

LEGAL UPDATE



DOL ISSUES OPINION LETTER ABOUT HOLIDAYS DURING FMLA LEAVE

On May 30, 2023, the Wage and Hour Division (WHD) of the U.S. Department of Labor issued Opinion Letter [FMLA2023-2-A](#): "Whether Holidays Count Against an Employee's FMLA Leave Entitlement and Determination of the Amount of Leave Taken."

The letter addresses whether an employee taking leave under the federal Family and Medical Leave Act (FMLA) during a week that includes a holiday uses leave equal to a fraction of their usual workweek or a fraction of a reduced workweek (the employee's usual workweek less one day). The WHD advises that employees use a fraction of their usual, full workweek in this situation.

WHEN LEAVE IS TAKEN FOR A FULL WORKWEEK

The FMLA entitles eligible employees of covered employers to take 12 weeks of unpaid leave for qualifying family and medical reasons. The letter notes that when a holiday falls during a week that an employee is taking a full workweek of FMLA leave, [FMLA regulations](#) specify that the entire week is counted as FMLA leave.

WHEN LEAVE IS TAKEN ON AN INTERMITTENT OR REDUCED SCHEDULE

Under certain circumstances, an employee may use FMLA leave intermittently or on a reduced leave schedule by reducing the time worked in the day or week. The letter states that the DOL has taken the consistent stance that when an employee is taking less than a full workweek of FMLA leave, the holiday is not counted as FMLA leave unless the employee was scheduled and expected to work on the holiday and used FMLA leave for that day.

The letter quotes from a 2008 [Notice of Proposed Rulemaking](#) (for changes to the FMLA regulations) that stated the use of intermittent or reduced schedule leave "shall not result in a reduction in the total amount of leave to which the employee is entitled ... beyond the amount of leave actually taken." According to the letter, subtracting the holiday from the workweek when calculating the amount of FMLA leave used in a partial week of leave would impermissibly reduce the employee's leave entitlement, because the employee would have to use a larger amount of FMLA leave than needed.

The WHD therefore concludes that the employee's normal workweek is the basis of the employee's FMLA leave entitlement. If the employee is not expected or scheduled to work on the holiday, the fraction of the workweek of leave used is the amount of FMLA leave taken (which would not include the holiday) divided by the total workweek (which would include the holiday).

HIGHLIGHTS

- + If an employee takes a full week of FMLA leave during a week that contains a holiday, the entire week counts as FMLA leave.
- + If an employee takes a partial week of leave during a week that contains a holiday, and the employee is not scheduled to report for work during the holiday, the holiday does not count as FMLA leave.
- + In calculating the amount of FMLA leave used during the partial week of leave, the holiday is counted as part of the employee's normal workweek.

