



2023 Business Office Professional Conference

*Navigating Common, But Not So Easy,
FMLA Scenarios*

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Scenario #1



Scenario #1

- I have a full-time teacher that is entering their 2nd full school year of employment with the District; how does summer affect their eligibility?
- Is the analysis the same with a part-time employee?

Answer #1

- Federal FMLA requires the employee to have 12 months of employment prior to being eligible for leave.
 - But, they must also have *worked* 1,250 hours in the 12-month period immediately preceding the leave. (Paid leave does not count).
- Wisconsin FMLA requires the employee to have 52 weeks of continuous employment prior to being eligible for leave.
 - But, they must also have 1,000 or more *paid* work hours in the 52 weeks preceding the leave. (Paid leave counts).
- In general, the summer counts as months/weeks of employment. However, it does not count as time worked or paid work hours.
 - This is particularly important for part-time employees who might not otherwise have worked the necessary hours in the first school year.
- Bonus answer: Don't count summer, winter, or spring break against someone's FMLA entitlement unless they would otherwise have been scheduled to work during the breaks.

Scenario #2



Scenario #2

- I have an employee that took 12 weeks of FMLA to start the year in order to recover from a personal serious health condition.
- We use the 12-month lookback calendar for FMLA.
- The employee's serious health condition flares up again in February and the employee asks for two more weeks off.
- Can we deny this leave because the employee is out of FMLA leave?

Answer #2

- No. By law, Wisconsin FMLA resets on January 1. Therefore, this employee is eligible to take the two weeks off under Wisconsin FMLA in February even though the employee does not have any federal FMLA available.

Scenario #3



Scenario #3

- What paperwork is required for FMLA leave?
 - Seriously, why is there so much paperwork?

Answer #3

- Technically, you don't have to use the DOL forms. You could use your own forms. In practice, most employers, especially smaller employees use the DOL forms or forms that mirror the DOL forms. All of the DOL forms are available at <https://www.dol.gov/agencies/whd/fmla/forms>.
- Every time someone goes on federal FMLA, you need to use Form WH-381, which is the eligibility and rights and responsibilities notice.
- If it is for the employee's own serious health condition, you need to include form WH-380-E which is the doctor's certification in this situation.
- If it is for the serious health condition of a family member, you need to include form WH-380-F which is the doctor's certification in this situation. (This form is sometimes missed).
- If the leave is for pregnancy or baby-bonding, you do NOT need a doctor's certification, unless there are medical complications that might warrant a doctor's certification. (The EEOC does not like employers assuming that all pregnancies are serious health conditions).
- For all leaves, after you get the necessary initial forms, you need to complete form WH-382 which is the designation notice.
- Finally, some employers use an FMLA application form for employees to request leave initially. This is generally fine, but it generally does not replace the other forms.

Scenario #4



Scenario #4

- I have an employee requesting to take FMLA before their baby is born.
- Can I deny this leave?

Answer #4

- Under Wisconsin law an employee may take their 6 weeks of family leave up to 16 weeks before the estimated date of birth/adoption and must return from family leave no later than 16 weeks after the birth/adoption.
 - No more than one 6-week period of leave may be used by an employee, either as continuous or partial absence leave, as to the birth or adoption of any one child.
- Under federal law, FMLA leave can only be taken prior to the birth if the birth qualifies as a serious health condition. Such a situation permits the employer to get a doctor's certification.
- Under federal law, employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement to proceed.

Scenario #5



Scenario #5

- I have an employee that requested 12 weeks of leave for their own serious health condition starting January 1. It is now the end of March, and the employee says they will need the rest of the school year off.
- Can I deny this leave?

Answer #5

- Not necessarily. That serious health condition might also constitute a disability under state and federal law.
- You need to analyze this request for additional leave as a request for reasonable accommodation under those laws.
- To deny the leave, the district would have to demonstrate an undue hardship. That might be challenging here in the absence of more facts.

Scenario #6



Scenario #6

- I have an employee that has missed two weeks due to complications involving their diabetes.
- I offered them the FMLA forms, but they are refusing to fill them out because they have sick leave banked to cover the absences.
- Can the employee avoid taking FMLA by using sick leave?

Answer #6

- No, employees cannot avoid FMLA by using sick leave.
- If you have evidence that the employee is experiencing a serious health condition (or otherwise qualifies for FMLA leave), you can require them to complete FMLA paperwork. This time off can be counted against their FMLA allotment, and they can then choose to substitute their sick leave to receive pay during their leave.
- If an employee refuses to complete the paperwork, you might be in a position to “deem” their leave as FMLA and complete the designation form for their leave. However, you might want to check with legal counsel first.

Scenario #7



Scenario #7

- I have given the employee 15 days to complete the FMLA doctor certification form, but they haven't returned them to me yet.
- Can I deny the leave?

Answer #7

- The employee has 15 days from the request to provide certification unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.
 - If certification is incomplete, the employee must be given the opportunity to cure the deficiency within seven calendar days (unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts).
- The remedy for an incomplete certification is for the employer to deny the employee's FMLA leave.
- However, the emphasis in this situation will be on whether it is "practicable under the particular circumstances" for the certification to be timely. If the employee is hospitalized with a serious health condition, that might justify extending that time. Additionally, an employee might not be able to get the paperwork done on time because they are not physically or mentally able to get it completed on time due to an acute onset of symptoms.
- Denial of FMLA leave usually means that you treat the leave consistent with your regular attendance policies. For employees with significant sick leave banks, this might not have much impact. You will need to check with your health insurer because an extended non-FMLA leave might trigger a loss of coverage (subject to COBRA). However, in a lot of situations, it is better for all parties to keep trying to work with the employee to get the paperwork completed in a timely manner. Often the threat of denial of FMLA leave, is enough to get the paperwork completed.

Questions?

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