

The Family Medical Leave Act: Employee Eligibility

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This post is one of a continuing series this week providing a useful refresher on the FMLA.

To be eligible for [Family Medical Leave Act \(FMLA\)](#) benefits, an employee must satisfy *all* of the following:

- The employee must have been employed by the employer for at least a total of 12 months before the commencement of the leave;
- The employee must have worked at least 1,250 hours in the 12 months immediately preceding the leave; and
- The employee must work at a site at which the employer has 50 or more employees within a 75-mile radius.

In Detail: 12 Months of Employment

The 12 months of employment need not be consecutive. Current employment as well as employment before a break in service is counted. However, the 12-month period does not include employment periods prior to a break in service of *seven years or more* unless:

- The break in service was for National Guard or Reserve military service;
- There was a written agreement stating the employer's intention to rehire the employee after a break in service; or
- The employer chooses to recognize such prior employment, so long as the employer acts uniformly.

In Detail: 1,250 Hours of Service

The Fair Labor Standards Act (FLSA) rules for determining compensable hours of work apply when determining whether an employee has worked the required 1,250 hours. The 1,250 hours of service does not include time during which an employee performs no work, such as paid holidays or paid vacation. Time that would have been worked during a period of National Guard or Reserve military service, however, is included.

In Detail: 50 Employees Within 75 Miles

This requirement means that even though employees at an employer's large headquarters may be eligible for FMLA leave, employees at a small, remote satellite location might not be eligible. The number of employees at the time that the employee requests leave is used for calculation purposes.

For employees such as salespersons who do not have a fixed worksite, the employee's "home base" is used. This may be the location from which their work is assigned or the location to which they report.

The Message (or hopefully a reminder) for Employers

In order to properly calculate leave eligibility, employers should be sure to keep accurate employee records detailing each employee's length of service, hours worked, and time off.

About Beth Lincow Cole

Employment Law Attorney Beth Lincow Cole has skillfully helped business owners and managers head off the unwanted and unnecessary lawsuits that can arise in the workplace. Drawing on her successful legal experiences both in and outside the courtroom, Beth Lincow Cole understands how to protect employers. By developing solid pre- and post-employment procedures for her clients, she assures that they are legally protected.

Beth Lincow Cole has worked for large regional and national law firms, focusing solely on employment issues, on behalf of management within a wide range of industries. Whether you are a start up company with basic questions about personnel files or a larger company with questions about an employee's Family Medical Leave, Beth Lincow Cole can help. Drawing on her experiences, she counsel's companies in the following practice areas:

- Defense in administrative agency matters such as before the DOL, EEOC, PHRC or NJDCR
- Department of Labor Audits
- Discrimination
- Downsizing/Reduction in Force
- Drug Testing
- Employment Contracts and Severance Agreements
- Employment Law Compliance
- FMLA and other family leave laws
- Independent Contractors/Contingent Workforce

Please contact the firm to find out how the Law Office of Beth Lincow Cole can protect your company.