

How do we calculate FMLA eligibility on rehire?

Q. We have an employee who was employed with our company from May, 2010 until April, 2011. The employee was rehired in 2015 and worked approximately nine months. Has the employee satisfied the requirement of 12 months of employment despite the three-year gap in employment under the FMLA?

A. Yes. As long as the employee has also worked 1,250 hours in the nine months preceding the leave and works at a location with 50 or more employees within 75 miles, he meets the requirements for eligibility under the FMLA because the employee has worked for you for a total of more than 12 months. If the break in employment were seven years or more, then the earlier employment need not be counted in determining whether the employee has been employed by the employer for at least 12 months, but three years is too short of a break in employment to disregard the prior employment.

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