

CWCKC's eligibility for FMLA

Our handbook states that we comply with FMLA (pg 24) and details three conditions that must be met for an employee to qualify for FMLA (pg 25). The third condition is written in the Handbook as follows:

To be eligible for FMLA leave, the employee must (condition 1) and (condition 2). Additionally, FMLA only applies to employees that work at a location where 75 or more employees work at that location or within 75 miles of it; CWC Kansas City does not yet meet that threshold and as such, employees are not eligible for FMLA leave.

There are two things wrong with that third condition, as written.

1. The correct threshold is 50 employees within a 75-mile radius, not 75 employees.
2. A public elementary/secondary school is specifically exempted from the minimum number of employees rule.

Therefore, I would like to propose a change to the above Handbook wording to the following:

To be eligible for FMLA leave, the employee must (condition 1) and (condition 2). Additionally, FMLA normally also only applies to employees that work at a location where 50 or more employees work at that location or within 75 miles of it; as a public school system, CWC Kansas City employees are specifically exempted from this third condition.

Using PTO/Vacation Leave with FMLA Leave

Our handbook also discusses how an employee can use PTO/Vacation Leave with FMLA Leave - namely, all PTO/sick days must be exhausted before FMLA will kick in.

pg 26: *An employee on FMLA leave must use all accrued paid sick leave at the beginning of any otherwise unpaid FMLA leave period.*

pg 29: *An employee must exhaust all accumulated PTO days, prior to any unpaid leave.*

There are two concerns that stem out of those statements:

1. "sick" and "PTO" time are discussed (we collectively otherwise refer to that time simply as "PTO"); but vacation time is not. As a reminder, "vacation" time is given to 12-month employees and these two classifications of time off are given, accrued, and tracked separately. The lack of clarification on vacation time needs to be addressed.
2. Requiring the exhaustion of all PTO time before FMLA kicks in only makes sense if an employer allows the "rolling-over" of PTO time year-to-year. If an employee is only allowed to use PTO during the academic year in which it is earned, taking FMLA therefore only punishes an employee (by restricting when PTO is taken) with no additional protection/benefit to the employer as PTO is not paid out and not rolled over. In fact, I would argue most employees needing to take FMLA will - by definition - be most needing additional PTO days after FMLA expires for follow-up doctor visits.

Since PTO (and vacation) must be taken in the academic year earned, I do not see any benefit to CWCKC to require the exhaustion of accrued leave before FMLA kicks in.

Therefore, I would like to propose 1) striking the sentence above on page 29 (it's out of place contextually there and redundant) and 2) changing the above wording on page 26 to:

When submitting the FMLA Leave Request Form, employees must indicate in writing how many days will be paid (and therefore deducted from the employee's accrued PTO/Vacation balance) or unpaid.

FMLA Leave over a Calendared School Break

Lastly, our Handbook offers two potentially conflicting guidelines around FMLA leave over a calendared school break:

pg 26: *If, however, the school's business activity has temporarily ceased for some reason and employees are generally not expected to report for work for one or more weeks (i.e. Winter Break, Spring Break, and Summer Break), the days the school's activities have ceased do not count against the employee's FMLA leave entitlement.*

pg 29: *Should the employee's leave overlap or coincide with known school holidays (i.e. spring, winter or summer break), then those holidays are included in the employee's allotted leave.*

I believe the statement on page 26 is more legally defensible, more aligned with our culture, and more beneficial to employees. The distinction is "one or more weeks." Legally speaking, a single-day holiday over FMLA is specifically counted as a normal day (i.e. the week containing Memorial Day is still "1 Week" of FMLA leave). Additionally, FMLA leave can be broken up by weeks. An employee can take 5 weeks of leave just prior to Spring Break, "come back" for Spring Break to be paid, then take the next 7 weeks just following Spring Break for a 12-week FMLA leave spanning 13 weeks (and be paid 1). Entirely legal - which is what page 26 says.

Therefore, I would like to propose 1) striking the sentence above on page 29 (it's out of place contextually there and redundant) and 2) changing the above wording on page 26 to:

If, however, the school's business activity has temporarily ceased for some reason and employees are generally not expected to report for work for one or more weeks ("weeks" being defined as "an entire Monday-Friday period between two weekend periods" - i.e. Winter Break, Spring Break, and Summer Break), the week(s) the school's activities have ceased do not count against the employee's FMLA leave entitlement. However, holidays (single or back-to-back [i.e. Thursday/Friday Thanksgiving]) do not meet this "week" threshold and will be considered regular unpaid FMLA days.