

NEW RULE TO CALCULATE LEAVE UNDER FMLA MULLED BY U.S. DEPARTMENT OF LABOR



A rule is under consideration of the U.S. Department of Labor that would change the way employers calculate leave time under FMLA and the reinstatement of employees following FMLA leaves. Once passed, the rule would require an employer to calculate FMLA leaves according to the shortest increments they employ to track work-time. The new rule resembles the situation before 2009 when a change in directives allowed employers to track FMLA leaves in the same manner as other leaves taken by an employee. In a FAQ notice, the Department of Labor said the move was being made to remove confusion over application of provisions. The Department of labor is also considering further clarification of the “physical impossibility” provision inducted in 2009. Post-2009 provisions allow an employer to delay reinstating an employee where “it is physically impossible for the employee to return to his or her job in mid-shift.” The DOL is concerned that the rule of “physical impossibility” could be stretched by employers to include situations where it is a mere inconvenience to allow the employee to join mid-shift. On the leave calculation issue, the DOL has already stated that “In response to the apparent confusion, the Department proposes to delete this provision of the regulations in favor of the more general principle of calculating FMLA leave usage using the employer’s shortest increment of leave at any time.” Under the current situation, an employer can track leave time under FMLA in 2-hour increments if employees take other forms of leave also in 2-hour increments, even though the same employer may be tracking work-time of employees in 30-minute increments. The new rule intends to change that situation and make the shortest work-time increment used by an employer to track work-time of employees to be applicable to the calculation of leave time under FMLA. Comments on the proposed rule are open up to April 16, 2012

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