



February 05, 2025

Calculating FMLA Leave

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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Reference Number: CTAS-1026

The employee's actual workweek is the basis of the FMLA leave entitlement. Accordingly, if an employee who regularly works 40 hours in a workweek uses eight hours of leave, that employee has taken 1/5 of a workweek. Similarly, if an employee who regularly works eight-hour days works four-hour days under a reduced leave schedule, that employee uses 1/2 workweek of FMLA leave for each week of the reduced leave schedule. A part-time employee who normally works 30 hours each week but works only 20 hours under a reduced leave schedule is taking 1/3 of a workweek of FMLA leave each week. The employer may convert these fractions to the hourly equivalent as long as the conversion equitably reflects the employee's total normally-scheduled hours.

The employer must account for FMLA leave using the smallest increment the employer uses to account for other forms of leave, but it cannot be more than one hour. For example, if the employer accounts for other leave in 1/2 day increments, the employer must use one-hour increments for FMLA leave. If the employer accounts for other leave in 15-minute increments, FMLA leave must be accounted for in 15-minute increments. The employee's FMLA entitlement cannot be reduced by more than the amount of leave actually taken.

Employers may not require the employee to take more leave than necessary to address the circumstances that precipitated the need for leave. Employees may not be charged FMLA leave for periods during which they are working. 29 C.F.R. § 825.205.

When it is physically impossible for an employee to start or end work mid-way through a shift, the entire period the employee is forced to be absent is counted against the employee's FMLA leave entitlement. The physical impossibility provision is to be applied in only the most limited circumstances, and the employer bears the responsibility to restore the employee to the same or equivalent position as soon as possible. 29 C.F.R. § 825.205.

Overtime. If an employee normally would be required to work overtime but cannot due to an FMLA-qualifying reason, the hours the employee normally would have been required to work may be counted against the employee's FMLA entitlement. For example, if an employee normally would be required to work 48 hours in a workweek but because of a serious health condition can work only 40 hours, that employee is on a reduced leave schedule and would be using eight hours out of each 48-hour workweek, or 1/6 of a workweek. Voluntary overtime hours that the employee does not work may not be counted against the employee's FMLA leave entitlement.

Holidays. If a holiday occurs during a full week of FMLA leave, the holiday has no effect and the week is counted as a week of FMLA leave. However, if the employee is using leave in increments of less than one week, the holiday does not count against the employee's FMLA leave entitlement unless the employee was scheduled and expected to work on the holiday.^[1]

[1] 29 C.F.R. § 825.205.

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