

■ *We utilize temporary employees assigned by an agency. One of the temporary employees worked with us for 4 months and then we hired her as a full-time employee. She has worked with us as a full-time employee for the last 9 months. Yesterday, she applied for FMLA leave. Is she eligible for such leave?*

Yes. An employee is eligible for FMLA leave when, among other criteria, she has worked for an employer for 12 months and worked 1,250 hours in the previous 12-month period. The Department of Labor regulations make clear that the time worked as a temporary employee (through an agency) for a particular employer does count toward the 12-month service eligibility requirement. The courts have affirmed the regulation finding that an employee's term of employment begins once assigned by the temporary agency, rather than when fired as a full-time employee. Accordingly, for purposes of the FMLA, a temporary employee is to be treated the same as a regular full-time employee on day one of employment for purposes of analyzing the 12-month eligibility factor.

Therefore, in the scenario proffered, since the employee has worked for the employer for 13 months she would be eligible for FMLA leave provided, however, that she worked 1,250 in the prior 12 months and can meet the other eligibility criteria.

This is not intended to be legal advice, which can only be given after an understanding of the facts of a particular matter. Additionally, employers should consult the law in the state(s) which they operate to determine if any state law addresses the above issue, and whether any such law provides greater rights, responsibilities and/or protection to the employer and employee.

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