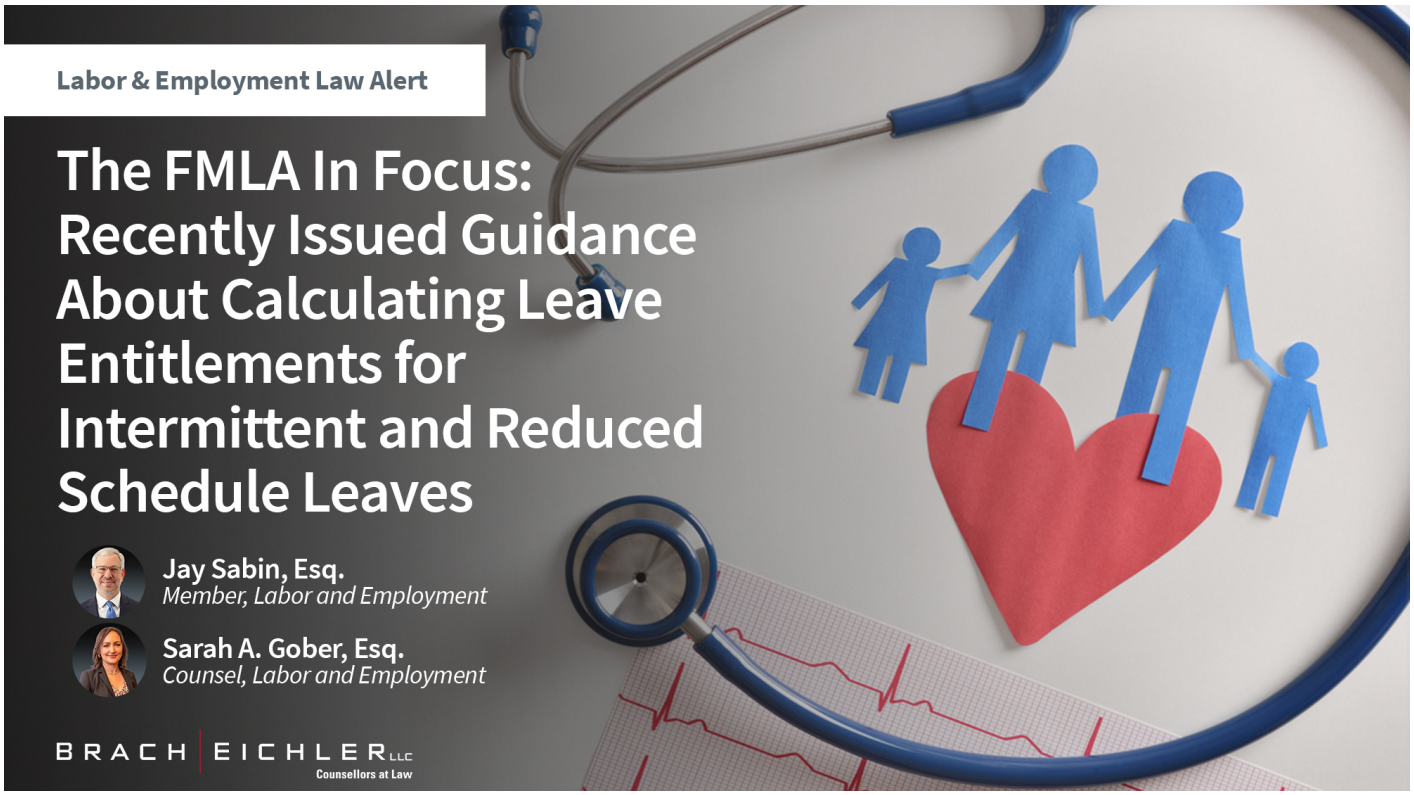
The FMLA In Focus: Recently Issued Guidance About Calculating Leave Entitlements for Intermittent and Reduced Schedule Leaves



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A recently issued opinion letter from the US Department of Labor (DOL) explains how an employer should convert an employee's weeks of available leave under the Family Medical Leave Act (FMLA) into hours. The guidance applies when an employee uses FMLA in less than full week increments, such as during intermittent or reduced schedule leave.

Eligible employees are entitled to up to 12 weeks of leave under the FMLA during the relevant 12 month look back period. However, when an employee takes intermittent or reduced schedule leave, an employer must determine the employee's hourly leave entitlement. While employers may assume that an employee who works a regular 40-hour workweek (with no overtime) is entitled to 480 hours of leave, how many hours of leave an employee is entitled to becomes more complicated when the employee works a variable schedule.

The DOL's recent opinion letter discusses how to convert an employee's 12 week leave entitlement into hours of leave for purposes of intermittent or reduced schedule leave. The DOL clarifies that an employee's hourly leave entitlement should reflect the employee's actual, regularly scheduled workweek. For example, if an employee works 30 hours each week, the employee would be entitled to 360 hours of leave.

In order to determine the hourly leave entitlement for employees who work a variable work schedule, an employer must calculate the employee's average weekly hours worked. The average should be based upon the weekly hours worked during the

12-months before the anticipated start of leave.

If an employee is regularly scheduled to work mandatory overtime, those hours should be included in the calculation of available leave hours, according to the DOL. However, additional hours of voluntary work should not be included. A similar approach should be taken when determining how much leave the employee has used. If the employee regularly works mandatory overtime and that overtime is missed because the employee is on leave, that time should be both included in the employee's hours of FMLA entitlement and deducted from the employee's total available leave. This was the approach upheld in *Hernandez v. Bridgestone Americas Tire Operations, LLC*, 831 F.3d 940 (8th Cir. 2016).

Converting FMLA weeks to hours, both for purposes of entitlement and usage, can also arise when an employee's work schedule changes, either prior to or during leave, such as a change from part-time to full-time or vice versa.

Given the intricacies of FMLA, employers should carefully review their FMLA policies and procedures to ensure compliance with the clarified calculation method. Available hours should also be entered in Section III of the FMLA Designation Notice whenever leave is approved.

For more information about how your organization can properly manage FMLA compliance, please contact:

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