

Calculating FMLA eligibility? Add in prior service

To be eligible for FMLA leave, employees must work for your organization for at least 12 months. But take note: Those months don't need to be consecutive.

In fact, a break in service can last several years, and even include the employee quitting and being rehired.

That's why it's wise to ask about prior service with the organization during hiring or employee orientation. Then, even if you don't use that information for any other reason, make a note for FMLA-eligibility purposes.

Recent case: Kenneth Rucker quit his sales job at Lee Auto Malls, but five years later the company rehired Rucker for the same job.

Seven months into his second stint, he hurt his back and had to take medical leave. The dealership fired him when he didn't return to work after two weeks. It reasoned that the FMLA didn't cover Rucker because it had been less than 12 months since he was rehired. (He had worked more than 1,250 hours since his return, meeting the other FMLA threshold.)

Rucker sued and the 1st Circuit Court of Appeals sided with him, declaring that "the complete separation of an employee from his or her employer for a period of years ... does not prevent the employee from counting earlier periods of employment with the employer toward satisfying FMLA's 12-month requirement." (*Rucker v. Lee Holding Company*, No. 06-1633, 1st Cir., 2006)