



MARCH 19, 2019

U.S. DOL Issues Opinion Letter Clarifying The Length of FMLA Entitlement

On March 14, 2019, the United States Department of Labor (“DOL”) issued an opinion letter addressing whether employers may delay designating paid leave as Family and Medical Leave Act (FMLA) leave. The opinion letter also addressed whether employers can permit employees to expand their FMLA leave beyond the statutory 12-week entitlement.

The FMLA enables eligible employees of covered employers to take unpaid, job protected leave of up to 12 weeks in a 12-month period for qualifying reasons. According to the DOL, employers must provide a written designation to an employee within 5 business days after determining whether the employee’s leave is being taken for FMLA qualifying reasons. Employers may not delay designating leave as FMLA leave because an employee is seeking to exhaust his or her paid sick leave. Employees seeking to substitute paid leave for unpaid FMLA leave will have the paid leave count toward their FMLA entitlement. While employers are not prevented from adopting leave policies which are more generous than FMLA, leave greater than the statutory 12 weeks may not be designated as FMLA protected leave.

Takeaway for Employers

Employers should designate employee leave as FMLA within five (5) days of determining that the leave is for a FMLA qualifying reason and may not delay such designation because an employee is exhausting other paid leave. Employers should also be cognizant of the fact that use of an employee’s sick leave does not expand the length of FMLA entitlement beyond the statutory 12 weeks.

If you have any questions regarding the DOL opinion letter or your obligations under the FMLA, please do not hesitate to contact us.

[PUTNEY, TWOMBLY, HALL & HIRSON LLP](#)