

**FMLA2025-02-A**

September 30, 2025

Dear **Name***:

This letter responds to your request for an opinion concerning how to calculate the number of hours of Family and Medical Leave Act (FMLA) leave available to correctional law enforcement employees who work a fixed “Pitman Schedule” requiring 12-hour shifts over a 2-week cycle that includes mandatory overtime. Your letter also states that employees may volunteer for additional hours that are not part of the fixed schedule.

It is our opinion that, under the circumstances presented, an employer seeking to calculate the hourly equivalent of FMLA leave available to an employee should do so based on the employee’s actual, normally scheduled workweek. Accordingly, you should include in the entitlement calculation any work time comprising the employee’s normal, actual workweek—including mandatory hours. In contrast, additional voluntary hours that the employee may work should not be counted in his or her FMLA entitlement calculation. Similarly, employers cannot require employees to use their FMLA leave when employees do not work these voluntary hours.

This opinion is based exclusively on the facts as presented below that you provided to the Department and may not apply to different facts in this or other situations.

BACKGROUND

In your letter, you request guidance on the appropriate method for calculating intermittent or reduced schedule FMLA leave hours when employees work fixed schedules that include mandatory overtime hours and may volunteer for additional hours that are not part of the published weekly schedule.

You indicate the employer calculates the 12-workweek FMLA leave entitlement as equivalent to 504 hours. This calculation is based on the number of hours employees are required to work under the employer’s published schedule which mandates 84 hours of work every two weeks. You ask whether such an approach is correct, including whether it is appropriate to exclude from the FMLA leave entitlement calculation additional hours that an employee may volunteer to work, but that are not part of the published schedule. Additionally, you ask for confirmation that hours for which an employee may volunteer, but is not required to work, and does not work due to an FMLA-qualifying reason, should not count against the employee’s FMLA leave entitlement.

GENERAL LEGAL PRINCIPLES*FMLA Entitlement*

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. 29 U.S.C. §§ 2612–

2614. Eligible employees may generally take up to 12 “workweeks of leave” in a 12-month period (leave year) for qualifying FMLA leave reasons. 29 U.S.C. § 2612(a)(1); *see also* 29 U.S.C. § 2612(a)(3) (entitlement to a total of 26 workweeks of leave during a single 12-month period to care for a servicemember).

Although an employee does not accrue FMLA-protected leave at any particular hourly rate, the FMLA regulations provide that an employer may calculate an employee’s FMLA leave entitlement by converting fractions of a workweek of leave to their hourly equivalent in a manner that equitably reflects the employee’s total normally scheduled hours; these are generally the hours the employee would have worked but for the use of leave. 29 CFR 825.205(b)(1).

Because the FMLA provides that an employee is entitled to 12 workweeks of leave per leave year, it is common for employers to convert the entitlement to 480 hours of FMLA leave per leave year for employees who work a 40-hour workweek (40 hours per workweek multiplied by 12 workweeks).¹

However, it is the specific employee’s actual schedule that determines the conversion calculation. For example, where an employee otherwise would work 30 hours per workweek, the employee is entitled to 360 hours of leave per leave year (30 hours per workweek multiplied by 12 workweeks), or an employee who works 60 hours per workweek will be entitled to 720 hours (60 hours per workweek multiplied by 12 workweeks).²

“If an employee’s schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked (but for the taking of FMLA leave), a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee’s leave entitlement.” 29 CFR 825.205(b)(3).

Taking of FMLA Leave

The principles used to calculate an employee’s FMLA entitlement similarly apply when deducting an employee’s FMLA leave use from his or her entitlement. Under the FMLA, when an employee uses less than a full workweek of leave, the leave use “shall not result in a reduction in the total amount of leave to which the employee is entitled . . . beyond the amount of leave actually taken.” 29 U.S.C. § 2612(b)(1); 29 CFR 825.205(b)(1). In addition, the employee’s actual workweek determines the amount of FMLA leave used. For example, if an employee who would otherwise work 40 hours per workweek uses 8 hours of leave, the employee would use one-fifth (1/5) of a week of FMLA leave. 29 CFR 825.205(b)(1).

Moreover, “[i]f an employee would normally be required to work overtime but is unable to do so

¹ *See, e.g.*, Final Rule: The Family and Medical Leave Act of 1993, 60 FR 2180, 2203 (Jan. 6, 1995); [WHD Opinion Letter FMLA2002-1 \(May 9, 2002\)](#).

² *See* WHD Opinion Letter FMLA2002-1.

because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement." 29 CFR 825.205(c). In contrast, voluntary overtime hours that an employee is not required to work, and that an employee does not work due to an FMLA-qualifying reason, are not counted against the employee's FMLA leave entitlement. *Id.*

OPINION

It is our opinion that the conversion of the 12-workweek FMLA leave entitlement to a 504-hour leave entitlement that you describe is in accordance with the FMLA's requirements, as this calculation is consistent with what would be 12 normally scheduled workweeks for an employee working a mandatory 84 hours every 14 days. In determining the appropriate amount of an employee's FMLA leave entitlement, an employer may convert the workweek to its hourly equivalent in a manner that equitably reflects the employee's total normally scheduled hours. Your calculation properly appears to take into account normally scheduled hours while disregarding voluntary additional hours that an employee could potentially work.

Additionally, it is our opinion that, when calculating an employee's FMLA leave usage to be deducted from an employee's FMLA leave entitlement, you are correct to count as FMLA leave any hours the employee would normally work but for the FMLA absence, which includes mandatory overtime hours. Your approach is also consistent with the Department's regulations providing that additional voluntary hours that an employee does not work due to an FMLA-qualifying reason are not deducted from the employee's FMLA leave entitlement.

These principles may be illustrated by the following example:

Mark is a correctional police officer who works a schedule that requires him to work 84 hours every two weeks. He is required to work what his employer classifies as mandatory overtime hours as part of this schedule. Additionally, Mark may volunteer for extra work above his scheduled hours. Mark's employer considers his 12-workweek FMLA leave entitlement equivalent to 504 hours. The conversion is based on his actual schedule and does not include the availability of additional voluntary hours.

Mark has 504 hours of FMLA leave available when he requests 2.5 hours of leave to attend an appointment for the treatment of a serious health condition that qualifies for FMLA leave. Mark requests leave from 9:15 a.m. to 11:45 a.m. on a day on which he is scheduled to work during that time period. Mark's employer approves Mark for 2.5 hours of FMLA leave and calculates that he has 501.5 hours of FMLA leave remaining available in the employer's 12-month leave year. The fact that Mark had the option to, but did not and was not required to, volunteer for additional hours in the workweek is not a factor in the calculation of how much FMLA leave he has available to use or how much FMLA leave he has used.

The actual workweek is the basis of FMLA leave entitlement. Under the facts described in your

letter, we conclude that you properly included mandatory overtime hours when calculating your employee's FMLA leave entitlement and usage. We further confirm that additional voluntary overtime hours should not be added to the calculation of an employee's FMLA leave entitlement, and likewise any voluntary hours an employee is not required to work and does not work due to an FMLA-qualifying reason should not be counted against the employee's FMLA leave entitlement.

We trust that this letter is responsive to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Macy', with a stylized flourish at the end.

James R. Macy
Acting Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b).** You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request. This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.