How to choose the best FMLA calendar year for your business

For HR, one of the most difficult FMLA challenges is figuring out exactly how much FMLA leave workers can take. From a calendar year to a rolling year, there are several calendar methods available to choose from. Each has its pros and cons. However, the calendar method your organization set years ago may not be meeting your post-pandemic needs.

Beyond that, there's the confusion over last year's pandemic paid leave laws and the most recent extension. The American Rescue Plan Act (ARPA) may mean a new pot of paid leave for some, not all, workers.

With this in mind, now is the perfect time to reflect on your FMLA calendar method and ensure it's still fitting your needs. If not, it might be time to change it to a more advantageous option. Here's how to make sense of it all.

The FMLA and calendaring

The FMLA allows most employers to choose from one of four calendaring methods. The chosen method must apply to all employees equally. Employers may change their calendar method by giving 60-days-notice to all affected employees. If the change deprives an employee of leave time or other FMLA benefits, the employee is entitled to the time/benefits under the original calendaring method. Leave initiated during the 60-day notice period must be calculated on the method most beneficial to the employee.

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The four FMLA calendaring methods are:

- The calendar year.
- Any fixed 12-month “leave year,” such as a fiscal year, a year required by state law, or a year starting on an employee’s “anniversary” date.
- The 12-month period measured forward from the date any employee’s first FMLA leave begins.
- A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

If the employer doesn’t choose a calendaring method, the employer must use the calendaring method most beneficial to the employee. So, if you haven’t already chosen a method, do so now. Otherwise, each time you process an FMLA leave request, you must calculate the entitlement four ways.

Calendar and fixed-year methods

The calendar and fixed year methods are easy to manage. All employees are on the same schedule. The downside of fixed-year methods is leave stacking. Leave stacking occurs when an employee taking leave at year’s end gets a new entitlement when the calendar flips.

Example: Rose works for an employer that uses the calendar year method. She starts her FMLA leave on October 8. Her twelve-week entitlement ends December 31. On January 1, she is entitled to another twelve-week entitlement. Assuming her condition qualifies, she could potentially take 24 consecutive weeks of job-protected leave.

Twelve-month forward method

Under this method, each employee is on a different calendar, making leave management a little messy. Each employee’s FMLA year begins on the first date of FMLA leave. This method does not totally eliminate the stacking issue.

Example: John works for an employer who uses the 12-month forward method. He injures his back on May 1 and requires surgery. His FMLA year begins May 1. He returns to work after eight weeks. In early April of the following year, he sustains serious injuries in a car accident. He uses his remaining four weeks of leave from the current year. As of May 1, he is entitled to another 12-weeks of leave. Potentially, he could take 16 consecutive weeks of job-protected leave.

Rolling method

The rolling method looks backward from each day of FMLA leave. This method prevents stacking and discourages abuse. It is, however, complicated to administer.

Example: Josh works for an employer that uses the rolling method. He takes four weeks of leave beginning February 1 to care for his ailing mother. He takes four weeks of leave for child bonding time after his child is born on June 1. December 1, he starts four weeks leave for a medical condition. He is ineligible for more leave until February 1.

Josh regains one day of available leave for each day starting February 1 for four weeks. Because the rolling method looks back 12-months, he will begin regaining leave again on June 1 for four weeks. The same process will play out beginning December 1. Under the rolling method, the amount of leave available is 12-weeks minus the amount of leave used in the previous twelve months.

Special calendar rules for some military leave

The FMLA permits two types of military leave — military exigency leave and military caregiver leave. Military exigency leave includes leave for:

- Issues arising from the military member's short-notice deployment (*i.e.*, deployment within seven or fewer days of notice).
- Attending military events and related activities.
- Certain childcare and related activities arising from the military member's covered active duty.
- Certain activities arising from the military member's covered active duty related to care of the military member's parent.
- Making or updating financial and legal arrangements to address a military member's absence while on covered active duty.
- Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the military member's covered active duty.
- Taking up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary rest and recuperation leave during deployment.
- Certain post-deployment activities within 90 days of the end of the military member's covered active duty.
- Any other event that the employee and employer agree is a qualifying exigency.

The calendaring method the employer uses for FMLA leave is also used for military exigency leave.

FMLA calendar year rules for military caregiver leave differ

Employees who are "next of kin" to an injured service member may take military caregiver leave. The military caregiver leave year begins on the first day of caregiver leave (twelve-month forward method). This is true regardless of the employer's FMLA calendaring choice. In other words, you need to track military caregiver leave separately unless you always use twelve-month forward.

Employees taking military caregiver leave are entitled to a total of 26 weeks of leave. Any regular FMLA leave or military exigency leave can be included in that 26-week entitlement. FMLA leave is capped at 12 weeks.

Once the employee begins military caregiver leave, the twelve-month forward calendaring method kicks in. This is true regardless of the employer's chosen calendaring method. Thus, the 26 weeks could be counted under two calendar methods. The first 12 weeks would be calculated using the employer's regular FMLA calendar method. The remaining 14 weeks would be calculated using the twelve-month forward method.

Sorting out calendaring for Families First Coronavirus Response Act leave

Mandated federal paid leave under the Families First Coronavirus Relief Act (FFCRA) ended December 31, 2020. The FFCRA had required employers to provide paid time off for many COVID-19-related reasons. These included time to get tested, treated, and recover.

Crucially for employers, the FFCRA had two new service requirements for eligibility. Employees were immediately eligible for the two weeks of paid emergency leave. They were eligible for expanded partly paid FMLA leave after two weeks of service. Thus, the 12-month, 1,250-hour requirement was out the window. For example, a worker whose employer used the calendar year method would usually wait 12 months before becoming eligible. If his start date was 1/1/2020 he'd be eligible 1/1/2021. But if he started 6/1/20 he's not eligible before 6/1/21. However, he'd already be eligible for FFCRA leave on April 1, 2020.

The American Rescue Plan Act (ARPA) extended the time employers may offer Emergency Paid Sick Leave (EPSL) to September 30, 2021. However, employers don't have to provide the leave. It's voluntary and employers can take a tax credit for the full cost. ARPA adds new eligibility reasons for taking paid leave — vaccine appointments and vaccine-related complications and testing for COVID. Employees who already used

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their EPSL received a new bank of ten days leave April 1, 2021.

The IRS has not yet issued regulations on how an employer's voluntary provision of EPSL affects the FMLA calendar. However, the new bank of time provided as of April 1, 2021 implies a new calendar year. If it wasn't an April Fool's joke, it appears to create a new calendaring method — one started in the second quarter.

Should you reset your FMLA calendar?

When most of your employees who were able to telework did, you may have been a bit casual about leave. As long as the work got done, you probably didn't know your employee took time off for a doctor's appointment. Tracking usage likely fell by the wayside. But that casual approach won't cut in when employees are back in the office.

Review the calendaring method you have been using. Is it unduly complicated? You might be better off using the calendar year approach. Yes, some workers may end up with more unpaid time off if they begin leave late in the year. Or, you may have workers who have been using military caregiver leave. In that case, it may be easier to switch everyone to the twelve-month forward calendar.

Additional resource: Read more about FMLA requirements and what they mean for your business.

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