



The U.S. Department of Labor issued an [opinion letter](#) on May 30, 2023, clarifying how employers should calculate Family and Medical Leave Act (FMLA) leave taken by employees "during a week that includes a holiday." The letter addresses the question of whether the employee "is using a fraction of the employee's usual workweek (a workweek without a holiday), or if the employee is using a fraction of a reduced workweek (the employee's usual workweek less one day due to a holiday)."

Specifically, the letter clarifies that when a holiday falls within the workweek of an employee who has taken a full workweek of leave, the holiday "has no effect and a full week of FMLA leave is used." For example, if an employee works 40 hours per week, Monday through Friday, and takes FMLA leave for that entire week, a holiday falling on a Monday will **not** reduce the amount of leave as measured in workweeks—a full workweek will be counted against their 12 weeks of leave, instead of 80% of a workweek if the holiday were to be counted.

In contrast, when a holiday falls during a week where an employee is taking **less** than a full workweek of FMLA leave, the holiday is **not** counted as FMLA leave unless the employee was scheduled and expected to work on the holiday and used FMLA leave for that day.

The opinion letter provides an illustration of how this calculation applies: "For example, for an employee who normally works a 5-day week and takes one day of FMLA leave, excluding the holiday from the week would result in the employee using 1/4 of a workweek of FMLA leave in a workweek that includes a holiday instead of 1/5 of a workweek of FMLA leave. Calculating the amount of leave used in this way would be an interference with the employee's FMLA rights."

As always, employers calculating FMLA leave for their employees should consider each employee's specific workweek and scheduled hours. If some employees are scheduled to work on what constitutes a holiday for other employees, the above considerations do not apply to calculations for the employees who would not otherwise be receiving the holiday.

Employers with questions about accurately calculating FMLA leave should contact experienced employment counsel for guidance.

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