

Electronic Alert

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DOL Publishes Guidance Regarding FMLA Leave & Counting Holidays

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On May 30, 2023, the Department of Labor’s Wage and Hour Division (“WHD”) published an Opinion Letter regarding how to calculate the amount of leave an employee uses under the federal Family and Medical Leave Act (“FMLA”) where an employee takes FMLA leave for less than a full week during a week that includes a holiday.

When an employee takes a *full* workweek of FMLA leave during a week that includes a holiday, the employee uses a full week of FMLA leave. However, the Opinion Letter specifically examines the situation where an employee takes FMLA leave on an *intermittent or reduced schedule* during a week that includes a holiday. The Opinion Letter explains that the holiday does not reduce the amount of the employee’s FMLA leave entitlement unless the employee was scheduled and expected to work on the holiday. That is because when an employee takes leave for less than one full workweek, the amount of FMLA leave used is determined by looking at the employee’s actual workweek.

For example, consider an employee who normally works Monday through Friday and needs to take FMLA leave in a week with a Friday holiday. If the employee needs to take FMLA leave every day that week, the employee will use a full week of FMLA leave. According to the WHD, if this same employee only needed to take FMLA leave Wednesday through Friday, the employee would use only 2/5 of a week of FMLA leave. The Friday holiday would not count against the employee’s FMLA leave entitlement. Click [here](#) to read the WHD’s full opinion letter.

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