



### Additional Help



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## 12 Weeks of Leave, 480 Maximum Hours, Right? Wrong!

**U**nder the federal FMLA, an employee is eligible for up to 12 weeks of unpaid leave during an employer-designated 12-month period. When an employee requires leave on an intermittent or reduced schedule, it is necessary to calculate how many hours of FMLA leave the employee may take.

For a full-time employee working 40 hours, if you multiply 40 hours per week times 12 weeks of available leave, the result is 480 hours available for leave. However, the federal regulations do not provide for 480 hours of leave, but rather provide leave availability based on the employees' regular weekly work schedule. The regulations state:

### Increments of FMLA leave for intermittent or reduced schedule leave (§825.205)

(b) Calculation of leave. (1) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. Therefore, if an employee who would otherwise work 40 hours a week takes off 8 hours, the employee would use one-fifth of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work 8-hour days works 4-hour days under a reduced leave schedule, the employee would use one-half week of FMLA leave. Where an employee works a part-time schedule or variable hours, the amount of FMLA leave that an employee uses is determined on a *pro rata* or proportional basis. For example, if an employee who would otherwise work 30 hours per week, but works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third

### The actual workweek is the basis of leave entitlement.

of a week of FMLA leave for each week the employee works the reduced leave schedule. An employer may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours.

Where an employee's work schedule varies from week to week or is sporadic so that the employer cannot determine with certainty the normal hours worked per week, the regulations instruct the employer to average the weekly work hours for the 12 months prior to the commencement of the leave.

### **Practical Example: Employee on a 10-hour or 12-hour shift**

An employee working a 10-hour shift scheduled Monday through Thursday who consistently works six hours of overtime on Friday, would be eligible for 552 total hours of leave (46 hours per week times 12 weeks of leave). If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason, the hours the employee would have been required to work may be counted against the employee's FMLA entitlement.



An employee on a 12-hour shift working alternating 36-hour and 48-hour work weeks would be eligible for 504 hours of leave (36 hours times six weeks plus 48 hours times six weeks).

### **Key Direction**

Employers should carefully check employee weekly work schedules when determining the amount of available federal FMLA leave. In addition, an employer policy or agreement, such as a union contract, cannot limit the amount of available leave (for example, stating that 480 hours of federal FMLA leave is available to all eligible employees).

Need help talking through your FMLA process? MRA's [HR Advisors](#) can help you!



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