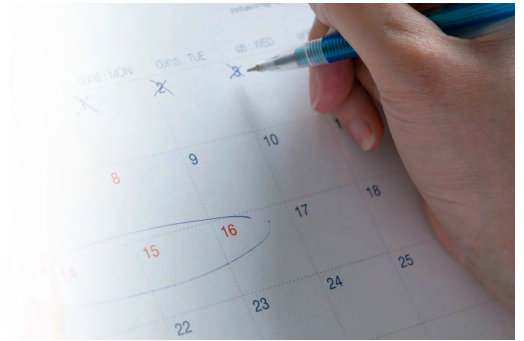


## Counting Days of Leave Under FMLA



MRA's HR Hotline Advisors receive dozens of questions each day about the application of the state and federal Family and Medical Leave laws. One major area of concern is how to count the hours or days of leave toward an employee's annual leave entitlement under special circumstances. The situations discussed here are some of the most common puzzlers.

**Intermittent or Reduced Schedule Leave.** An employee may take intermittent or reduced schedule leave in increments equal to the shortest period of time used by the employer's payroll system. An employee may not be required to take more FMLA leave than is necessary to deal with the condition that leads to the leave. In order to determine how the intermittent or reduced schedule leave affects the employee's leave entitlement, the employer must look at the employee's hours worked and hours of leave as compared to his regular work schedule.

For example, if an employee who regularly works a 40 hour week over five days takes one day of FMLA leave per week, he uses up one-fifth of a week of FMLA leave. If an employee who works a 40 hour week over four days takes one day of leave per week, he uses up one-fourth of a week of leave each week.

Employees who are exempt under the Fair Labor Standards Act and who regularly work more than 40 hours per week may be entitled to more intermittent leave for qualifying conditions under FMLA. Under the federal FMLA an employee who regularly works 40 hours per week is entitled to 480 hours of intermittent leave for qualifying conditions. However, the individual who regularly works 50 hours per week may be entitled to 600 hours of intermittent leave (12 weeks x 50 hours). However, if the workaholic exempt employee takes FMLA all at once or in periods of a week of more at a time, the history of long hours becomes irrelevant- 12 weeks is 12 weeks.

### Holidays

A holiday which falls within a week of leave does not entitle the employee to an extra day of leave. The week is to be considered a full week of leave. However, periods during which the employer's operations are temporarily interrupted and other employees are not expected to work (e.g. annual plant shutdown) do not count toward FMLA leave.

### Working at Home

If an employee who is on FMLA leave works at home during the leave, the hours worked are not counted as hours of leave. Although the employer may not have specifically requested the work, typically these hours are hours the employee has been "suffered or permitted" to work. Therefore, they are considered to be "work hours" under the FLSA.

These are just a sampling of questions that may arise with regard to the counting of FMLA leave. There are many more situations that may occur when dealing with Family and Medical Leave requests that require complex analysis. When questions arise, call MRA's HR Hotline at 866-HR-Hotline (866-474-6854) or email at [infnow@mranet.org](mailto:infnow@mranet.org) to discuss your specific circumstances.

This sample document is only an example and is based on the laws in effect at the time it was written. MRA-The Management Association, Inc. does not make any representations or warranties regarding the appropriateness or prudence of using this information for any particular individual or situation. Your company should add, delete, or modify the content of this document as needed to suit your purposes. This material is for your information only and should not be construed as legal advice. In some circumstances it may be advisable to have legal counsel review final documents prior to implementation.

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### Light Duty

An employer may offer a person on FMLA leave an opportunity to work on a light duty basis, but the employer may not compel the employee to accept such work in place of leave. If the employee elects to return to work to a light duty position, the period of light duty work does not count toward his leave entitlement.

### Death

When an employee takes leave to care for a parent, spouse, or child with a serious health condition and that relative dies, the FMLA leave ends. The serious health condition that was the reason for the leave no longer exists. The employee may not take additional FMLA leave to plan or attend the funeral, or handle the affairs of the deceased. The employee may, of course, be eligible for time off under other organizational policies and practices.

### MRA's HR Hotline can help you!

 866-HR-Hotline | 866.474.6854

 [InfoNow@mranet.org](mailto:InfoNow@mranet.org)

 [mranet.org/24-7/hr-hotline](http://mranet.org/24-7/hr-hotline)

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