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Amount and Timing of Leave under the FMLA

Dear Reader:

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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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Amount and Timing of Leave under the FMLA

Reference Number: CTAS-1024

For most categories of leave, eligible employees may take up to 12 workweeks of FMLA leave during each employer-specified 12-month period. Employers are given four options for their 12-month period. The rules are slightly different for military caregiver leave, where the leave entitlement begins when the reason for the leave arises regardless of which 12-month period the employer uses for other types of FMLA leave, and employees may take up to 26 workweeks of leave per occurrence beginning on the first day leave is taken and continuing for 12 months thereafter. Leave under the FMLA may be taken all at once, in blocks of time, intermittently, or on a reduced work schedule.

The 12-Month Period.^[1] Employers must choose one of the following four options as their 12-month period for FMLA leave purposes:

1. the calendar year;
2. any fixed 12-month leave year, such as the fiscal year or a year starting on the employee's anniversary date;
3. the 12-month period measured forward from the date the employee first takes FMLA leave; or
4. a rolling 12-month period measured backward from the date the employee uses any FMLA leave.

The method chosen should be set out in the employer's FMLA policy. The employer must apply the chosen method consistently and uniformly to all employees. Once established, the employer may change the 12-month period only by giving 60 days advance notice to employees and implementing the change so that employees do not lose any leave benefits during the transition. If an employer fails to designate one of these four options, the option that provides the most benefit to the employee will be used to calculate an employee's leave entitlement, so it is important that the employer designate the 12-month period.

The 12-Workweek Entitlement.^[2] Eligible employees are entitled to a total of 12 workweeks of leave during each 12-month period for all categories of FMLA, with the exception of military caregiver leave. The 12-workweek entitlement applies to leave taken for one or more of the following reasons: for the birth or placement of a child; to care for the employee's parent, son, daughter or spouse with a serious health condition; for the employee's own serious health condition; and for a qualifying exigency.

The 26-Workweek Entitlement.^[3] Eligible employees are entitled to a total of 26 workweeks of military caregiver leave to care for a family member who becomes seriously injured or ill while on active duty in the line of duty. This is a one-time entitlement per covered servicemember, per injury or illness, and it begins on the first day the employee takes leave for this purpose. During the single 12-month period of military caregiver leave, the employee's leave entitlement is limited to a combined total of 26 workweeks for all FMLA purposes, and to a total of 12 workweeks for those purposes set out above to which the 12-workweek entitlement applies.

Spouses Working for the Same Employer.^[4] If both husband and wife work for the same employer (i.e., the county), they are limited to a combined total of 12 workweeks of leave in any one 12-month period for (1) birth or placement of a child and routine care afterward, or (2) caring for a parent with a serious health condition. If the husband and wife both use a portion of the 12 workweeks for those purposes, each is entitled to use their remaining entitlement (the difference between the amount he or she has taken individually and 12 workweeks) for other qualifying purposes. Note that this limitation does not apply to leave to care for a child with a serious health condition; for example, if a newborn child has a serious health condition the mother and father each may take up to 12 workweeks of leave if needed to care for the child, even if they work for the same employer. When military caregiver leave is involved, spouses working for the same employer may be limited to a combined total of 26 workweeks of leave during the single 12-month period.

[1] 29 C.F.R. §825.200.

[2] 29 C.F.R. § 825.200.

[3] 29 C.F.R. §§ 825.127, 825.200.

[4] 29 C.F.R. §§ 825.120, 825.121, 825.127.

Intermittent Leave and Reduced Leave Schedules

Reference Number: CTAS-1025

Intermittent leave is FMLA leave taken in separate blocks of time for a single qualifying reason. A reduced leave schedule is a reduction in an employee's usual working hours. A reduced leave schedule is a change in the employee's work schedule for a period of time, usually from full time to part time.^[1]

Medical Necessity. For intermittent leave or a reduced leave schedule for the employee's own serious health condition, or to care for a covered family member with a serious health condition, or for military caregiver leave, there must be a medical need for the leave to be taken in this manner. The medical necessity can be addressed in the medical certification, if the employer requires one. When leave is taken after the birth or placement of a healthy child, the employee is not entitled to take intermittent leave or a reduced leave schedule unless the employer agrees. Leave for a qualifying exigency may be taken on an intermittent or reduced leave schedule without medical necessity.

Scheduling.^[2] Scheduling when there is medical necessity will usually be dependent on the medical necessity, but when an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to disrupt the employer's operations unduly. Intermittent or reduced leave may be taken whenever there is a qualifying exigency.

Transfer or Reassignment.^[3] When an employee is taking intermittent or reduced leave that is foreseeable based on planned medical treatment, or if the employer agrees to permit it for the birth or placement of a healthy child, the employer may transfer the employee to an available alternative position for which the employee is qualified and which better accommodates the recurring periods of leave. The position need not have equivalent duties, but the pay and benefits must be equivalent. The employer may proportionally reduce benefits such as vacation leave where the normal practice is to base the benefit on the number of hours worked. The employee cannot be required to take more leave than is medically necessary, and the employer cannot use the transfer to discourage the employee from taking leave or to otherwise work a hardship on the employee. When the employee is able to return to full-time work, the employee must be placed in the same or an equivalent job as the job he or she left when the intermittent or reduced leave commenced.

[1] 29 C.F.R. § 825.202.

[2] 29 C.F.R. §§825.203, 825.302(e).

[3] 29 C.F.R. § 825.204.

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