



FMLA2026-1

January 5, 2026

Dear Name\*:

This letter responds to your request for an opinion concerning how a school closure of less than a full week impacts the amount of leave a school employee uses under the Family and Medical Leave Act (FMLA or Act).

When a school closes for part of a week during which an employee uses less than a full week of FMLA leave, the period during which the school is closed is not counted as FMLA leave, unless the employee was scheduled and expected to work during the period and used FMLA leave for that time. When a school closes for part of a week during which an employee is using a full week of FMLA leave, however, the entire week is counted as FMLA leave.

## BACKGROUND

You ask how to calculate an employee's FMLA leave use when a school closes for less than a full week due to inclement weather. You note that while 29 C.F.R. § 825.200(h) addresses the calculation of leave during a holiday or time when an employer temporarily closes or ceases operations for a full week or longer, you seek clarification regarding the treatment of school closures of one or more days, but less than a full week. You propose that whether the school schedules "make up" days for the days the school was closed for inclement weather should determine how the closure impacts the employee's FMLA leave entitlement.

## GENERAL LEGAL PRINCIPLES

### A. 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. *See* 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. *See* 29 U.S.C. § 2612(a)(1); *see also id.* § 2612(a)(3) (entitlement to a total of 26 workweeks of leave during a single 12-month period to care for a servicemember).

### B. Taking of FMLA Leave

Employees may use FMLA leave continuously, intermittently, or on a reduced leave schedule when medically necessary or when the employee and employer agree. 29 U.S.C. § 2612(b)(1).<sup>1</sup>

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<sup>1</sup> FMLA leave may be taken intermittently or on a reduced leave schedule when medically necessary due to the employee's serious health condition, the employee's family member's serious health condition, or for servicemember-family leave, or due to a qualifying exigency. *See* 29 U.S.C. § 2612(b)(1). Employers are

Employees who use FMLA leave on an intermittent or reduced schedule basis may not have their leave reduced “beyond the amount of leave actually taken.” *Id.* § 2612(b). When an employee takes FMLA leave for less than one full workweek, the amount of FMLA leave used is determined as a proportion of the employee’s actual workweek. *See* 29 C.F.R. § 825.205(b).

When a holiday falls during a week when an employee is taking FMLA leave in increments of less than a full workweek, the holiday does not count against the employee’s FMLA leave entitlement unless the employee was scheduled and expected to work on the holiday and uses FMLA leave for that day. *See* 29 C.F.R. § 825.205(b)(1); *see also* 73 Fed. Reg. 7876, 7892 (explaining that “[i]f an employee is not required to be at work because of a holiday on the day he or she requested leave, then no leave would be charged to the employee’s FMLA entitlement.”). Instead, the amount of FMLA leave the employee uses is a proportion of the employee’s actual workweek. *Id.* In contrast, when a holiday falls during a week that an employee is taking a full workweek of FMLA leave, the entire workweek counts as FMLA leave. *See* 29 C.F.R. § 825.200(h).

If the employer’s business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks, the days the employer’s business activity has ceased for one or more weeks do not count against the employee’s FMLA leave entitlement. *See id.*; *see also* *Scalia v. Department of Transportation and Public Facilities*, 985 F.3d 742, 749 (9th Cir. 2021) (“If a school is on break for one or more weeks, those weeks will not count as FMLA leave”).

## OPINION

In your letter, you request clarification whether an employee’s absence counts against his or her FMLA entitlement when the employer—here a school—is temporarily closed for less than a full week due to inclement weather. In determining how a school closure of less than a full week impacts an employee’s FMLA leave use, the principles in 29 C.F.R. § 825.200(h) apply.

As noted above, the statutory FMLA entitlement is based on workweeks of leave. *See* 29 U.S.C. § 2612(a)(1). Additionally, for those employees who use FMLA leave on an intermittent or reduced schedule basis, the Act prohibits the reduction of an employee’s statutory leave entitlement “beyond the amount of leave actually taken.” *Id.* § 2612(b)(1). The regulations also make clear that, when the employee takes leave for part of a workweek, the amount of leave taken is determined based on the actual week in which the employee took leave, and only the amount of leave actually taken may be counted. *See* 29 C.F.R. § 825.205(b)(1).

Therefore, when an employee is approved to take FMLA leave for less than a full workweek, and the school closes for less than a week such that the employee would no longer be expected to report to work during that time, such time during the school closure should not be deducted from the employee’s FMLA leave entitlement. For example, if an eligible employee needs FMLA leave each Tuesday afternoon for physical therapy, but the school is closed all day on Tuesday due to

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not required to permit employees to take FMLA intermittent or reduced schedule leave for the birth and care of a newborn child or for the placement with the employee of a child for adoption or foster care but may choose to do so. *Id.*

inclement weather and the employee is not required to report for duty, the employer school should not deduct time for that day from the employee's FMLA entitlement.

Conversely, for an employee using FMLA leave for a full workweek, when a school closes for less than a week the closure has no impact on the employee's FMLA leave usage, and the employer may deduct a full week's worth of leave from the employee's FMLA leave entitlement. In other words, if the employee was on FMLA leave for Monday through Friday of a week, but the school is closed on Tuesday, the employee would use a full week of FMLA leave despite not being required to report to work on Tuesday. *See id.* § 825.200(h).

Whether the closure was planned or unplanned has no impact on the amount of leave an employee uses. Nor are the specific reasons for the temporary closure material to the analysis. Additionally, whether your employer requires an employee to report to work on or for a "make up" day in the future likewise does not impact this analysis, as these days appear to be both scheduled to satisfy the school's instructional hour mandates (e.g., those imposed by the state) and unrelated to the employee's protected use of FMLA leave. However, an employee's ability to take FMLA leave on a "make up" day must be evaluated independently of the day that "make up" day replaces. Generally, if the employee is eligible, has a qualifying leave need, and has an unused leave entitlement prior to the scheduled "make up" day, the employee may use FMLA leave on that scheduled day.

We trust that this letter is responsive to your inquiry.

Sincerely,



Andrew B. Rogers  
Administrator

**\*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** 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.