

Start of absence, not approval date, sets 12-week FMLA clock ticking

Under the Family and Medical Leave Act (FMLA), eligible employees can take up to 12 weeks of job-protected, unpaid leave. When do those 12 weeks officially begin? A new court ruling has made clear that the clock starts ticking on the day of the first absence, not the date on which you officially notify employees that their leave falls under the FMLA.

Recent case: After an office manager's complicated pregnancy, she gave birth and required many weeks of recovery. She went on leave in April. But in an effort to extend her leave, she argued that her FMLA leave wasn't officially approved until three months later, so that later date should be the start of her 12-weeks of allowable FMLA leave. The company disagreed and stuck with the April date.

She sued, claiming an FMLA violation. A district court sided with the company, saying the employee wasn't entitled to a leave windfall even if the company failed to immediately designate the leave as FMLA leave. She was given all the leave required under the law when she actually began her leave in April. (*Myrick v. Aramark Corp.*, N.D.Ill., 2004)

Final note: Within two days after learning an employee's absence could be FMLA related, send written notice that the leave falls under FMLA. Specify the start date. By doing this, you'll set the 12-week meter running.