

New Guidance

FMLA Leave Can Be Taken in Hourly Increments

THE U.S. Department of Labor recently issued new guidance on the federal Family Medical Leave Act that has upended the notion of what qualifies as leave under the statute.

Its Wage and Hour Division in February issued a guidance letter noting that employees with a serious illness may use intermittent leave under the FMLA to work a reduced schedule for “an indefinite period.” That is a significant departure from the typical FMLA scenario where workers will take days, weeks or months off from work for a qualifying reason under the law.

The ruling paves the way for workers with serious health conditions that may limit how many hours they can work in a day to do reduced hours, which will count towards the law’s leave limit of 12 working weeks per 12-month period.

In other words, if an FMLA-eligible employee reduced their working hours by two every day, they would never exhaust their allowed leave (two hours a day for an entire year).

The FMLA entitles eligible employees to take unpaid job-protected leave for qualifying family and medical reasons with continuation of group health insurance coverage.

The case and opinion

The company that sought the opinion clarifying the law required its employees to regularly work 10-hour shifts to meet its 24-hour operational needs. Several of its workers asked the company under the FMLA to limit their shifts to eight hours.

It asked the Wage and Hour Division to render an opinion if that would be an appropriate use of the law.

Here is the ground-breaking interpretation of the law in the opinion that followed:

“In this case, if an employee would normally be required to work more than eight hours a day but is unable to do so because of an FMLA-qualifying reason, the employee may use FMLA leave for the remainder of each shift, and the hours which the employee would have otherwise been required to work are counted against the employee’s FMLA leave entitlement.”

The Wage and Hour Division added that employees can continue to use FMLA leave until they exhaust their leave, but if an employee only takes a few hours off every day from a workday that’s longer than eight hours, they could theoretically never exhaust their leave and be able to reduce their hours indefinitely.

The takeaway

This guidance changes the dynamic of family medical leave for both employers and employees.

In one sense, if employees are FMLA-eligible but still feel they can work a restricted amount of hours, it could be a benefit for an employer that needs the manpower they may lose with someone who takes weeks off work.

It would also allow the employee to earn a paycheck (albeit reduced by the hours they don’t work).

But for employers that need all hands on deck and working full shifts, this could be a burden.

If you are faced with a situation where an employee requests a restricted work schedule under the auspices of the FMLA, discuss your plans with legal counsel. ❖

