

What do recent DOL opinions on FMLA mean for intermittent leave and holidays?

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The Family Medical Leave Act (FMLA) allows an employee to take up to 12 weeks of unpaid and job-protected leave for qualifying family and medical reasons. The FMLA also requires employers to maintain health benefits while an employee is on FMLA leave and to restore the employee to the same or equivalent job upon return.

The FMLA was enacted for well-intended reasons and has benefitted many employees. But complying with its complex regulations is often a difficult task for employees who may struggle with determining (1) how long intermittent leave can be used, and (2) the impact of a company approved holiday on FMLA leave. The U.S. Department of Labor (DOL), which administers and enforces the FMLA, recently issued opinion letters on both issues.

In the first opinion letter, issued on February 9, 2023, the DOL was asked if an employee could use intermittent leave to indefinitely reduce his work day. The employee at issue was required to work 10-hour shifts each day; however, a chronic medial issue prohibited him from working more than eight hours per shift. The DOL concluded that the employee could use FMLA leave intermittently to work a reduced number of hours per day (or week). The DOL also noted that the intermittent leave could be used until it was exhausted. Thus, if the employee never exhausted his FMLA leave, the DOL concluded that he could work the reduced schedule indefinitely.

In the second opinion letter, issued on May 30, 2023, the DOL was asked to clarify if and how holidays impact the calculation of FMLA leave. The DOL responded by clarifying its long-standing rule that holidays have no impact if the employee was on FMLA leave the entire week. Thus, for example, an employee who works Monday through Friday and takes leave for a week that includes the Fourth of July on Thursday would use one week of leave. However, when a holiday falls during a week that the employee took less than a full workweek of FMLA leave, the holiday is not counted as FMLA leave. In that instance, the leave used would be calculated by dividing the amount of FMLA leave taken (which would not include the holiday) by the total work week (which would include the holiday).

The FMLA regulations are extremely technical and require nuanced analysis on the part of employers and managers. These recent opinion letters serve as important reminders that employers must stay updated on these evolving regulatory opinions, regardless of their complexity, to remain in compliance with the FMLA.

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