

Sec. 31-51qq-16. How does one determine the amount of leave used where an employee takes intermittent leave or reduced schedule leave?

(a) If an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. For example, if an employee who normally works five (5) days a week takes off one (1) day, the employee would use one-fifth (1/5) of a week of FMLA leave. Similarly, if a full-time employee who normally works eight (8)-hour days works four (4)-hour days under a reduced schedule leave, the employee would use one-half (1/2) of a week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee who normally works thirty (30) hours per week, works only twenty (20) hours per week under a reduced schedule leave, the employee's ten (10) hours of leave would constitute one-third (1/3) of a week of FMLA leave for each week the employee works the reduced schedule.

(c) If an employer has made a permanent or long-term change in the employee's schedule for reasons other than FMLA, and prior to the notice of need for FMLA leave, the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked but for the taking of FMLA leave, a weekly average of the hours scheduled over the twelve (12) months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement. However, where the employee has been employed by an employer for less than twelve (12) months prior to the beginning of the leave period, a weekly average of the hours scheduled over the employee's entire period of employment with the employer (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement.

(e) If an employee would normally be required to work overtime, but is unable to do so because of a qualifying reason that limits the employee's ability to work overtime, the employer may count the hours which the employee would have been required to work against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for forty-eight (48) hours in a particular week, but due to a serious health condition the employee is unable to work more than forty (40) hours that week, the employee would utilize eight (8) hours of FMLA-protected leave out of the forty-eight (48)-hour workweek, or one-sixth (1/6) of a week of FMLA leave.

(f) An employer may not count voluntary overtime hours that an employee does not work due to a qualifying reason against the employee's FMLA leave entitlement.

(Adopted effective March 9, 1999; Amended August 3, 2022)