

*MEMO*

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DATE: September 5, 2000

TO: Personnel Directors/Designees  
Labor Relations Directors/Designees

FROM: Carolyn J. Trevis  
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RE: FMLA Update – Recent Issues

*FMLA UPDATE*

Recently, a variety of FMLA issues have come up for discussion within the DOER Labor Relations/Compensation Division. Please read the following update and contact your labor relations representative with any questions.

- **Continuous Leave Which Crosses Over Fiscal Year:** Several questions have emerged regarding the determination of eligibility when an employee's leave crosses over the fiscal year (i.e. begins in one fiscal year and continues into the next fiscal year). This issue has arisen because eligible state employees are entitled to up to 12 weeks of unpaid leave in a twelve-month period. The State has chosen the fiscal year (July 1 to June 30) as the "12-month period" in which the 12 weeks of leave entitlement occurs.

We have recently received an interpretation from the Department of Labor that if an employee is eligible for and qualifies for a continuous FMLA leave in one fiscal year for a particular condition, and this leave crosses over into the new fiscal year, the employer may not determine eligibility again as of the beginning of the new fiscal year (i.e., as of July 1). In this situation, the employer must determine eligibility only at the commencement of the leave.

For example, assume that Employee A has worked 1500 hours during the past 12 months. She has an FMLA qualifying condition and commences leave on May 15. The employee's health care provider has certified that she needs 14 weeks of continuous leave for her serious health condition. As of June 30, Employee has used 6 weeks of FMLA leave. Since Employee A was eligible for the leave on May 15, she will continue to be eligible for the leave as of July 1, the start of the new fiscal year. The employer cannot recount on July 1 to see if the employee has worked 1250 hours in the last 12 months. Under this scenario, Employee A may continue her leave into the new fiscal year and use an additional 8 weeks (14 weeks less 6 weeks used in old fiscal year=8 weeks remaining).

If the employee is eligible for leave, she would have four weeks of FMLA leave remaining.

If the employee has a different condition in the new fiscal year, the employer may determine whether the employee is eligible for leave for this condition (i.e. determine whether the 1250 hours requirement is met).

- **Intermittent leave: Determining 1250 hours of FMLA eligibility:** We have received an interpretation from the Department of Labor that, once an employee has been approved for intermittent leave for a specific qualifying condition, they are approved for up to 12 weeks of intermittent leave in that fiscal year for that condition. We are not to re-check the 1250 hours criterion each time the employee is absent during the fiscal year, provided that the leave is for the same condition. The theory behind this interpretation is that if an employee is approved for 12 weeks of leave in a row, we do not re-check the employee's 1250-hour eligibility during the period of continuous leave. You should, however, re-check the 1250-hour eligibility standard for each new qualifying condition.

We had a recent inquiry as to whether we can re-check an employee's 1250 hours eligibility criteria at the beginning of a new fiscal year where the employee has been taking intermittent leave. It appears from the regulations and case law on this issue that an employer *may* re-check the eligibility of an employee who is using intermittent leave for a medical condition at the beginning of the fiscal year. FMLA grants an eligible employee twelve weeks of leave *per twelve-month period*. Hence, any eligibility determination made on the day of the first absence applies only to the twelve weeks the employee takes during the current twelve-month period.

- **Final Regulations Available:** If you would like a copy of the federal regulations, they are available via the Department of Labor's phone number (202/219-8412) or website (<http://www.dol.gov>).
- **FMLA Policy, Forms, Updates and Postings also available on DOER's website.**

cc: DOER Labor Relations/Compensation Staff  
DOER Employee Insurance Division Staff  
Cassandra O'Hearn, Attorney General's Office  
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