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Letter on Proposed Changes
825.205

Introduction

Section 825.205 of the FMLA as it stands now is too burdensome on employers. This letter will propose to set a minimum increment of intermittent leave. With a minimum increment, the burden on employers will be lessened and employers will know the options available to them when physical impossibility prevents an employee from taking intermittent leave.

Minimum Increment

Intermittent leave allows employees to only miss what is necessary when they do not have to take off an entire day for a medical reason. However, the amount of leave allowed balances the burden on the employer against the burden on the employee. The employer must compensate for the employee not being there and deal with the administrative requirements of allowing leave. The employee relies on pay to survive and may not be able to meet financial burdens if forced to miss an entire day of work. The Act now allows the employee to take as little leave as is allowed by the employer's timekeeping methods. Considering that an employer must keep track of all of this leave, the burden becomes much worse when an employee is allowed to take one minute of FMLA leave at a time if necessary.

Small businesses will be less affected by the current rule. If an employer only has five or ten employees, then keeping track of the couple that may need FMLA leave is not a big deal. But what about an employer with one hundred employees or five hundred employees? Keeping track of every employee taking FMLA leave when they are allowed

to take as little as one minute at a time is a much worse burden than an employee missing a couple of hours more than needed.

Therefore, the minimum increment should be set at two hours, or quarter days. With two hours of leave, the employer will be able to better track the FMLA leave taken. One-fourth is a much easier fraction to deal with than 1/480. Also, it will be easier for the employer to find a replacement for that chunk of time. If an employee only needs thirteen minutes of leave, the employer must do without that employee because it is impossible to find a replacement for thirteen minutes.

Setting the minimum increment at two hours will also not be unduly burdensome on the employee. The employee will still be able to work for most of the day and earn a majority of that day's salary. In some companies two hours is only slightly more than what is given for a lunch break. As a result, the employee also has the opportunity to make up what was missed by skipping lunch if possible on the day leave is required.

Overall, any burden suffered by an employee who must miss less than two hours of work when intermittent leave is taken is far outweighed by how much easier it will be for the employer to keep track of leave and run a business more smoothly.

Physical Impossibility and Two Hour Minimum Leave

The two hour minimum increment will be especially useful in alleviating the current problem of physical impossibility preventing an employee from taking intermittent leave. There are many businesses where even a few minutes are the difference between working and not working for long stretches of the day.

This situation is most prevalent in transportation. Trains and planes are on set schedules and will not wait for an employee who needs to take five minutes of FMLA

leave before the trip. Two hours increments will allow many of those employees to work after the two hours. For example, the train from Trenton to New York's Penn Station takes about an hour and a half. The Amtrak train from Philadelphia to New York takes two hours. Most flights within the same time zone take two hours or less. Thus, while it is impossible for an employee to start working mid-trip, there will almost always be another trip to take every two hours.

There are of course occupations where even the two hour increment is not ideal. For example, the situation given where the lab is sealed at the beginning of the day causes problems. For the employees left out that day, there is no easy solution. However, this fact does not limit the effectiveness of the two hour minimum increment. It is the perfect increment to keep both parties as happy as possible.

Conclusion

Therefore, I propose to set the minimum increment allowed for intermittent leave at two hours, or quarter days. This change will alleviate the immense burden on employers who must track each employee's leave and will fix some of the problems of physical impossibility.