

## **Fact Sheet #28I: Calculation of Leave under the Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave for specified family and medical reasons. This fact sheet explains how an employee's FMLA leave entitlement and usage is determined. See [Fact Sheet 28: Family and Medical Leave Act](#) and [Fact Sheet 28M: The Military Leave Provisions under the FMLA](#), for more information.

*Note: Special rules apply to the calculation of leave entitlement and increments of leave for airline flight crew employees. See [Fact Sheet 28J, Special Rules for Airline Flight Crew Employees under the FMLA](#).*

### **FMLA LEAVE ENTITLEMENT AND INCREMENTS OF LEAVE**

An employee is entitled to up to 12 workweeks of FMLA leave for most qualifying reasons or up to 26 workweeks of FMLA leave for military caregiver leave. The employee's actual workweek is the basis for determining the employee's FMLA leave entitlement. An employee does not accrue FMLA leave at any particular hourly rate.

FMLA leave may be taken in periods of whole weeks, single days, hours, and in some cases even less than an hour. The employer must allow employees to use FMLA leave in the *smallest* increment of time the employer allows for the use of other forms of leave, as long as it is no more than one hour. If an employer uses different increments for different types of leave (for example, accounting for sick leave in 15 minute increments and vacation leave in one day increments), the employer must allow FMLA leave to be used in the smallest increment used for any other type of leave. Similarly, if an employer allows for use of leave in different increments during specific times of the day (for example, requiring a one hour increment of leave at the start of the shift and using 15 minutes increments for leave at other times), the employer may use the same increment for FMLA leave at those specific times of the day. An employer may always allow FMLA leave in shorter increments than used for other forms of leave but no work may be performed during any period of time counted as FMLA leave.

### **CALCULATION OF LEAVE USAGE**

Only the amount of leave *actually* taken may be counted against an employee's FMLA leave entitlement. Where an employee takes FMLA leave for less than a full workweek, the amount of FMLA leave used is determined as a proportion of the employee's actual workweek. The amount of FMLA leave taken is divided by the number of hours the employee would have worked if the employee had not taken leave of any kind (including FMLA leave) to determine the proportion of the FMLA workweek used. For example, an employee who normally works 30 hours a week but works only 20 hours in a week because of FMLA leave would use one-third of a week of FMLA leave. An employer may convert the FMLA leave usage into hours so long as it fairly reflects the employee's actual workweek.

Time that an employee is not scheduled to report for work may not be counted as FMLA leave. If an employer temporarily stops business activity and employees are not expected to report for work for one or more weeks (e.g., a school that closes two weeks for the winter holiday, or a plant that closes for a week for repairs), the days the employer's business activities have stopped do not count against the worker's FMLA leave.

When a **holiday** falls during a week in which an employee is taking the full week of FMLA leave, the entire week is counted as FMLA leave. However, when a holiday falls during a week when an employee is taking less than the full week of FMLA leave, the holiday is not counted as FMLA leave, unless the employee was scheduled and expected to work on the holiday and used FMLA leave for that day.

When an employee's schedule varies so much that the employer is unable to determine how many hours the employee would have worked during the week the employee takes FMLA leave, the employer may use a weekly average to calculate the employee's FMLA leave entitlement. The weekly average is determined by the hours scheduled over the 12 months prior to the beginning of the leave and includes any hours for which the employee took any type of leave.

Required **overtime** hours that are not worked by the employee because of an FMLA-qualifying reason may be counted as FMLA leave. However, voluntary overtime hours not worked due to an FMLA-qualifying reason may not be counted as FMLA leave.

## **PHYSICAL IMPOSSIBILITY**

In a situation where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to begin or end work mid-way through a shift, the entire period the employee must be absent is designated as FMLA-protected leave and counts against the employee's FMLA entitlement. The period of the physical impossibility is limited to the period when the employer is unable to permit the employee to work prior to a period of FMLA leave or return the employee to the same or equivalent position after a period of FMLA leave due to the physical impossibility. This rule applies only to situations where it is truly physically impossible to return the employee to work after an FMLA-qualifying absence, for example, a railroad conductor whose FMLA leave prevents him from boarding the train before it leaves for its scheduled trip.

## **SUBSTITUTION OF LEAVE**

FMLA leave is unpaid leave. However, an employee may request, or an employer may require the employee, to use accrued paid vacation leave, sick leave, personal time, etc. for some or all of the FMLA leave period. An employee must follow the employer's normal leave rules in order to substitute paid leave. When paid leave is used for an FMLA-covered reason, the leave is FMLA-protected. See [Fact Sheet 28A: Employee Protections under the FMLA](#), for more information.

## **ENFORCEMENT**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. See [Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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