

Too small for FMLA? Don't be too sure

Issue: Even if it employs fewer than 50 people, your organization could be subject to FMLA compliance.

Risk: Being affiliated with another organization could mean that, together, the two organizations "employ" 50 or more people.

Action: Use the checklist below to determine if your organization could be considered an "integrated employer" under FMLA.

If your organization employs fewer than 50 people, it's probably exempt from complying with the Family and Medical Leave Act (FMLA). But if it's affiliated with another organization within a 75-mile radius, and the total number of people employed exceeds 50, you could be considered an "integrated employer" and subject to FMLA compliance.

Courts will examine four factors to decide if organizations are integrated:

1. Common management
2. Relationship among operations
3. Centralized control of labor relations
4. Degree of common ownership or financial control

Recent case: The manager at a Massachusetts Domino's Pizza filed an FMLA lawsuit. The employer argued that the law didn't apply because the store employs fewer than 50 people. The employer admitted that the store would cross the 50-employee threshold if three local franchises together were deemed "integrated," but said each store stood alone in management structure and financial control.

The court disagreed and let the case proceed. Reason: Enough linkage existed among those three stores, pushing them over the 50-employee limit. The stores were part of the same franchise, and they shared a workers' comp policy. (Cousin v. Sofono Inc., No. 01-30186-MAP, DMass, 2003)