

EMPLOYER LAW BLOG

# FMLA: Pick A Year... Any Year

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Cox, C. FMLA eligible employees can take up to 12 weeks of unpaid leave during a 12-month period. But, the question is – which 12 month period?

The employer can choose from 1 of 4 methods for measuring the 12-month period.

## 1. A Calendar Year

This is the easiest method. The downside is that an employee could take 12 weeks of leave ending on December 31 and then have a new 12 weeks of leave available on January 1. Not good.

## 2. Any fixed 12-month period

Such as – your fiscal year or the employee's anniversary date. Potentially the same problem with "stacking" as with option 1 above.

## 3. A "forward-looking" 12-month period

You begin the 12-month period from the date the employee first uses FMLA leave. The employee will have up to 12 weeks leave during the following 12 months.

## 4. A "backward-looking" 12 month period

This is also called a "rolling" period. It is the most complicated method, but also popular because it allows you to limit FMLA leave to a total of 12 weeks during the preceding 12 months. Huh? I said it was the most complicated.

Here's an example. An employee asks for FMLA leave. You check the records and see that the employee has already taken 8 weeks leave during the previous 12 months. The employee is entitled to 4 more weeks of leave.

However, a new calculation is required each time the employee asks for leave because the 12-month period is "rolling", or constantly moving. But, on the other hand, it prevents the possibility of a person "stacking" leave in order to take 24 consecutive weeks of leave.

You get to pick a method, but when you make your choice you have to apply the same method consistently to all of your employees.

If you fail to make a choice, the Department of Labor says you have to use the method that is most beneficial to the employee. So, it is best to choose... and choose wisely.

When you choose a method, you must notify your employees of your choice. If you later want to choose a different method, you must give your employees a 60-day notice of the change. And, you must give the employees the full benefit of 12 weeks of FMLA leave under whichever alternative method yields the greatest benefit during the 60-day transition period. At the conclusion of the 60-day period, you may implement the new alternative method.

Want to know more? Here is a good source for reviewing the regulations pertaining to FMLA leave.