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FMLA UPDATE

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PERSL #1380

TO: Personnel Directors/Designees
Labor Relations Directors/Designees

FROM: Carolyn J. Trevis 
DOER Labor Relations and Compensation Division

RE: FMLA Update – Eligibility Issues

This is to give you an update on FMLA eligibility issues. As the new fiscal year approaches, agencies should be reviewing the eligibility of all employees on FMLA leave, both continuous and intermittent. If, as of July 1, the employee remains on leave for an FMLA-qualifying condition and has worked the required 1250 hours over the past year, the employee is eligible for an additional 12 weeks of FMLA leave at the beginning of the new fiscal year. This is true whether or not the employee has used 12 weeks of FMLA-qualifying leave in the current fiscal year.

For instructions on how to process a leave that qualifies under FMLA, refer to SEMA4 Help. Because HR and insurance are now combined in an integrated system, the proper insurance transactions will be generated for purposes of the health insurance issues.

Please review the following examples and contact your labor relations representative with any questions.

Long-term Leaves¹: Assume that Employee X has worked 1800 hours during the past 12 months and has an FMLA-qualifying condition that commenced on January 15, 2003. The employee's health care provider has certified that she needs an indefinite amount of continuous leave for her serious health condition. As of the commencement of her leave, Employee X is determined eligible for FMLA and is given the appropriate notice of her FMLA rights. On April 9, 2003, Employee X has exhausted the 12 weeks of FMLA leave

¹ Although the example uses a long-term medical leave, the same will apply to a long-term leave of a different nature (e.g. personal leave to care for a family member with a serious health condition; sick leave; vacation; parenthood leave).

she is entitled to in the current fiscal year. On July 1, 2003, the start of the new fiscal year, Employee X remains on an approved unpaid medical leave for the same FMLA-qualifying condition. Employee X is not entitled to any additional FMLA leave for the new fiscal year because in the 12-month period immediately preceding July 1, Employee X did not work the required 1,250 hours.

In contrast, assume that Employee Y goes out on an FMLA-qualifying leave on March 1, 2003 and has worked 1800 hours during the preceding 12 months. Employee Y exhausts the 12 weeks of FMLA leave for the current fiscal year on May 24, 2003. He remains out on a leave for the same FMLA-qualifying condition as of July 1, 2003. If Employee Y meets the 1250-hour requirement on July 1, 2003, Employee Y is entitled to an additional 12 weeks of FMLA-qualifying leave at the start of the new fiscal year.

This clarification and update is based on the regulations. 29 CFR 825.110 provides that an FMLA eligible employee is one who has been employed for at least 12 months and who has worked for at least 1,250 hours during the 12-month period “immediately preceding the commencement of the leave.” 29 CFR 825.200 (c) also provides that an “employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year.”

Continuous Leave That Crosses over Fiscal Year: With regard to a continuous FMLA-qualifying leave that crosses over into a new fiscal year, you should not determine eligibility at the beginning of the new fiscal year. The Department of Labor has advised 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 the FMLA-qualifying serious health condition. As of June 30, Employee has used 6 weeks of FMLA leave.² 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 FMLA-qualifying leave into the new fiscal year and use up to an additional 12 weeks. Employee A will have used 6 weeks of FMLA-qualifying leave in the first 12 month period (i.e. the first fiscal year). The health care provider has certified that she needs 14 weeks of leave. Thus, after using the 6 weeks,

² In this case, the employee has not exhausted his/her 12 weeks of FMLA leave.

Employee may take an additional 8 weeks in the new fiscal year. Assuming that the employee returns to work following this leave, she will then have four weeks of FMLA leave remaining.

- Intermittent Leaves: 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. You should, however, re-check the 1250 hour eligibility standard for each new qualifying condition.

However, it is clear from the DOL's regulations and case law that we can re-check an employee's 1250 hours eligibility criteria at the beginning of a new fiscal year, i.e. July 1, where the employee has been taking intermittent leave. 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 fiscal year. Thus, for employees on intermittent FMLA leave, you *should* check whether these employees meet the 1250 hours eligibility criteria as of July 1, 2003.

- 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 and Total Compensation Staff
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