

# Too small for FMLA? Think again; you may be an 'integrated employer'

If your company has fewer than 50 workers, yet is somehow linked to another employer or location, you may incorrectly believe that you don't need to comply with the Family and Medical Leave Act (FMLA). If this fits your situation, read on to find out whether you need to start complying.

The FMLA says you must comply if you employ 50 or more workers within a 75-mile radius. Separate companies are usually viewed as separate employers. But the Labor Department sometimes classifies a group of smaller businesses as an "integrated employer" if the companies are linked in some way, thus forcing all those small companies to comply. Franchised and spun-off businesses are particularly vulnerable.

Are you an integrated employer? The Labor Department will examine four factors to decide if two or more employers or locations are "integrated":

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

Having any one of these items doesn't automatically make you an integrated employer, but courts will look at the totality of circumstances to make the decision.

**Recent case:** The manager at a Massachusetts pizza store filed an FMLA lawsuit.

The employer argued that the law didn't apply to his store because it doesn't employ 50 or more people. He admitted that it would cross the 50-employee threshold if each of its three pizza franchises together were deemed "integrated." But 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 to make them an integrated employer, pushing them over the 50-employee limit. The stores were part of the same franchise (Domino's), and they shared a workers' comp policy. (Cousin v. Sofono Inc., No. 01-30186-MAP, DMass, 2003)

## Who qualifies under FMLA?

**Employers:** Any company with 50 or more employees working within a 75-mile radius of the work site. The workers must be employed for each working day over 20 or more workweeks in the current or preceding calendar year.

**Employees:** To be eligible for FMLA leave, employees must work for a covered employer at least 12 months (but not necessarily 12 continuous months) and clock at least 1,250 hours during the 12 months leading up to FMLA

leave. On-call time counts toward the 1,250 hours, but paid time off, such as vacation and sick leave, does not. Part-time employees are entitled to FMLA leave based on a proportionate formula.

Note: A company can decide to offer FMLA leave even if it doesn't meet the 50-employee threshold, or it can set a more-generous employee qualification rule