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U.S. DOL Advises That Qualified Employees Can Use FMLA Leave to Work Reduced Hours



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Human Resources & Employment

The U.S. Department of Labor's (DOL) Wage and Hour Division recently released an opinion letter finding that employees who qualify for leave under the FMLA may use FMLA leave to work reduced hours until they have exhausted their FMLA leave.

As background, an employer received a medical certification stating that an employee could only work 8 hours per day and requesting FMLA leave for any work time in excess of 8 hours per day (the employer noted that it was standard in this workplace for employees to work more than 8 hours). The employer sought an opinion from the DOL as to whether limiting an employee's hours was better considered as a reasonable accommodation under the Americans with Disabilities Act (ADA) rather than job-protected leave under the FMLA.

The DOL opined that an employee who qualifies for FMLA leave may use their FMLA leave for reduced hours until they exhaust their FMLA leave. If the employee exhausts the FMLA leave, however, they would no longer be entitled to work less than 8 hours a day (under the FMLA). The DOL noted, however, that an employee may be able to invoke the protections of the ADA and FMLA simultaneously such that an ADA accommodation would need to be considered.

The Opinion Letter also clarifies that an employee is entitled to 12 "workweeks" of leave per year. In other words, if an employee works more than 40 hours per week, they are entitled to more than 480 hours of FMLA leave per year. For example, an employee who regularly works 50 hours per week is entitled to 600 hours of FMLA leave per year.

If you have any questions regarding the DOL's recent guidance on FMLA leave, please contact a member of Gould & Ratner's [Human Resources and Employment Law Practice](#).