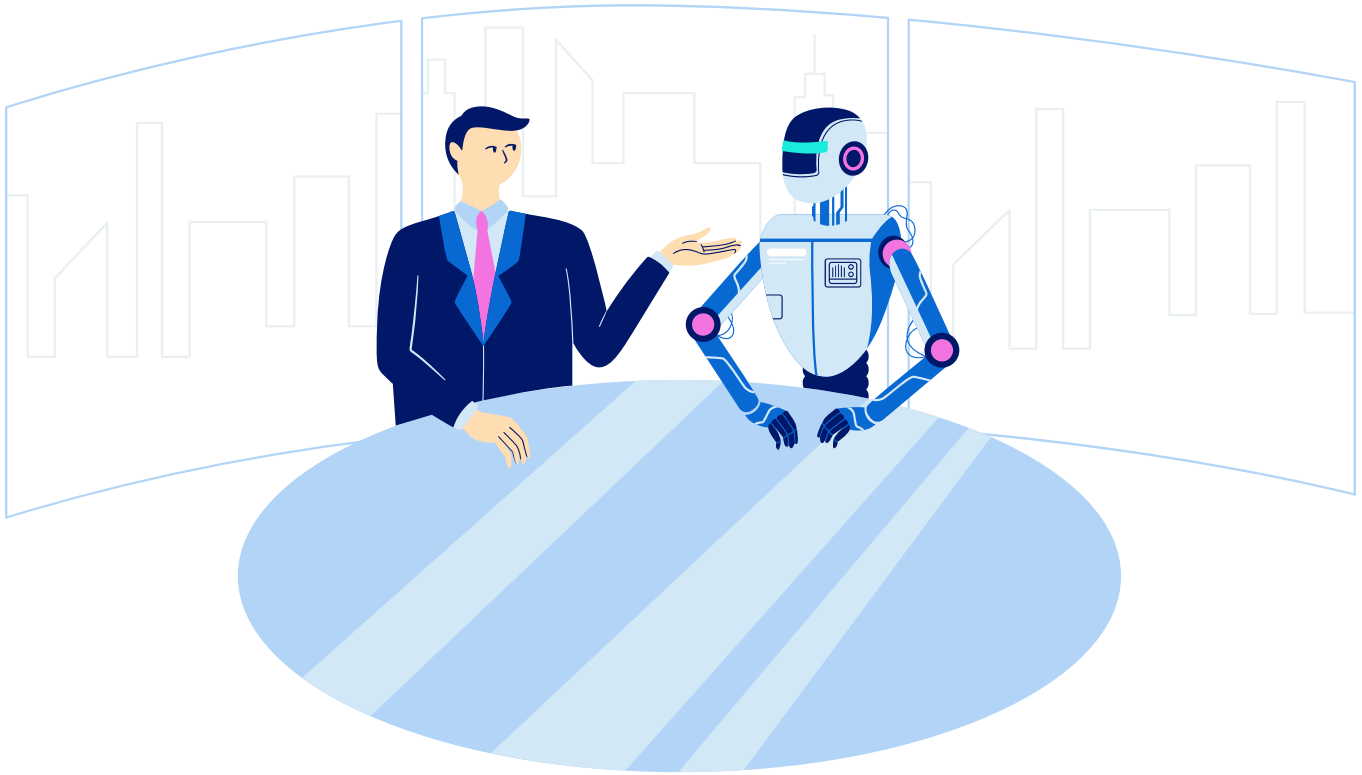
The Setup



Employees *and* employers are increasingly turning to AI for workplace answers. Things get tricky when the questions shift from

“What’s the law?” to **“What about me?”**

What We're Doing Today

- **Solve Real-World Scenarios**

  Each question presents an absence management situation ranging from simple questions to emotionally complex employee challenges involving FMLA, PFML, ADA, and more.

- **Compare Approaches**

  Our legal experts provide their perspectives on how to navigate the scenario, highlighting differences in reasoning and risk awareness.

- **Discuss Strengths & Limitations**

  The panel breaks down where AI offers efficiency and clarity and where legal nuance and human judgment are essential.

- **Wrap-Up: Final Insights and Employer Takeaways**

Legal Expert Panelists

Daris Freeman (UNUM)

Licensed attorney in TN

Abigail O'Connell (Sun Life)

Licensed attorney in MA

Lori Welty (FINEOS)

Licensed attorney in CO

AI Panelists

ChatGPT

Gemini

Copilot

Please see presentation handout for the full text of AI answers. AI answers provided reflects the model's behavior and knowledge as of February 2026 and may not represent model improvements or behavior after that point. This content is for informational purposes only and should not be interpreted as legal, financial, or professional advice.

My boyfriend is having surgery.
I live in New York.
Can I take paid family leave to take care of him?

Issues to consider:

- Eligibility – no work history provided
- Relationship – is a boyfriend a covered family member
- Location – employee **lives** in New York

AI Panelist Answer

DMEC CC26 Clip 1 - PFML state.mp4

How did AI do?

☑Correct

- Serious Health Condition – certification required
- Qualifying family members – boyfriend vs. domestic partner

☒ Misses

- Localization - Live vs. work
- Eligibility requirements
- FMLA – “boyfriend … wouldn’t be covered unless … a spouse or domestic partner under your employer’s policy”

Localization:

Question:

- We provide flexibility for our employees regarding how often they must work in the office. For purposes of state PFML laws, how do I determine what program(s) applies to an employee?

AI Panelist Answer

DMEC CC26 Clip 2 – hybrid workforce.mp4

How did AI do?

☑Correct

- Physical work location
- Fully remote employees

☒ Misses

- 50% rule – this is specific to MN and DC
- Reference to unemployment is buried in best practices

Lessons Learned

- AI doesn't pick up on the difference between "live" and "work" in a prompt
- May not provide full requirements – employee/HR unable make informed decisions
- May provide incorrect rules, using one state's requirements for all
- Employees may have unrealistic or incorrect expectations
- Don't forget – FMLA rules may differ from state PFML!

Do I have to give my employee time off for stress?

Issues to consider:

- Possibly applicable laws:
  - ADA
  - FMLA
  - state and local leave and accommodation law
  - applicable paid time off laws
- Underlying concepts:
  - Intermittent & Reduced Schedule leave
  - Definition of Serious Health Condition
  - Complete Certification
  - Undue Hardship under the ADA and potentially state law
  - FMLA use to avoid mandatory overtime

AI Panelist Answer

DMEC CC26 Clip 3 - stress.mp4

How did AI do?

☑Correct

- Started with “it depends”
- Pulled in laws that may apply including FMLA, ADA, state law
- Advised “don’t say no immediately” and to document

☒ Misses

- Advised user to do the following “right now” despite not having enough information to understand which laws are applicable
  - Ask for documentation
  - Engage in the interactive process
- Second prompt (CT ER with 100 EEs) failed to pull in CT PFML

Lessons Learned

- Without more detail, like work state and employer size, the user is unlikely to get results that identify applicable law.
- Even when providing additional detail, AI can miss relevant law.
- AI does not contemplate various compliance steps if the question relates to only one part of the process.
  - Here AI instructed the questioner to seek certification but neglected to discuss rights and eligibility notice requirements.

Can my employer fire me when I need leave for pregnancy complications?

I am pregnant and planned to work for my company for a year before having my baby so I could qualify for a maternity leave. But recently I was told by my doctor I need to be put on bedrest for preeclampsia. If my symptoms don't improve soon, the doctors will have to induce me. But I will be just short of having worked for 12 months. Can I still get my maternity leave or will I be fired?

Issues to consider:

Can an employer be more generous?

DOL Opinion Letter March 14, 2019:

An employer may not choose whether an absence qualifies for FMLA.

☒ Cannot apply if the FMLA **doesn't** apply	☒ Cannot postpone if the FMLA **does** apply

- **29 USC 2653:** "Nothing [in the FMLA] shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act."
- **CFR 825.700:** An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA.

Issues to consider:

What about state leaves and PFML programs?

Can employers be more generous there?

- State FMLA: Typically abide by FMLA rules - but ask!
- PFML: Most explicitly allow employers to be more generous: waive eligibility, increase duration, etc.
- Issues won't arise until employee runs out of leave!

How can an employer be more generous?

- Separate company plan/entitlement

Employer Tip:

Exercise caution when being more generous than the law requires!

Issues to consider:

- Not all laws have a 12-month eligibility requirement.
  - State Unpaid FMLA
    - Can have shorter eligibility requirements (for example, CT FMLA, CA PDL)
  - PFML (shorter eligibility)
    - Often have lesser eligibility requirements
    - Can have financial eligibility requirements
    - Even if employee is using state benefits, there could be job protection rights
- PWFA!

AI Panelist Answer

DMEC CC26 Clip 4 - pregnant EE.mp4

How did AI do?

☑Correct

- PWFA
- Employer can provide its own, more generous leave policy
- State laws mentioned but not discussed at length (could be unpaid FMLA, pregnancy disability, PFML)

☒ Misses

- Employer cannot provide FMLA before 12 months – no "spirit of the law"
- Confuses pay with job protection: STD is pay benefit – usually not job protection, but can run with job protection
- Employer must show accommodation will "ruin their business" – not quite accurate

Lessons Learned

- AI's conclusions have a ring of accuracy, but are often too vague to be useful.
- AI doesn't go into sufficient depth and can require the user to know the right questions to ask.

My employee has an approved intermittent leave but I don't think their absences are valid. She's been seen out and about town when she's supposed to be too sick to work. Can I deny the absences?

Issues to consider:

- State laws
- Reason for the leave (mental health vs orthopedic)
- How much entitlement is remaining and when do they replenish?
- Company culture
- Morale

AI Panelist Answer

DMEC CC26 Clip 5 - intermittent.mp4

How did AI do?

☑Correct

- Can’t just deny
- FMLA – recertification options
- Health condition may matter
- Be objective
- Documentation

☒ Misses

- State or corporate leave requirements
  - FMLA not in the prompt but response made that assumption
  - What if this employee is in CA?
  - What if it’s state PFML?
- Requirements for recertification – written notice, certification timing

Lessons Learned

- FMLA is the default for questions about “leave”
- Must be specific in prompts regarding applicable state leave programs

What to do if my provider won’t complete the leave/accommodation paperwork?

Issues to consider:

- Certification rights under the FMLA, ADA, relevant paid or unpaid state leave, and the PWFA.
- Definition of health care provider under relevant law
- What is sufficient and complete documentation? (can't ask for dx under CFRA)
- Treating similarly situations employees different
- Positions on payment for certification
- Late certification
- Second and Third Opinions

AI Panelist Answer

DMEC CC26 Clip 6 - paperwork.mp4

How did AI do?

☑Correct

- Employer can deny FMLA if employee fails to provide certification
- Burden is on the employee to provide certification
- Employer must provide 15 calendar days to return the certification
- Employer must tell employee if the certification is incomplete
- Providers are not legally obligated to complete certification

☒ Misses

- Did not define health care provider
- Possibly mis-leading responses:
  - Use another provider (Employee must use a treating provider)
  - Certification is part of the eligibility requirement
- The employee does not have to use the form the employer provided to them.
- No discussion of related issues like late certification or frequency of certification

Lessons Learned

- AI focused narrowly on the prompt: no insight on the structure of the certification process (timing, recertification, late certification, authentication/clarification, second opinion, fitness for duty, etc.) to help set expectations.
- Not much attention given to the ability to provide other medical documentation, such as records or notes, to certify the leave when the provider won’t complete the form.

We have a strict policy of not giving employees leave before 12 months. Is it OK to terminate the employee if she insists on taking leave before 12 months?

Our employees are highly trained, and we invest a lot of time and money into their training. We don’t allow leave before 12 months because it is a waste of their training to not get the full 12 months of work before they take leave.

Issues to consider:

- What is the reason for leave?
  - Employee's health condition
  - Family member's health condition
  - Other
- Accommodation
  - Family member?
  - Disability
  - Pregnancy
  - Other

Issues to consider:

- ADA/PWFA
  - Be careful about inflexible rules & policies. It can seem like a good idea to be “fair” across the board but can get an employer in hot water.
  - Remember the interactive process
  - How long is too long?
    - Providing leave to an employee who is unable to provide a fixed date of return is a form of reasonable accommodation. Does that the lack of a fixed return date causes an undue hardship?
    - Could be undue hardship: disruption to the operations because the employer can’t plan for employee's return nor permanently fill the position.
    - Employer can require, as part of the interactive process, periodic updates. Employer can reevaluate whether continued leave is an undue hardship.

Issues to consider:

- Undue hardship
  - **Example:** An experienced chef at a top restaurant requests leave for treatment of her disability but cannot provide a fixed date of return. The restaurant can show that this request constitutes undue hardship because of the difficulty of replacing, even temporarily, a chef of this caliber. Moreover, it leaves the employer unable to determine how long it must hold open the position or to plan for the chef's absence. Therefore, the restaurant can deny the request for leave as a reasonable accommodation.

https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada

Issues to consider:

- Undue hardship
  - Cannot use generalized conclusions. Must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. Consider factors:
    - the nature and cost of the accommodation needed;
    - the overall financial resources of the company; the number of employees; the effect on overall expenses and resources
    - the structure and functions of the workforce, the geographic separateness
    - the impact of the accommodation on the operation of the facility/employer

Issues to consider:

- Does a cost-benefit analysis determine whether a reasonable accommodation will cause undue hardship?
  - No: Undue hardship depends on the employer’s resources–not on the individual’s perceived worth.
    - A cost-benefit analysis assesses the cost of a reasonable accommodation in relation to the perceived benefit to the employer and the employee.
    - Whether the cost of a reasonable accommodation imposes an undue hardship depends on the employer's resources, not on the individual's salary, position, or status (e.g., full-time versus part-time, salary versus hourly wage, permanent versus temporary).

Issues to consider:

- Is there an applicable state law?
  - State Unpaid FMLA & PFML (shorter eligibility)
  - PFML (shorter eligibility)
  - Sick & Safe leave
  - School Activities Leaves
  - Small Necessities

AI Panelist Answer

DMEC CC26 Clip 7 – termination ER.mp4

How did AI do?

☑Correct

- Reminder that AI is not legal advice.
- Policy ≠ Law
- Eligibility rules related to leave reasons – vague
- Blanket rules are risky

☒ Misses

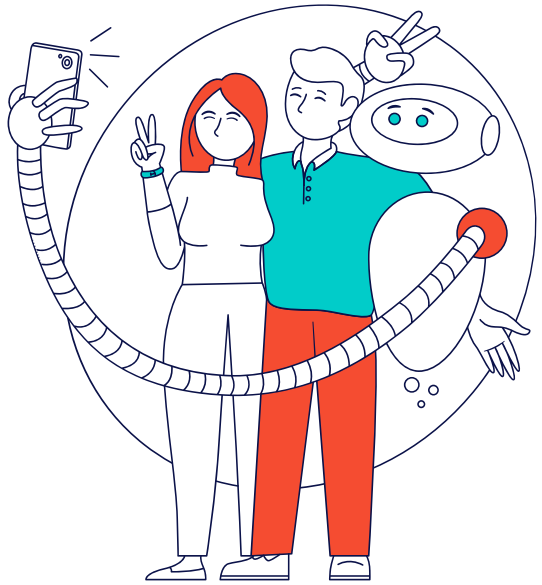
- Mentioned that reason for leave matters but missed *why* that matters, i.e. applicable federal or state laws.
- Vague – no specific mention of accommodations, and that ADA/PWFA generally apply to employees' health conditions.

Lessons Learned

- AI's conclusions are vague, and require the user to have background knowledge to make sense of the information provided.
- Insufficient information about the range of applicable laws – federal, state, municipal

Employer Takeaways: AI Usage

1. Establish and enforce clear AI usage policies.
2. Train employees on when and when NOT to use AI.
3. Protect employee privacy and data integrity.
4. Keep humans in the loop.
5. AI is a support tool, not a decision-maker.



THANK YOU!

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