



Department of Labor Provides Opinion on FMLA Leave

April 10, 2019

In March, 2019, the Department of Labor ("DOL") released an opinion letter on Family and Medical Leave Act ("FMLA") leave addressing certain situations in which employers have delayed the start of FMLA leave or provided additional FMLA leave beyond the 12-week FMLA entitlement.

Background

Some employers have permitted their employees to exhaust their accrued sick leave or paid time off prior to designating their leave as FMLA-qualifying, when the leave is clearly FMLA-qualifying from the beginning. Additionally, some employers that have benefit programs with greater leave rights than under the FMLA have provided FMLA leave to employees beyond the 12-week entitlement. The DOL's opinion letter addresses both of these situations.

DOL Opinion Summary

An employer may not delay the start of FMLA leave. Once an eligible employee communicates a need to take leave for an FMLA-qualifying reason, neither the employee nor the employer may decline or delay FMLA protection for that leave. Therefore, when an employer determines that leave is for an FMLA-qualifying reason, the leave is FMLA protected and immediately counts toward the FMLA leave entitlement of 12 weeks, even if the employee would prefer that the employer delay the designation of FMLA leave.

An employer may not designate more than 12 weeks of leave as FMLA leave. An employer may adhere to any employment benefit program that provides greater than 12 weeks family/medical leave, but any leave greater than 12 weeks, provided by the employer, must be provided outside of the FMLA leave and cannot expand the employee's 12-week entitlement under the FMLA. Additionally, if an employee substitutes paid leave provided by the employer for unpaid FMLA leave, that employer-provided paid leave counts toward the employee's 12-week FMLA entitlement and does not expand the 12-week FMLA entitlement.

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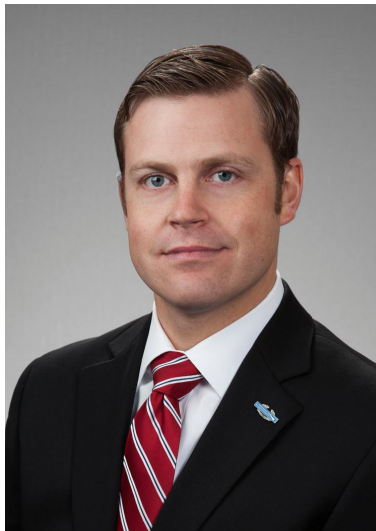
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