County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

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Coverage under the FMLA

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Coverage under the FMLA

Reference Number: CTAS-1016

Covered Employers.[1] The FMLA only applies to "covered employers" as defined under the act. Public agencies are covered employers, and a county is a public agency under the FMLA. A county is considered a single employer for FMLA purposes. Unlike private employers, coverage is not dependent upon the number of employees employed by the county.

Eligible Employees.[2] Employees must meet certain requirements before they are entitled to protection under the FMLA. An eligible employee is one who (1) has worked for the employer for at least 12 months (this time does not have to be consecutive, but the employer is not required to count previous employment more than seven years before the most recent hire date[3]), (2) has worked at least 1,250 hours during the preceding 12-month period,[4] and (3) is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite (which rarely will be an issue in county government because the county is considered to be a single employer).

"Employee" defined. Under the FMLA, "employee" is given the same meaning as under the Fair Labor Standards Act (FLSA), which means that the FMLA does not cover anyone who is not covered by the FLSA (e.g., elected or appointed officials).[5] However, employees who are covered by the FLSA but fall under an exemption (e.g., executive, administrative and professional employees) *are* covered under the FMLA.

The 12-month Requirement. The determination of whether an employee has been employed for at least 12 months is made by looking at the time the employee was *on the payroll*, and not whether the employee was actually physically at work. If an employee is on the payroll for any part of a week, that week is considered a week of employment, and 52 weeks is deemed equal to 12 months. The 12 months of employment need not be consecutive months.[6]

The 1,250-hour Requirement. Unlike the 12-month requirement, the number of hours worked for the 1,250-hour requirement is determined in the same manner as hours worked under the Fair Labor Standards Act–the 1,250 hours are time the employee actually worked; unworked time for which the employee was paid (paid holidays, leave, etc.) is not counted toward the 1,250-hour requirement.[7] For exempt salaried employees for whom the FLSA does not require records of hours worked, the employer has the burden of showing that the employee has not worked at least 1,250 hours during the previous 12-month period in order to claim that these employees are not eligible for FMLA leave. In determining the eligibility of an employee returning from USERRA-covered military serivce, the employee must be credited with the number of hours the employee would have worked but for the period of military service for purposes of determining whether the 1,250 hour requirement has been met. The employer may use the employee's pre-service work schedule to determine the hours that would have been worked.[8]

The determination whether the employee has been employed at least 12 months and has worked at least 1,250 hours during the immediately preceding 12 months is made as of the date the leave is to begin.[9]

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[1] 29 C.F.R. §§ 825.104 and 825.108. Special rules apply to local educational agencies.
[2] 29 C.F.R. § 825.110.
[3] Two exceptions exist: if the break in service was for National Guard or Reserve Duty, or if there was a written agreement to rehire after the break in service. 29 C.F.R. § 825.800.
[4] An exception exists for employees returning from National Guard or Reserve military obligations. These employees must be credited with the hours they would have worked but for the period of military service. 29 C.F.R.§ 825.800.
[5] 29 C.F.R. § 825.800.
[6] 29 C.F.R. § 825.110(b). However, periods of employment prior to a break in service of seven years or more need not be counted toward the 12-month requirement unless the break in service was occasioned by the fulfillment of the employee's military service obligation or if there was a written agreement of the employer's intention to rehire the employee after the break in service.
[7] *Mutchler v. Dunlap Memorial Hospital*, 485 F.3d 854 (6th Cir. 2007).
[8] 29 C.F.R. § 825.110(c).
[9] 29 C.F.R. § 825.110(d).

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