Calculating FMLA Time-Off



At the beginning of each new year, some employees have a fresh set of 12 weeks of Family and Medical Leave (or more if state law requires such) to use for serious health conditions, the birth, adoption, or placement of a child, or to care for a family member that has a serious health condition. However, other employees may not have a full complement of 12 weeks of leave at their disposal. What accounts for this disparity – the way that the employer defines a "12-month period" in its FMLA policy.

The FMLA provides that any eligible employee (for federal purposes that means any employee that has been with the employer for at least 12 months and has worked at least 1250 hours during those 12 months) can take up to 12 weeks of unpaid, job-protected leave during any 12-month period.

What is a "12-month period" is the key to how much leave an employee can take and when. The FMLA allows an employer to choose any one of the following four methods for determining the "12month period" in which the 12 weeks of leave entitlement occurs:

- The calendar year;
- Any fixed 12-month period (such as a fiscal year, or a year starting on the employee's anniversary date ("fixed year");
- The 12-month period measured forward from the date any employee's first FMLA leave begins ("forward year"); or
- A rolling 12-month period measured by looking back from the first date of the employee's FMLA leave ("rolling year").

Under the rolling year option, the amount of leave remaining from the employee's 12-week allotment is 12 weeks minus any leave the employee took in the 12-month period prior to the inception of the leave for which the employee is currently taking. Under the calendar year or fixed year method, an employee may be eligible for up to 24 weeks of leave for a particular qualifying event if the leave begins 12 weeks before the end of the calendar or fixed year, because the 12-week allotment replenishes itself automatically at the beginning of the next calendar or fixed year. Under the forward year method, an employee may only take 12 weeks of leave per qualifying illness or injury, but the 12-month period, for FMLA purposes, begins on the first day of the employee's leave and the employee receives 12 weeks of leave for all qualifying events which occur during that year.

NOTE: The regulations require that to alter the method for determining the 12-month period, an employer must first give its employees 60 days written notice of the impending change. During the 60-day notice period, an employer must continue operating under the old method (which should be described in your handbook's FMLA policy). After providing proper notice to your employees of the change, we recommend revising your FMLA policy in your employee handbook to reflect which method you are using to calculate the 12-month period.