FMLA, State-Mandated, or Employer-Sponsored Leave? New U.S. Department of Labor Guidance for Employers Tries to Answer Tricky Questions

Labor & Employment Law Update

By Laurie Meyer and Stephen Pauwels on January 21, 2025

As states and cities have created new paid family and medical leave requirements for employers, the layers of overlapping regulation have left even the most seasoned employee benefits professionals and leave administrators with legitimate questions about how those schemes interact with the federal Family and Medical Leave Act (FMLA).

Recently released guidance from the United States Department of Labor (DOL), in the form of an opinion letter, attempts to resolve many of those questions.

Unpaid FMLA Leave and Other Paid Leave Benefits

The DOL has already directed covered employers on how qualifying employees' 12-week unpaid FMLA leave benefits interact with paid leave benefits such as employer-sponsored paid vacation and/or sick leave (PTO) plans, workers' compensation wage-replacement benefits, and short- and long-term disability insurance wage-replacement benefits.

Thus, employers are likely well-familiar with how unpaid FMLA leave interacts with PTO where leave qualifies under both, under the FMLA "substitute" rule. When this happens, the general rule is that the employer or the employee, independent of the other, may choose to have PTO run concurrently with unpaid federal FMLA leave.

Similarly, the DOL has plain rules for how FMLA leave interacts with workers' compensation and disability leave insurance. In those instances, employers *must* designate time off as FMLA leave, count any time off work against the employee's FMLA allotment, and notify the employee of the designation.

And PTO can supplement partial-income-replacement workers' compensation or disability benefits—under existing DOL guidance—*only* where the employer and employee *mutually agree* to do so, the employee's leave qualifies for all three, and state law permits.

The Intersection of FMLA Leave, State Paid Family, and Medical Leave

Applying this framework, the DOL reached the reasonable conclusion that state paid family and medical leave schemes were—at least for FMLA purposes—no different than state workers' compensation or private disability insurance schemes.

Thus, where an employee qualifies for state paid family and medical leave for an FMLA-qualifying reason (such as for their own serious health condition or to care for a family member's serious health condition), the employer *must* designate leave as FMLA, count time off against the employee's FMLA, and notify the employee of the designation.

And where the leave qualifies under FMLA, the state paid family and medical leave program, *and* the employer's PTO plan, the employer and employee may *mutually agree* to let the employee use PTO to substitute for the portion of leave that is unpaid, such as where disability benefits only cover some percentage of the employee's wages.

Exceptions to the New Guidance

Of course, these general guidelines do not apply universally—that would be too easy. As the DOL repeatedly cautions, its guidance is dependent on the state (or local) law in question. For example, Wisconsin's mini-FMLA (WFMLA) *prohibits* an employer from requiring the employee to use available PTO during the two-week WFMLA leave period (though the employee may still elect to use PTO).

Similar one-off exceptions, whether based on legal requirements or the unique facts of each case, are inevitable as the patchwork of state and local family and medical leave requirements develops. Employers should seek out trusted legal counsel to help them apply case-specific facts to the increasingly complex web of laws, regulations, and ordinances.