



# **Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know**

June 25, 2013

12:30 PM – 2:00 PM EDT

Venable LLP

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Washington, DC 20004

## **Moderator:**

Lisa M. Hix, Esq.

## **Panelists:**

Megan H. Mann, Esq.

Marina Burton Blickley, Esq.

# Presentation



## Employee Leaves of Absence and Other Accommodations Under the Law: What Every Nonprofit Needs to Know

Tuesday, June 25, 2013  
12:30 p.m. – 2:00 p.m. EDT

Venable LLP  
Washington, DC

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Lisa M. Hix, Esq., Venable LLP

Panelists:  
Megan H. Mann, Esq., Venable LLP  
Marina B. Blickley, Esq., Venable LLP



## Upcoming Venable Nonprofit Legal Events

July 23, 2013 – [Evaluating Your Nonprofit's Options under the Affordable Care Act: The Pros and Cons of Health Insurance Alternatives for Your Employees](#)

August 8, 2013 – The Roadmap to HIPAA Compliance: What Your Nonprofit Needs to Know (details coming soon)

August 21, 2013 – [The IRS Final Report on Nonprofit Colleges and Universities: Lessons for All Tax-Exempt Organizations](#)



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## Agenda

- Overview of ADA & FMLA
- Policy & Practical Pointers
- Example Requests for Leave or Other Accommodations
  - Discussion of Select Issues Related to Such Requests
- Questions



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# Americans With Disabilities Act (ADA)

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## ADA – Does It Apply?

- Employers with 15 or more employees
- All employees
  - No minimum tenure
  - No minimum hours worked
- State laws
  - Many jurisdictions have similar laws with lower employee thresholds



## ADA Overview

- Prohibits discrimination on the basis of disability
  - Including record of disability or regarded as being disabled
- Requires employers to provide a “reasonable” accommodation to allow qualified individual with a disability to perform essential functions of the job



## ADA – Qualified Individual with a Disability

- “Disability”
  - Physical or mental impairment that substantially limits one or more major life activities



## ADA – Physical or Mental Impairment

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine
- Any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities

## ADA – Major Life Activity

- Includes:
  - (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and
  - (ii) operation of a major bodily function (e.g., immune system functions, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions)

## ADA – Substantially Limited

- Whether a person is “substantially limited” will depend upon:
  - The nature and severity of the impairment
  - The expected duration of the impairment
  - The actual or expected permanent impact of the impairment
- EEOC contemplates a comparison between the individual and the performance of the same activity by the general population

## ADA – “Substantially Limited” Analysis

- ADAAA dictates that the analysis should not be extensive
- Episodic or remission – Is disability if it would substantially limit when active
- May be disability even if expected to last less than 6 months
- Mitigating measures:
  - Should not include ameliorative effects (e.g., medication, equipment; but not glasses/contacts)
  - BUT, does include non-ameliorative effects of mitigating measures (e.g., negative medication side effects/treatment burden)



## Family and Medical Leave Act (FMLA)

## What does FMLA provide generally?

- Total of 12 (or 26 for servicemember family leave) workweeks of unpaid leave during any 12-month period
- Permits eligible employees to:
  - Care for a new child
  - Care for a close family member with a serious health condition or who is a covered servicemember
  - Deal with their own serious health conditions
  - Handle qualifying exigencies arising out of the fact that a close family member is on or being called to active duty in the armed forces



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## FMLA – Does It Apply?

- Employers with 50 or more employees
- Employees
  - 12 months with employer and 1,250 hours
  - 50 or more employees within 75 miles of employee's worksite
- State laws
  - May have lower triggers and different leave benefits
  - E.g., DCFMLA applies to employers with 20 employees and provides 16 weeks of medical leave **and** 16 weeks of family leave over 24-month period



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## FMLA – Obligation on Employers

- Provide leave
- Maintain benefits as if the employee were not on leave
- Restore the employee to his or her job, or an “equivalent position”
- Do not “interfere” with FMLA rights or discriminate against an employee
- Provide employees with FMLA information, including by posting FMLA notice in “conspicuous places” where it can be seen by applicants and employees



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## FMLA: Tending to the Growing Family

- Leave for parent (father, mother, or someone standing in loco parentis) to care for a child following birth, adoption, or foster care placement
  - Applies equally to men & women
- Must be taken within the 12 months following the birth or placement of the child with the employee



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## FMLA – Serious Health Condition

- Illness, injury, impairment, or physical or mental condition that involves:
  - Inpatient care in a hospital, hospice, or residential medical care facility; or
  - Continuing treatment by a health care provider



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## Serious Health Condition: Continuing Treatment

- (1) Incapacity & treatment: Incapacity for 3 full days and subsequent incapacity or treatment for the same condition
- (2) Pregnancy or prenatal care (including morning sickness)
- (3) Chronic conditions: Any period of incapacity or treatment that requires periodic visits over an extended period of time and may cause episodic rather than continued incapacity (e.g., diabetes)
- (4) Permanent or long-term conditions: Incapacity which is permanent or long-term due to a condition for which treatment may not be effective and for which individual is under continuing supervision of a health care provider (e.g., terminal disease)
- (5) Conditions requiring multiple treatments (e.g., chemotherapy)

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## Covered Active Duty

- Employee's spouse, son or daughter of any age, or parent is on covered active duty (or has been notified it is impending)
- Deployment in a foreign country



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## Active Duty & Qualifying Exigencies

- (1) Short-notice deployment
- (2) Military events & related activities
- (3) Childcare and school activities
- (4) To make/update financial/legal arrangements
- (5) Counseling
- (6) Rest and recuperation (spending time with the military member who is on short-term R&R leave)
- (7) Post-deployment activities
- (8) Parental care

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## Caring For a Covered Servicemember

- Up to 26 weeks to care for a covered servicemember with a serious illness or injury
  - Incurred in the line of active duty or existed before but was aggravated by active duty service
- Includes covered veterans who were discharged or released from the armed forces (except if for dishonorable discharge) during the 5-year period preceding the leave start date



## ADA v. FMLA Coverage

- Some conditions protected under ADA will not be protected under FMLA – may not require continuing treatment or inpatient care
- Some conditions protected under FMLA will not be protected under ADA – not serious enough, or too temporary
- The end of FMLA leave may trigger the ADA process
- When ADA and FMLA apply, employees must receive the most beneficial rights and protections



## Policy and Procedures

### Steps for Managing the Interplay

- Determine what, if any, laws apply to the individual (ADA? FMLA?)
  - Don't forget to check state laws!
    - Workers' compensation
    - Discrimination and leave laws
- Understand the rights and obligations of both employee and employer under those laws
- Develop a strategy for dealing with overlapping coverage



## ADA Policy

- Provide “reasonable” accommodation unless it would pose an “undue burden”
  - Identify to whom requests for accommodations should be directed
  - Managers should be educated on identifying accommodation requests
- Prohibit disability discrimination
  - Disability-related questions or medical examination only if “job related and consistent with medical necessity”



## ADA – Reasonable Accommodation

- Accommodation requested (e.g., requested change in work environment due to medical condition)
  - No magic words required
- Examples of request:
  - “I’m having trouble getting to work at my scheduled time because of the medical treatments I am undergoing”
  - “I need 13 weeks off to get treatment for a back problem”
- Example of insufficient request:
  - “I would like a new chair because the one I have is not comfortable”



## ADA – Reasonable Accommodation

- Engage in an “interactive process”
  - Back-and-forth communication with employee
  - Request medical documentation – verify disability, functional limitations, and need for accommodation
    - May request additional information if documentation is insufficient and the disability and/or need for accommodation is not obvious
  - May ask for employee’s suggestion on what accommodation is needed



## ADA – Reasonable Accommodation

- Employers are not required to change performance or conduct standards, BUT conduct rule must be job-related and consistent with business necessity
- Example:
  - Employee with Tourette’s syndrome causing uncontrolled speech and vocal tics violates conduct standards
  - Depends on whether behavior is disruptive to co-workers or incompatible with job (e.g., customer service)



## ADA – Reasonable Accommodation

- Not required to remove an “essential function” of the job
  - Most important/critical job duties
  - Removal of an essential function would fundamentally change the job
  - Not just the function most commonly performed
- Remember to review and update job descriptions



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## ADA – Reasonable Accommodation

- BUT may require restructuring non-essential functions:
  - Reallocating or redistributing marginal job functions
  - Altering when and/or how a function is performed
- Examples
  - Assistant manager who cannot drive to deposit money at the bank
  - Deaf billing clerk's ability to make business or personal phone calls

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## ADA – Reasonable Accommodation

- Not required to provide the accommodation requested by employee if another accommodation would be effective
- Employers are not required to endure an “undue hardship”
  - Action requiring significant difficulty or expense
- Document the process!



## FMLA Policy/Procedures

- Notice/information to employer & other employee duties
- Notice/information to employee & other employer duties
- Leave entitlement calculations
- Intermittent/reduced schedule leave
- Pay status
- Return to work
- Employee benefits
- *Note:* If you are not a covered employer and you have a family and medical leave policy, do not call it a “FMLA” policy and be wary of imposing restrictions on your organization unnecessarily



## The Employee's Duties

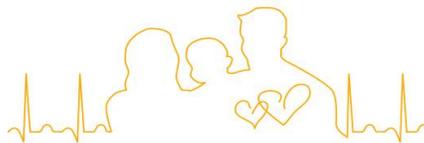
- Notice may be verbal or written and does not need to include term "FMLA"
- Where the need for leave is foreseeable, the employee must give 30 days' notice
- Make a reasonable effort to schedule treatment so as not to disrupt employer's operations
- If not foreseeable, the employee must give as much notice as possible
- Comply with a certification request
- Seek a second opinion at the request of the employer

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## Employer Notification Requirements

- Display FMLA notice
- Provide employees with general notice about FMLA in the employee handbook or other written material about leave and benefits
- Notify employees concerning
  - Eligibility status, rights, and responsibilities
  - Whether specific leave is designated as FMLA and the amount of time that will count against FMLA leave entitlement



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## Notification Requirements (cont'd.)

- Eligibility Notice (oral or written) within 5 days of request
  - Inform employee of eligibility status
  - If not eligible, state at least one reason why
- Every time an employer provides an Eligibility Notice, it must also provide a Rights and Responsibilities Notice
  - Employer's designated 12-month period for counting entitlement
  - Any certification requirement and consequences of failing to do so
  - Information regarding paid leave substitution policy
  - Instructions for making arrangements for any premium payments for maintenance of health benefits that employee must make during leave
  - Designation of key employee
  - Right to job restoration



## Calculations

- 12 month period: four methods of calculation (calendar, fixed, measured forward, rolling)
- Leave entitlement
  - Leave may be taken in whole weeks or even in periods of less than one hour
  - Only the amount of time *actually* taken may be counted against an employee's leave entitlement



## Intermittent/Reduced Schedule Leave

- For new child care, employee and employer may agree to intermittent/reduced schedule leave, but it is not a guaranteed right under the law
- Intermittent/reduced schedule leave may generally be taken for serious health condition, qualifying exigency, and servicemember family leaves
- Employer may require such employee to transfer temporarily to an available alternative position with equivalent pay and benefits if it better accommodates the recurring periods of leave



## Pay During Leave

- The leave may be unpaid
- Employees may elect to use accrued paid time off
- An employer may require employees to use accrued paid time off



## FMLA – Return to Work

- May only deny return to work if employee's job would have been eliminated or employee would have been terminated for other reasons; may deny return to work for key employee under specific circumstances
- May have uniformly applied rules that require employees to provide fitness for duty certifications with respect to particular health condition that caused need for FMLA leave



## FMLA Written Policy Tips

- Include all FMLA-required information!
- Explain how leave will be measured (i.e., on a rolling 12-months basis or otherwise)
- Include a statement on how the employer will deal with husband/wife employee teams
- Generally describe the circumstances under which fitness-for-duty certifications will be required upon return to work or at least a statement reserving the right to require them
- Policy should contain statement regarding when substitution of paid leave will be required



## FMLA Written Policy Tips (cont'd.)

- How employee contributions to health insurance and other benefit premiums will be handled
- A statement regarding additional rights to leave under state or local laws
- A statement that nothing changes the employee's at-will status



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## FMLA – Employee Health Coverage

- Obligation to make available continued health coverage on same terms and conditions as when the individual was active
- Obligation ends if employee exhausts FMLA leave, fails to return following FMLA leave, or fails to pay premiums
- Employer may (a) permit employee to choose whether to continue health coverage while on FMLA leave, or (b) require employee to continue coverage
- Employer may provide for pre-pay, pay-as-you-go, or catch-up
  - Pre-pay may not be the sole option
  - Must provide options at least as favorable as for non-FMLA leaves
- If employee chooses pay-as-you-go but fails to pay, employer may discontinue coverage or, alternatively, continue coverage and recoup payments upon return to employment

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## FMLA and COBRA

- Generally, the COBRA period does not start until FMLA leave ends (either through exhaustion of the FMLA period, or an employee's clear intention not to return to work)
- COBRA period begins at end of FMLA period, even if state law provides a longer leave period than FMLA
- COBRA period begins at end of FLMA period, even if employee declines health coverage during the FMLA period, or loses coverage due to non-payment of premiums during the FMLA period
- The rules discussed above relating to health coverage during a leave period, and the interaction of COBRA with leave periods, are specific to FMLA leave. Non-FMLA leaves differ.



## Discussion of Select Issues Related to Leave & Other Accommodations

## ADA Right to Leave



- May require leave of absence to obtain treatment or recuperate
- Right to leave arises when individual's disability precludes him/her from performing the essential functions of the job
- If an accommodation would not be effective, it need not be made (only if employee is expected to be able to return to work)



## Reduced Schedule & Intermittent Leave

- Possibly required by both ADA and FMLA
- ADA
  - Employee must show that new schedule would enable employee to perform essential functions of job
- FMLA
  - Intermittent/reduced schedule leave may generally be taken for serious health condition, qualifying exigency, and servicemember family leaves
  - For new child care, employee and employer may agree to intermittent/reduced schedule leave
  - Employer may require such employee to transfer temporarily to an available alternative position with equivalent pay and benefits if it better accommodates the recurring periods of leave



## Special Issue – Attendance

- FMLA-protected absence may not be counted for purposes of discipline under an absenteeism policy
- ADA
  - Enforcement of leave and attendance rules not illegal, but must evaluate request to modify rule
  - Unpredictable/unreliable (e.g., request to leave whenever the employee feels sick)
    - Most courts find that reliable, predictable attendance is an “essential function”
    - Consistency is key



## Transfer of Employee

- ADA
  - Does not permit transfer for the convenience of the employer
    - If accommodation is not available, must consider reassignment to a vacant position
    - Not required to create a new position
- FMLA allows transfer to alternative position under certain conditions



## Teleworking



- ADA
  - Depends on whether essential functions can be performed off-site
  - Considerations include: ability to supervise, need to work with certain equipment, requires face-to-face interaction, etc.
  - Becoming more and more likely to be considered “reasonable”
    - But, may consider other effective accommodations!



## Don't Forget State Laws!



- Small employers may be covered under state laws
- Many states have enacted their own disability discrimination legislation
  - E.g., Maryland recently enacted an amendment to its disability law to require accommodations for pregnancy-related conditions
- Many states have family and medical leave laws which may provide greater protections
  - E.g., many states cover domestic partners



## Questions?

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# **Speaker Biographies**



## Lisa M. Hix

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### AREAS OF PRACTICE

Tax-Exempt Organizations  
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### INDUSTRIES

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### EDUCATION

J.D., Duke University School of  
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*Duke Journal of Comparative and  
International Law*

B.A., Political Science, Smith  
College, 1996

### MEMBERSHIPS

Chair, ASAE Legal Symposium  
Planning Committee

ASAE Legal Section Council

ASAE Association Law "Tool Kit"  
Task Force

ASAE Technology Resources  
Committee

Ms. Hix concentrates her practice on counseling charities, trade and professional associations, and other nonprofits on a wide range of legal topics, including tax exemption, intellectual property, corporate governance, and antitrust, among others.

Ms. Hix has broad experience in the nonprofit sector, having served in various capacities at nonprofit organizations, including as the Founding Executive Director of the Memorial Institute for the Prevention of Terrorism (MIPT) and Development Director of East Harlem Block Schools. This experience has included representation before Members of Congress and federal agencies. She also worked in the nonprofit practice of a large national law firm for four years before joining Venable. Ms. Hix is the former Chair of the American Society of Association Executives (ASAE) Washington, DC Legal Symposium, a former member of the ASAE Legal Section Council, and current member of the ASAE Finance and Business Operations Committee.

### HONORS

Recognized in the 2013 edition of *Legal 500*, Not-For-Profit

Selected for inclusion in Washington, DC "Rising Stars" edition of *Super Lawyers*, 2013

### PUBLICATIONS

- June 26, 2012, Agreeing to Convene: Spotting and Solving the Most Common Event Contract Pitfalls
- March 20, 2012, All About UBIT: What Nonprofit Leaders Need to Know
- November 18, 2011, The New D.C. Nonprofit Corporation Act Takes Effect on Jan. 1, 2012: Everything You Need to Know to Comply
- October 24, 2011, Unrelated Business Income Tax for Nonprofits: The Basics
- October 13, 2011, Traps on the Web: Legal Essentials on Social Media, Protecting Data, HR Policies, and More
- October 6, 2011, Nonprofit Strategic Partnerships: Building Successful Ones and Avoiding the Legal Traps
- September 20, 2011, Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center and Meeting Contracts
- September 16, 2011, Playing by the Rules: A Fresh Look at Corporate Sponsorship & Affinity Program Income
- August 8, 2011, Cyberspace Risk: The Top Legal Traps for Associations
- June 16, 2011, Sponsorships, Advertising, Endorsements and Cause Marketing:

### Understanding Critical UBIT Issues for Nonprofits

- May 13, 2011, Online Social Media and Nonprofits: Navigating the Legal Pitfalls
- April 28, 2011, Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center and Meeting Contracts
- April 20, 2011, Navigating Nonprofit Partnerships, Joint Ventures and Commercial Co-Ventures: How Arts Organizations Can Avoid the Legal Pitfalls
- March 29, 2011, Dangers and Opportunities: Navigating Nonprofit Partnerships, Collaborations, Joint Ventures and More
- March 8, 2011, Sponsorships, Advertising, Endorsements, and Cause Marketing - Understanding Critical UBIT Issues for Nonprofits
- February 3, 2011, Top Ten Legal Issues for Associations: Common Mistakes, and How to Avoid Them
- December 16, 2010, So You Want To Be On The Internet<sup>®</sup>
- December 6, 2010, Mergers, Alliances, Affiliations and Acquisitions for Nonprofit Organizations: Financial and Legal Issues
- November 10, 2010, Legal Issues in Publishing – Copyright and Reprint Requests
- November 3, 2010, Cyberspace Risk: What You Don't Know Could Hurt You
- September-October 2010, The Ins and Outs of Alliances and Affiliations, *Associations Now*
- September 24, 2010, Doing Business in a Changing Economy: Contracts, Liability, and Understanding Risk
- September 21, 2010, Legal Aspects of Social Networking and Online Media Platforms
- September 20, 2010, Best Practices for Negotiating Meeting Contracts in the Current Economy
- August 24, 2010, Association Alliances, Partnerships and Mergers
- May 7, 2010, Combinations and Alliances Among Nonprofit Associations
- January 26, 2010, The Building Blocks for a Successful Nonprofit Merger
- December 15, 2009, Best Practices for Negotiating Hotel Contracts in the Current Economy
- December 15, 2009, Hotel Contract Clauses That Work: Understanding the Fine Print
- April 16, 2009, Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center, and Meeting Contracts
- March 12, 2009, IM N, R U? Managing the Nonprofit Legalities of Social Networking and Online Media Platforms
- November 18, 2008, The Ten Most Common Online Legal Pitfalls for Nonprofits...and How to Avoid Them
- September 16, 2008, Obtaining and Maintaining Tax-Exemption for Your Affiliates: The Mechanics, Pros and Cons of Group Exemption

### SPEAKING ENGAGEMENTS

- June 25, 2013, Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know
- June 27, 2012, WMACCA Non-Profits & Associations Forum: "Agreeing to Convene – Spotting and Solving the Most Common Event Contract Pitfalls"
- March 20, 2012, "All About UBIT: What Nonprofit Leaders Need to Know" for the Better Business Bureau of New York
- October 13, 2011, "Traps on the Web: Legal Essentials on Social Media, Protecting Data, HR Policies & More" for the Better Business Bureau of New York
- October 6, 2011, Nonprofit Strategic Partnerships: Building Successful Ones and Avoiding the Legal Traps
- September 20, 2011, "Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center and Meeting Contracts" at Meeting Quest Charlotte

- September 16, 2011, "Playing by the Rules: A Fresh Look at Corporate Sponsorship & Affinity Program Income" at ASAE's Annual Association Law Symposium
- August 8, 2011, "Cyberspace Risk: The Top Legal Traps for Associations," 2011 ASAE Annual Meeting
- June 16, 2011, Sponsorships, Advertising, Endorsements and Cause Marketing: Understanding Critical UBIT Issues for Nonprofits
- May 18, 2011, "Mastering Tradeshow Contracts" at the 2011 Annual Association Law Symposium in Chicago
- May 17, 2011, "Legal Aspects/Issues of Social Media Platforms" for the Kansas Society of Association Executives
- May 13, 2011, "Cyberspace Risk: The Top Legal Traps for Associations," ASAE Finance, HR & Business Operations Conference
- April 29, 2011 - May 3, 2011, "Trends in Law, Practice and Management of Copyright and Licensing of Content" for the Council of Science Editors
- April 28, 2011, "Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center and Meeting Contracts" at ASAE's 2011 Springtime Expo
- March 29, 2011, "Dangers and Opportunities: Navigating Nonprofit Partnerships, Collaborations, Joint Ventures and More" for Better Business Bureau New York
- March 8, 2011, Legal Quick Hit: "Sponsorships, Advertising, Endorsements, and Cause Marketing - Understanding Critical UBIT Issues for Nonprofits" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- February 7, 2011, "Legal Update: What Every Tax-Exempt Association Should Know" for the Commercial Real Estate Development Association
- February 3, 2011, "Top Legal Issues for Tax-Exempt Associations" for the Mid-Atlantic Society of Association Executives
- December 6, 2010, Mergers, Alliances, Affiliations and Acquisitions for Nonprofit Organizations: Financial and Legal Issues
- November 10, 2010, "Copyright and Reprint Requests" to the Coalition of Education Association Publications
- November 3, 2010, "Cyberspace Risk: What You Don't Know Could Hurt You," Nonprofit Risk Management Center
- September 24, 2010, "Doing Business in a Changing Economy: Contracts, Liability, and Understanding Risk," at the 2010 Annual Association Law Symposium in Washington, DC
- September 21, 2010, "Legal Aspects/Issues of Social Networking and Media Platforms" at the Texas Society of Association Executives Annual Conference
- September 20, 2010, "Best Practices for Negotiating Meeting Contracts in the Current Economy" at the Texas Society of Association Executives Annual Conference
- August 24, 2010, "Association Alliances, Partnerships and Mergers" at the 2010 Annual Meeting & Expo of the American Society of Association Executives (ASAE)
- August 14, 2010, "Overview of Association Law" at the National Institute of Governmental Purchasers Annual Conference
- August 4, 2010, "Avoiding Legal Pitfalls When Using On-Line Social Media" for the Indiana Grantmakers Alliance, in collaboration with various State Grantmakers Alliances
- April 13, 2010, Legal Quick Hit: "Best Practices for Negotiating Hotel Contracts in the Current Economy" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- December 10, 2009, Two presentations on hotel contracts at PMPI's 4th Annual Mid-Atlantic Conference and Expo (MACE)
- September 25, 2009, American Society of Association Executives (ASAE) Annual Association Law Symposium
- June 22, 2009, Building Member and Supporter Buy-In Through Improved Governance Practices
- June 9, 2009, Legal Quick Hit: Copyright Law Basics and Pitfalls for Nonprofits

- April 16, 2009, Steering Clear of the Most Common Legal Hazards in Hotel, Convention Center and Meeting Contracts
- November 18, 2008, Association of Corporate Counsel Webcast: The Ten Most Common Online Legal Pitfalls for Nonprofits ... and How to Avoid Them
- 2008, "Developing Security Policies and Procedures to Protect Member Data" at the 2008 ASAE Association Technology Conference & Expo, Washington, DC
- 2007, "Board of Directors' Responsibilities" at the 2007 Society for Women's Health Research Board Orientation, Washington, DC
- 2007, "Intellectual Property Challenges in the Life of an Association" at the 2007 ASAE Annual Association Law Symposium, Washington, DC
- 2007, "Legal Considerations in Nonprofit Mergers" at the Association of Corporate Counsel "Legal Quick Hit"
- 2007, "Understanding and Managing Fiduciary Responsibility" at the 2007 Finance and Administration Roundtable, Washington, DC
- 2007, "Update on Hotel Contracts: Attrition and Other Key Issues" at the Association of Corporate Counsel "Legal Quick Hit"
- 2007, "Overtime for Employees on Travel" at the Association of Corporate Counsel "Legal Quick Hit"
- 2006, "Contracts Insurance & Liability: What Every Meeting Professional Should Know" at the 2006 ASAE Meetings Management Institute Issues in Hotel Meeting Contracts, ASAE Hotel Operations Program, Washington, DC
- 2006, "Opening General Session Panel: The Year in Review - Legal Style" at the 2006 ASAE Finance & Business Operations Symposium, Baltimore, MD
- 2006, "Legal Issues for Nonprofit Organizations" at the American College of Cardiology, 2006 General Scientific Session, Atlanta, Georgia



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### EDUCATION

J.D., Brooklyn Law School, 2008

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University of Virginia, 2002

Megan Mann's practice areas include employment counseling and litigation, labor relations, and commercial litigation. Ms. Mann represents clients in a vast array of industries, including hospitality, food service, education, construction, security, real estate, pharmaceutical services and financial services.

#### Employment Counseling

Ms. Mann regularly works with clients to ensure compliance with relevant laws, including but not limited to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans With Disabilities Act, and the Fair Labor Standards Act, as well as various state and local laws; and she likewise works with clients to improve the quality and efficacy of various employment-related practices, policies and documents. This type of counseling includes:

- Drafting new or updating existing employment documents, such as personnel handbooks, offer and termination letters, restrictive covenant agreements, and discipline or grievance procedure documents
- Rendering advice related to the hiring and termination processes, including group lay-offs, to ensure compliance with applicable laws and to appropriately protect clients' interests
- Advice and counseling related to harassment in the workplace, which includes onsite harassment training, drafting of sound anti-harassment policies and investigation guidelines, and counseling following reported harassment
- Rendering advice related to workplace practices, including employee classification, wage and hour practices, and disability accommodations

#### Employment Litigation

Ms. Mann also frequently represents clients in the defense of employment litigation matters, including those involving claims of discrimination and harassment, and wage and hour violations. She frequently handles matters pending before the Equal Employment Opportunity Commission and related agencies, and in both state and federal court.

#### Labor Relations

Ms. Mann likewise devotes a substantial portion of her practice to assisting and counseling employers in the face of union elections, collective bargaining and labor hearings. For example, she has worked on the negotiations and redrafting of a renewed and revised collective bargaining agreement, and represented employers in disputes with the union over discipline, discharge and work assignments.

#### Commercial Litigation

Ms. Mann also represents clients' interests in commercial litigation matters, including class action defense, involving claims of breach of contract and unjust enrichment, fraud and negligent misrepresentation, and violation of state consumer protection statutes.

## HONORS

1st Place, American Association for Justice Regional Mock Trial

2nd Place, Georgetown White Collar Crime National Mock Trial

## PUBLICATIONS

- September 20, 2012, Payroll Pitfalls: How Nonprofit Employers Can Avoid Big Problems
- June 2010, Turns Out, There's No Such Thing As "Free Labor" Either: Why Most Employers Should be Paying Interns or Modifying/Abandoning Their Unpaid Internship Programs, Labor & Employment News Alert
- December 19, 2008, Navigating the Wage and Hour Law Maze of Unpaid Internships at Nonprofit Organizations
- December 2008, The New York WARN Act Covers More Employers Than Its Federal Counterpart, Labor & Employment News Alert

## SPEAKING ENGAGEMENTS

- June 25, 2013, Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know
- September 20, 2012, "Payroll Pitfalls: How Nonprofit Employers Can Avoid Big Problems" for the Better Business Bureau of Metropolitan New York
- April 17, 2012, Venable Breakfast Briefing: Updates for Restaurant Industry Employers
- September 9, 2009, Panel Speaker for Brooklyn Law School's orientation class on September 9
- June 17, 2009, "A Guide to Preventative Human Resources and Labor Relations Audits," hosted by Venable LLP
- February 10, 2009, Employment Issues In The Economic Downturn: Avoiding Liability in Lean Times



## Marina Burton Blickley

Associate

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### AREAS OF PRACTICE

Labor and Employment  
Hospitality - Labor and  
Employment Law  
Public Sector Employers  
Financial Services Wage  
Compliance

### INDUSTRIES

Government Contractors  
Nonprofit Organizations and  
Associations

### BAR ADMISSIONS

Virginia  
District of Columbia

### COURT ADMISSIONS

U.S. District Court for the Eastern  
District of Virginia  
U.S. District Court for the District  
of Columbia

### EDUCATION

J.D., *cum laude*, Florida State  
University College of Law, 2008  
*Member, Florida State University  
Business Review*

Marina Blickley is a litigation associate in the firm's Labor and Employment group. Ms. Blickley's practice is focused on management-side employment and labor law counseling and representation.

**Employment Litigation:** Ms. Blickley regularly represents and defends clients against claims of employment discrimination brought under state and federal anti-discrimination laws before the EEOC and state agencies. Ms. Blickley has experience conducting internal investigations and has recently participated in private mediation of claims arising under FLMA and state tort law. Ms. Blickley is experienced in drafting and responding to pleadings, motions, and discovery. Recently, Ms. Blickley has worked on litigation matters concerning employment discrimination, retaliation, contract disputes, restrictive covenants, unfair competition, business conspiracy, misappropriation of trade secrets, computer fraud and theft, and violations of wage and hour laws.

**Employment Counseling:** Ms. Blickley frequently advises clients on compliance with a variety of federal and state laws. Recently, she has worked on matters pertaining to the Age Discrimination in Employment Act (ADEA), Title VII, Section 1981 of the Civil Rights Act of 1866, Employee Retirement Income Security Act (ERISA), the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Health Insurance Portability and Accountability Act (HIPAA), the Family and Medical Leave Act (FMLA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the National Labor Relations Act (NLRA), and the Fair Credit Reporting Act (FCRA), and compliance with various state privacy laws. In addition, Ms. Blickley assists clients by reviewing and revising handbooks and other policies and procedures including compensation practices, leave administration, and discipline/termination procedures.

**Benefits Counseling:** Ms. Blickley participates in the review and negotiation of health and welfare benefit contracts including service agreements, business associate agreements, and confidentiality agreements. In addition, Ms. Blickley has researched and reviewed case law, decisions by the National Labor Relations Board, and decisions by the Trustees of the United Mine Workers of America Funds in support of negotiations to reduce retiree health care costs for a significant firm client.

### PRO BONO

Ms. Blickley actively participates in the firm's pro bono program. Recently, as a result of her persuasive presentation at an administrative hearing, Ms. Blickley obtained reversal of the initial decision denying unemployment compensation benefits for an employee in Virginia.

### HONORS

- Semi-finalists and Second-Best Oralist in the Child Welfare and Adoption Law Moot

Member, Florida State University  
Moot Court Team, 2006-2008  
B.A., Truman State University, 2005

## MEMBERSHIPS

American Bar Association  
Fairfax Bar Association

Court Competition, Spring 2008

- Second-Best Oralist in the Mugel National Tax Moot Court Competition, Spring 2007
- Participated in Final Four Moot Court competition before the Florida Supreme Court, Fall 2006

## PUBLICATIONS

- May 22, 2013, New Maryland Law Requiring Accommodations for Pregnancy-Related Disabilities, *Labor & Employment News Alert*
- May 14, 2013, *The Cyberlock Decision*: District Court Rules That Non-Specific Teaming Agreements Are Unenforceable, *Government Contracts Update*
- Fall 2012, Fourth Circuit Finds EEOC Charge Not Required to List the Specific Disability Accommodation Denied, *Maryland State Bar Association Section of Labor and Employment Law Newsletter*
- June 8, 2012, The Axeman Cometh: Avoid Common Blunders When Disciplining and Terminating Employees
- April 2, 2012, NLRB Changes the Game with Regulations Streamlining Union Elections, *Hotel Business Review*
- March 28, 2012, Fourth Circuit Finds Allegations of Discriminatory Severance Package Sufficient to State a Claim Under Title VII
- November 2011, Virginia Supreme Court Recognizes the Evolving Nature of Non-Compete Law, *Labor & Employment News Alert*
- March 2011, Back to Basics – SDNY Says Non-Competes Are Not Retention Agreements, *Labor & Employment News Alert*
- January 2011, U.S. Supreme Court Allows Claim of Third-Party Retaliation Under Title VII, *Labor & Employment News Alert*
- January 2011, EEOC's Final GINA Regulations To Take Effect And Impact Employers, *Labor & Employment News Alert*
- May 2010, California Supreme Court Ruling Has Bite for Employment Arbitration Awards, *Labor & Employment News Alert*
- March 2010, "Major 2009 Labor and Employment Legislation Will Affect Business in 2010" in *Coal Age*, *The Trade Journal for Coal Mining and Processing Professionals*
- February 2010, D.C. Circuit Holds Failure-to-Promote Claim Is Not Revived by the Ledbetter Act, *Labor & Employment News Alert*
- Winter 2010, "The Impact of Recent Federal Rule Changes on Employment Litigators" in *Maryland State Bar Association Section of Labor and Employment Law Newsletter*, 15th volume
- Summer 2009, "Spiraling Costs and Crashing Markets – Who Will Be Left Holding the (Empty) Bag for Depleted Pensions and Unfunded Health Care Liabilities?" in *Law Journal of the Energy and Mineral Law Institute*, 30th volume

## SPEAKING ENGAGEMENTS

- July 18, 2013, "Focus on Nonprofit Employee Misclassification: Are Your Workers 'Employees,' 'Volunteers' or 'Contractors?'" for *Association Trends*
- June 25, 2013, Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know
- June 8, 2012, "The Axeman Cometh: Avoid Common Blunders When Disciplining and Terminating Employees" at ASAE's Finance, HR & Business Operations Conference
- March 17, 2011, "Employee Handbooks – Fundamentals and Follies," hosted by Venable