

Choose best method to set FMLA calendar

Under the FMLA, eligible employees are entitled to up to 12 weeks of unpaid leave to deal with qualifying serious health conditions.

Employers can calculate the 12-week entitlement by choosing one of four methods:

- 1. The calendar-year method** is the simplest. Eligible employees are entitled to 12 unpaid weeks during any calendar year. Eligibility resets Jan. 1.
- 2. The fixed 12-month year method** is based on any fixed 12-month “leave year” the employer chooses, such as the employer’s fiscal year or the employee’s anniversary date.
- 3. The single 12-month period method** begins on the first day the employee takes leave and ends 12 months later.
- 4. The rolling 12-month calendar method** measures backward from the date an employee first takes FMLA leave.

Not choosing a method can prove dangerous, as a recent case shows. Employers that don’t choose must provide leave under the method most beneficial for the employee. That means you will have to calculate leave under all four methods.

Recent case: Nichole was fired from her job at a nursing home. She had requested intermittent FMLA leave during pregnancy. The employer told her she had to take full-time leave until her delivery date.

Nichole had a miscarriage, and by Dec. 30 had undergone a hysterectomy.

She requested more leave beginning in January. The employer told her she had used up her FMLA leave and terminated her.

She sued for interference with her FMLA rights.

The court said that the employer hadn’t chosen a leave entitlement method and therefore had to provide the one most favorable to Nichole. Resetting leave on Jan. 1 for the calendar year would have made her immediately eligible. Instead, it fired her.

The court said that gave her grounds to sue her employer. (*Stahl v. Susque View Home Nursing*, MD PA, 2019)

How to improve the FMLA? DOL wants your ideas

Even after 25 years, compliance with the FMLA still confuses and trips up employers. Recognizing this, the U.S. Department of Labor says it will soon seek public comments on ways to improve FMLA regulations to protect employees “and to reduce administrative and compliance burdens on employers.” Look for DOL’s request for comments this year or early 2020.