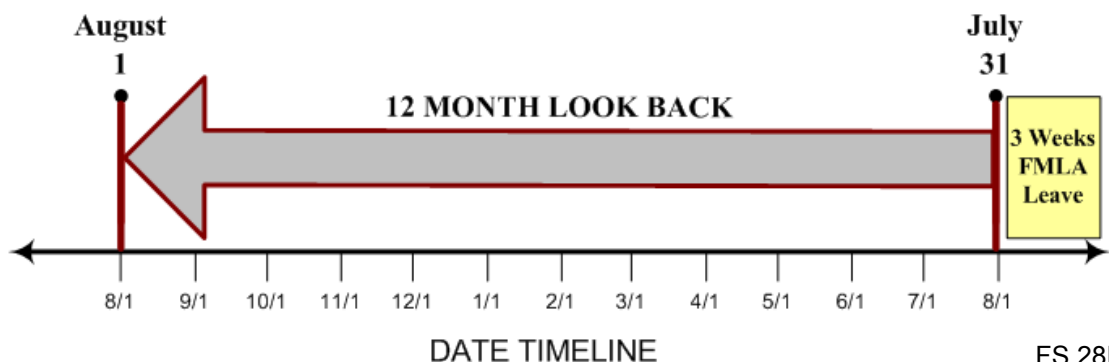


## Fact Sheet #28H: 12-month period under the Family and Medical Leave Act (FMLA)

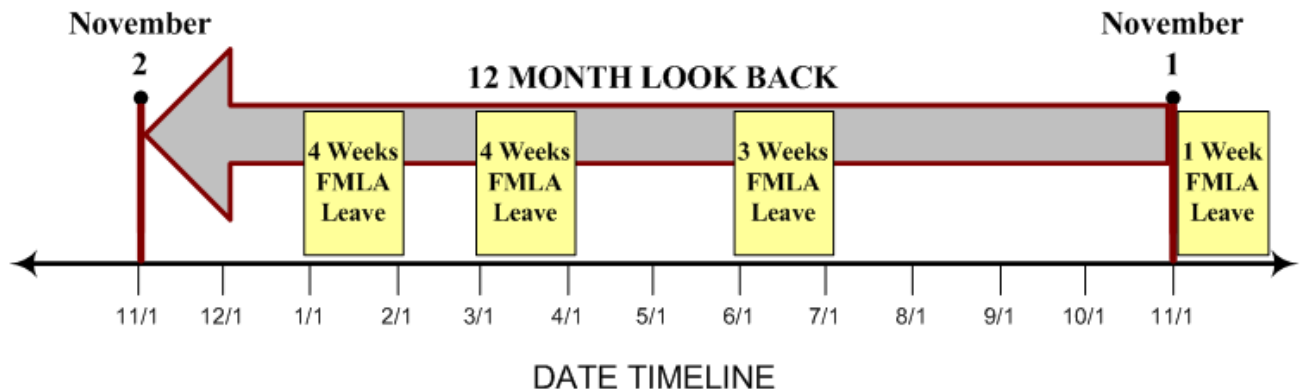
The FMLA entitles eligible employees who work for covered employers to take unpaid, job-protected leave in a defined 12-month period for specified family and medical reasons. Generally, employers may select one of four options to establish the 12-month period to be uniformly applied to all employees taking FMLA leave. This fact sheet does not address the “single 12-month period” applied to military caregiver leave, which differs from the employer determined 12-month period used for other FMLA leave reasons. See [Fact Sheets #28M\(a\), Military Caregiver Leave for a Current Servicemember under the FMLA](#) or [#28M\(b\), Military Caregiver Leave for a Veteran under the FMLA](#).

The employer may use any of the following methods to establish the 12-month period:

- (1) **the calendar year** – 12-month period that runs from January 1 through December 31;
- (2) **any fixed 12-months** – 12-month period such as a fiscal year (for example, October 1 through September 30), a year starting on an employee’s anniversary date (for example, September 22 through September 21), or a 12-month period required by state law;
- (3) **the 12-month period measured forward** – 12-month period measured forward from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period; or
  - For example, Lucia’s FMLA leave begins on November 6, 2012 so her 12-month period is November 6, 2012 through November 5, 2013.
- (4) **a “rolling” 12-month period measured backward** – 12-month period measured backward from the date an employee uses any FMLA leave. Under the “rolling” 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.
  - *Example 1:* Michael requests three weeks of FMLA leave to begin on July 31<sup>st</sup>. The employer looks back 12 months (from July 31<sup>st</sup> back to the previous August 1<sup>st</sup>) to see if any FMLA leave had been used. Michael had not taken any previous FMLA leave, so he is entitled to the three weeks he requested and has nine more weeks available.



- *Example 2:* Patricia requests two weeks of FMLA leave to begin on November 1<sup>st</sup>. The employer looks back 12 months (from November 1<sup>st</sup> back to the previous November 2<sup>nd</sup>) and sees that Patricia had taken four weeks of FMLA leave beginning January 1<sup>st</sup>, four weeks beginning March 1<sup>st</sup>, and three weeks beginning June 1<sup>st</sup>. Patricia has taken 11 weeks of FMLA leave in the 12-month period and only has one week of FMLA-protected leave available. After Patricia takes the one week in November, she can next take FMLA leave beginning January 1<sup>st</sup> as the days of her previous January leave “roll off” the leave year.



Employers may select any one of the four methods to establish the 12-month period as long as the method is applied consistently and uniformly for all employees. The only exception is for a multi-state employer who has eligible employees in a state with a state family and medical leave statute that requires a specific method for determining the leave period. The employer may comply with the state provision for all employees within that state, and uniformly use one of the four methods described above for all other employees.

Before changing to a different method of calculating the 12-month period, an employer must first give all employees at least 60 days notice of the intended change; and the transition must take place in such a way that the employees retain the full benefit of their leave entitlement under whichever method affords the greatest benefit to the employee. If an employer fails to select one of the 12-month period methods discussed above, the employer must use the 12-month period method that is the most beneficial to the employee. Under no circumstances may an employer change the 12-month period to avoid the requirements of the FMLA.

## ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. [See Fact Sheet 77B: Protections for Individuals under the FMLA](#). The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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