

Designating the 12 Month Period for Calculating FMLA

Federal FMLA permits employers to designate the 12-month period to be used to calculate employees' FMLA entitlement. Section 825.200(b) of the regulations states that employers may choose any of these methods to determine the 12-month period:

- The calendar year.
- Any fixed 12-month "leave year" such as a fiscal year, a year required by state law, or a year starting on an employee's anniversary date.
- The 12-month period measured forward from the date any employee's first FMLA leave begins.
- A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

All employees must be subject to the same 12-month period. Employers that do not designate a leave year will be considered to have chosen the calendar year. Employers may change their designated 12-month period as long as appropriate steps are followed.

Keep in mind that employers who have to comply with a specific state family and medical leave law that requires a calendar year (such as Wisconsin, Rhode Island and Hawaii), can designate a different 12-month period for federal FMLA purposes.

Compliance Checklist

Consider these points if you wish to change your designated federal FMLA 12-month period:

- Does your current FMLA policy specify the designated federal FMLA 12-month period? If not, the calendar year is being used by default for federal FMLA purposes.
- Provide at least 60 days' notice to all employees of the change in the federal FMLA 12-month period and the effective date.
- Notice of the change should be posted in all areas where other mandatory state and federal postings are maintained, including electronic postings such as those on the organization's intranet.
- The transition must occur in a way that allows employees to retain the full benefit of 12 weeks of leave.

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Advantage of Changing


An advantage of designating a federal 12-month period other than the calendar year or other fixed 12-month period is that it limits the employee's ability to "stack" federal FMLA leave. "Stacking" means taking FMLA leave for one year right after leave for the previous year. For example, an employee's first need for FMLA leave is October 1. In theory, this employee could have 12-weeks of federal leave until the end of the calendar year, then 12 more weeks as of January 1. That's potentially 24 weeks of consecutive federal leave.

Disadvantages of Changing

Organizations need to assess the business-related reasons for changing the federal 12-month period designation. Disadvantages of changing the federal period include:

- Confusion. Explanation of a change to an already complex law that can be confusing to employees.
- Legitimate business reason. Justifying a change after decades of application.
- Administrative burden. The need to correctly track multiple leave periods versus one.
- Morale/retention. The appearance of the loss of a benefit.

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