

## DOL FMLA GUIDANCE – HOLIDAYS DURING FMLA LEAVE

### I. BACKGROUND

The Department of Labor (DOL) has issued an Opinion Letter (FMLA 2023-2-A) to clarify how the amount of leave used is calculated when an employee takes Family and Medical Leave Act (FMLA) leave for less than a full week during a week that includes a holiday.

The DOL issued the Letter in response to a request for information on whether an employee who takes leave during a holiday week is: (a) using a fraction of the employee's usual work week (i.e., as if the workweek did not include the holiday); or (b) using a fraction of the reduced workweek (i.e., the employee's usual workweek, less the holiday day)

In general, the FMLA entitles eligible employees to up to 12 "work weeks" of leave in a 12-month period: a) for one's own "serious health condition"; b) to care for a seriously ill or injured spouse or dependent; c) for the birth, adoption or placement of a child; or d) to deal with "exigencies" related to their spouse's military deployment. Eligible employees may take intermittent FMLA leave which consists of separate blocks of leave for a single illness or injury.

### II. OPINION LETTER

The Opinion Letter explains that, if a holiday falls during the week when an employee takes a full work week of FMLA leave, then a full work week is counted as FMLA leave.

Under certain circumstances, an employee may use FMLA leave intermittently or on a reduced leave schedule by reducing the number of hours worked during a day of the week. The Opinion Letter explains that the DOL has taken a consistent position that when an employee is taking less than a full work week of FMLA leave, the holiday is not counted as FMLA leave unless the employee was scheduled to work on the holiday and used FMLA leave for that day. The Opinion Letter notes that "subtracting the holiday from the workweek when calculating the amount of FMLA leave used in a partial week of leave would impermissibly reduce the employee's leave entitlement because the employee would have to use a larger amount of FMLA leave than needed."

The Opinion Letter concludes "that under the FMLA, the employee's normal workweek is the basis of the employee's leave entitlement." If the employee is not scheduled to work on the holiday, the fraction of the work week of leave used is the amount of FMLA leave taken (not including the holiday), divided by the total workweek (including the holiday).

The foregoing Compliance Update is for informational purposes only, and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.

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