

# FMLA Insights

Guidance & Solutions for Employers

## Calculating FMLA Leave for Holidays, Breaks and Plant Shut Downs

By Jeff Nowak on November 10, 2011



'Tis the season *already*, as I am starting to receive telephone calls from employers with questions about how they calculate an employee's FMLA leave during a holiday week or when the employer is closed for a period of time (e.g., winter break for schools, plant shut down). As we prepare for the holidays, here are a few basic rules to have handy next to your payroll sheet:

### Calculating FMLA Leave During A Holiday Week

Let's use Veterans Day as an example. This year, Veterans Day falls on a Friday. If the employee observes the Veterans Day holiday and then takes the entire work week off (i.e., he is absent from Monday through Thursday), the employer should count the entire workweek as one full week of FMLA leave used. (The same would apply if the employer holiday occurred on any other day of the workweek and the employee was otherwise absent for the four other work days.)

However, if the employee works any portion of the workweek (i.e., he takes FMLA leave Tuesday through Thursday and then observes the employer holiday on Friday), the employer *cannot* count the holiday as FMLA leave. Here, the employer can only count Tuesday through Thursday as FMLA leave. [29 C.F.R. § 825.200\(h\)](#).

### Calculating FMLA Leave During a Plant Shut Down or School Break

What about situations where the employer shuts down operations for a period of time or a School District or College/University observes winter and summer breaks? Here, the [regulations](#) are very clear:

If for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement.

*Keep in mind:* in these situations, you cannot count the time against the employee's FMLA allotment, even if it is obvious the employee would not have been able to perform the duties of the job during this break.

*Does the same hold true for a School District or College/University on winter, spring and summer breaks where the employee is otherwise not required to report to work?* Yes. As noted above, the FMLA regulations specifically incorporate by example a "school closing two weeks for the

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Christmas/New Year holiday or the summer vacation.” Thus, the days during these school breaks should not be counted against the employee's FMLA leave entitlement.

## **Wait, there's more...**

If you still cannot get enough of this scintillating topic, you can access our [podcast](#) "Bah, Humbug! What Do I Do When My Employees Are Home for the Holidays?" for further guidance and examples.

Happy holidays!

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