

Fact Sheet #28H: 12-month period under the Family and Medical Leave Act (FMLA)

The FMLA entitles eligible employees who work for covered employers to take unpaid, job-protected leave in a defined 12-month period for specified family and medical reasons. Generally, employers may select one of four options to establish the 12-month period to be uniformly applied to all employees taking FMLA leave. This fact sheet does not address the “single 12-month period” applied to military caregiver leave, which differs from the employer determined 12-month period used for other FMLA leave reasons. See [Fact Sheets #28M\(a\), Military Caregiver Leave for a Current Servicemember under the FMLA](#) or [#28M\(b\), Military Caregiver Leave for a Veteran under the FMLA](#).

The employer may use any of the following methods to establish the 12-month period:

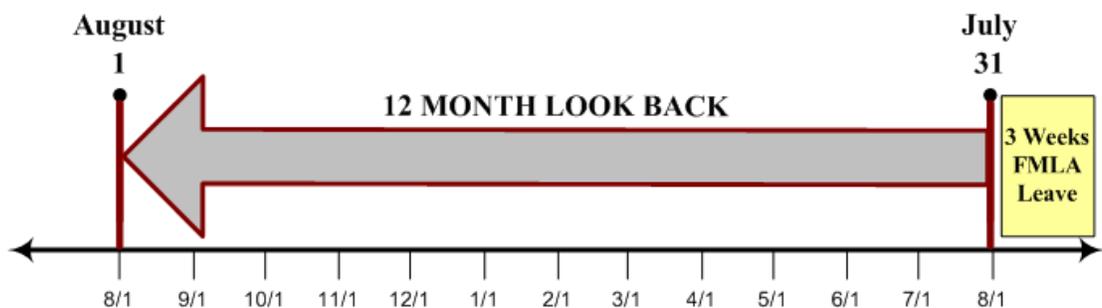
- (1) **the calendar year** – 12-month period that runs from January 1 through December 31;
- (2) **any fixed 12-months** – 12-month period such as a fiscal year (for example, October 1 through September 30), a year starting on an employee’s anniversary date (for example, September 22 through September 21), or a 12-month period required by state law; **Current FMLA Calendar July 1 – June 30**

→ (3) **the 12-month period measured forward** – 12-month period measured forward from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period; or **Will be moving to this**

- For example, Lucia’s FMLA leave begins on November 6, 2012 so her 12-month period is November 6, 2012 through November 5, 2013.

(4) a **“rolling” 12-month period measured backward** – 12-month period measured backward from the date an employee uses any FMLA leave. Under the “rolling” 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

- *Example 1:* Michael requests three weeks of FMLA leave to begin on July 31st. The employer looks back 12 months (from July 31st back to the previous August 1st) to see if any FMLA leave had been used. Michael had not taken any previous FMLA leave, so he is entitled to the three weeks he requested and has nine more weeks available.



GARI Family and Medical Leave

GARI

District employees shall be provided family and medical leave as provided by a plan approved by the board. The plan for providing leave under this policy shall be filed with the clerk of the board and made available to all staff at the beginning of each school year.

Approved: KASB Recommendation - 9/97; 2/98; 4/07; 6/08

| BOE approved: 7/08

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~~(Remove this page from the policy book)~~

~~SAMPLE: FAMILY AND MEDICAL LEAVE PLAN~~

Family and medical leave as required by federal law shall be granted for a period of not more than 12 weeks during a 12-month period. For purposes of this policy, a 12-month period shall be defined as a 12 month period measured forward from the first date an employee takes FMLA leave. ~~fiscal year beginning on July 1 and ending the following June 30.~~ Spouses employed by the district may only take an aggregate of 12 weeks of leave for a birth or adoption of a child or to care for a child with a serious health condition.

Leave is available because of (1) the birth of a son or daughter of the employee and to care for the son or daughter; (2) the placement of a son or daughter with the employee for adoption or foster care; (3) the need to care for a spouse, son, daughter or parent of the employee because of a serious health condition; or (4) a serious health condition of the employee that prevents the employee from performing the job functions. (Leave for reason 1 or 2 must be taken within 12 months of birth or placement.)

The leave shall normally be unpaid leave. However, if the employee has any paid vacation, personal, sick or disability leave that is available for use because of the reason for the leave, the paid leave shall be used first and counted toward the annual family and medical leave. The superintendent will notify the employee of the beginning date of family and medical leave and the amount of the employee's accrued paid leave designated as family and medical leave.

The employee is eligible for family and medical leave upon completion of 12 months of service in the district and employed at least 1250 hours during the preceding year.

During the period of any unpaid family and medical leave the board shall continue to pay the employer's share of the cost of group health benefits in the same manner as paid immediately prior to the leave. Any employee portion of the cost shall be paid by the employee to the clerk of the board on the payroll date or other time as the employee and superintendent may agree. The board may terminate group health coverage if the employee payment is not received within 30 days of the due date.

When leave is foreseeable, the employee shall give written notice 30 days in advance. If leave is not foreseeable, notice will be given as soon as practicable.

Upon the employee providing notice of need for leave, the employer will notify the employee of:

- a. the reasons that leave will count as family and medical leave,
- b. any requirements for medical certification,
- c. employer requirement of substituting paid leave,
- d. requirements for premium payments for health benefits and employee responsibility for repayment if employer pays employee share,

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- e. right to be restored to same or equivalent job,
- f. any employer required fitness-for-duty certifications.

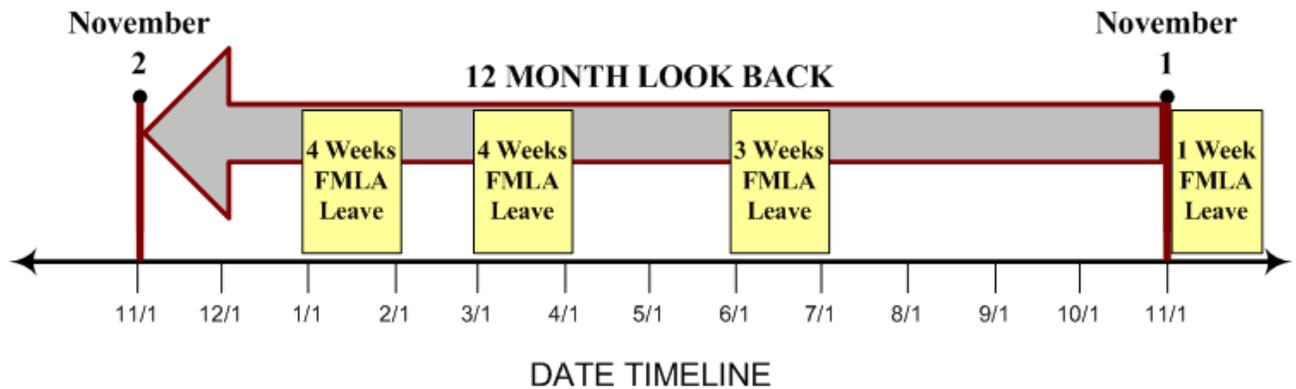
Family leave (reasons 1 or 2) may not be used intermittently or on a part-time basis without the prior approval of the superintendent.

The superintendent may require an instructional employee to continue leave until the end of a semester if the leave begins more than five (5) weeks before the end of a semester, lasts more than three (3) weeks and the return would occur during the last three (3) weeks of the semester.

If the leave is for a reason other than the employee's serious health conditions, the superintendent may require an instructional employee to continue leave until the end of a semester, if:

1. the leave begins in the last five (5) weeks of a semester, will last more than two (2) weeks and the return to work would occur in the last two (2) ~~_____~~ weeks of a semester, or
2. the leave begins in the last three (3) weeks of a semester, and lasts more than five (5) days.

- Example 2:* Patricia requests two weeks of FMLA leave to begin on November 1st. The employer looks back 12 months (from November 1st back to the previous November 2nd) and sees that Patricia had taken four weeks of FMLA leave beginning January 1st, four weeks beginning March 1st, and three weeks beginning June 1st. Patricia has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After Patricia takes the one week in November, she can next take FMLA leave beginning January 1st as the days of her previous January leave “roll off” the leave year.



Employers may select any one of the four methods to establish the 12-month period as long as the method is applied consistently and uniformly for all employees. The only exception is for a multi-state employer who has eligible employees in a state with a state family and medical leave statute that requires a specific method for determining the leave period. The employer may comply with the state provision for all employees within that state, and uniformly use one of the four methods described above for all other employees.

Before changing to a different method of calculating the 12-month period, an employer must first give all employees at least 60 days notice of the intended change; and the transition must take place in such a way that the employees retain the full benefit of their leave entitlement under whichever method affords the greatest benefit to the employee. If an employer fails to select one of the 12-month period methods discussed above, the employer must use the 12-month period method that is the most beneficial to the employee. Under no circumstances may an employer change the 12-month period to avoid the requirements of the FMLA.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. [See Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)