

DOL Says Employers Can't Mandate PTO Use to Supplement State or Local Benefits During FMLA Leave

On January 14, 2025, the U.S. Department of Labor (DOL) Wage and Hour Division (WHD) issued an opinion letter clarifying that employers cannot require the substitution of accrued paid time off (PTO) during Family and Medical Leave Act (FMLA) leave when an employee is also receiving paid benefits from state or local family and medical leave programs. This clarification impacts the interplay between FMLA and paid state or local leave programs.

Review of FMLA and State/Local Family and Medical Leave Programs

FMLA Leave

The FMLA provides eligible employees with up to 12 weeks of unpaid leave (or 26 weeks in certain cases) for qualifying reasons such as the birth or adoption of a child, an employee's own serious health condition, or caring for a family member with a serious health condition (29 CFR § 825.200).

State/Local Paid Leave

Some states and localities have established paid family and medical leave programs that mirror the FMLA's qualifying reasons but may differ in duration or have additional qualifying events.

Substitution of PTO

While FMLA leave is generally unpaid, employees may elect or employers may require them to substitute accrued paid vacation or sick leave for any part of the unpaid FMLA leave period. This means that either the employer or the employee

can decide to have the accrued PTO run concurrently with the unpaid FMLA leave. (29 CFR § 825.207(a)).

Key Takeaways From the Opinion Letter

State/Local Paid Family Leave and FMLA

If an employee takes leave under a state or local paid family or medical leave program and the leave is also covered under the FMLA, the employer must also designate the leave as FMLA leave and notify the employee accordingly.

No Substitution of PTO for Paid Leave

Employers cannot require employees to substitute their accrued paid vacation or sick leave during the portion of FMLA leave that is compensated by state or local paid family or medical leave benefits.

Supplementing Paid Leave

If an employee receives partial pay under a state/local paid leave program and has additional PTO available, the employer and employee may mutually agree (where permitted by state law) to use PTO to supplement the state/local benefits.

FMLA Protection When State Leave Ends

If the state or local paid family leave ends before the employee exhausts their FMLA leave entitlement, the employee remains entitled to full FMLA protections.

Unpaid Leave Under State Programs

If an employee's state/local leave becomes unpaid, the FMLA substitution provision applies, and the employer may require the employee to use accrued PTO for the unpaid portion of the leave.

Action Items for Employers

Employers, including those in states with paid family and medical leave laws, as well as those in local jurisdictions with similar programs, should:

- Review leave policies to ensure compliance with the WHD's interpretation of FMLA and state/local paid leave programs.
- Revise policies that require employees to substitute accrued PTO during FMLA leave if the employee is receiving paid family or medical leave benefits from state or local programs.
- Ensure that FMLA designations are made correctly when state/local paid leave is involved.

Currently, Washington, D.C., and the following states have passed paid family and medical leave laws: California, Colorado, Connecticut, Delaware, Maine, Massachusetts, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Washington.

Employers should act promptly to align their leave practices with WHD's interpretation of these regulations to avoid compliance risks and ensure they meet employees' needs during FMLA leaves.

FOR MORE INFORMATION

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