

How do we calculate the rolling FMLA year?

Q. Can you explain how to calculate a “rolling” 12-month period for FMLA leave?

A. One of the four permissible ways for an employer to calculate employees' 12-week FMLA leave entitlement is to use a 12-month period measured backward from the date an employee uses any FMLA leave.

For employers, this rolling 12-month period is the most administratively burdensome—and also the most advantageous.

Under a rolling 12-month period, each time the employee takes FMLA leave, the remaining leave entitlement is the balance of the 12 weeks that has not been used during the immediately preceding 12 months. Thus, if an employee has taken eight weeks of FMLA leave during the past 12 months, he or she could take an additional four weeks of leave.

Example: If an employee used four weeks beginning Feb. 1, 2009, four weeks beginning June 1, 2009, and four weeks beginning Dec. 1, 2009, the employee would not be entitled to any additional leave until Feb. 1, 2010. However, beginning on Feb. 1, 2010, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year.

Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four weeks, beginning Feb. 1, 2010. The employee would also begin to recoup additional days beginning on June 1, 2010, and additional days beginning on Dec. 1, 2010.

Accordingly, employers using the rolling 12-month period may need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested. Employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior 12 months. In the example above, if the employee needs six weeks of leave for a serious health condition beginning Feb. 1, 2010, only the first four weeks of the leave would be FMLA-protected.