

■ **One of our employees has requested FMLA leave to commence November 25, 2013. As of October 25, 2013, she has worked for the company for 11 months. Is she eligible for FMLA leave?**

Yes. Pursuant to the applicable federal regulation, 29 C.F.R. § 825.110 (d), the determination of whether an employee has worked for the employer for at least 1,250 hours in the past 12 months and has been employed by the employer for a total of at least 12 months and, thus, is eligible for FMLA leave, must be made as of the date the FMLA leave is to start. Thus, employers are to make the calculation of months worked by the employer not as of the date of the FMLA leave request, but as of the date the leave is to begin. Therefore, the employee in this hypothetical would be eligible for FMLA if she continues to work for the company through November 25, 2013 and as of the date she worked at least 1,250 hours in the prior twelve month period.

Employers are encouraged to consult with Quantum for assistance, along with legal counsel when confronted with an FMLA leave request. Connell Foley LLP would welcome the opportunity to be of assistance to your organization. Our focus is to assist employers in making employment-related decisions to avoid or reduce the risk of litigation, while maintaining a productive and well-managed work force. We accomplish this by providing employers with proactive and preventative counseling and training on every facet of the employment relationship.

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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