

The image features a purple square in the top left corner containing the text "K&L GATES" in white. The background is a blurred photograph of a modern office interior with glass walls and people walking.

K&L GATES

Working Wise

2019 FMLA DOL Opinion Letter Updates

MARCH 14, 2019 OPINION LETTER

Question:

Can an employer delay designating paid leave under the Family and Medical Leave Act (“FMLA”) or permit employees to expand their FMLA leave beyond the 12-week entitlement?

Answer:

No. An employer may not delay the designation of FMLA-qualifying leave or designate more than 12 weeks of leave as FMLA-qualified. As soon as the leave request is made and it is determined to be covered, FMLA-qualifying leave begins.

Opinion Letter available at

https://www.dol.gov/whd/opinion/FMLA/2019/2019_03_14_1A_FMLA.pdf

AUGUST 8, 2019 OPINION LETTER

Question:

Can an employee take intermittent leave under the FMLA to attend a Committee on Special Education (“CSE”) meeting to discuss the Individualized Education Program of the employee’s child?

Answer:

Yes. The attendance of a parent at such a meeting is considered “care for a family member . . . with a serious health condition.” Care extends to arranging for changes in care, making medical decisions, or finding suitable childcare for a child with a disability. In this case, the employee attended a Committee on Special Education (“CSE”) meeting to make decisions regarding her children’s medically prescribed speech, physical, and occupational therapy; to discuss their well-being; and to ensure the environment was suitable to meet the medical social and academic needs of the children. The Department of Labor clarified that the children’s doctor need not be present at the meeting in order to qualify for FMLA leave coverage.

Opinion Letter available at

https://www.dol.gov/whd/opinion/FMLA/2019/2019_08_08_2A_FMLA.pdf

SEPTEMBER 10, 2019 OPINION LETTER

Question:

Can an employer delay designating paid leave as FMLA-qualified leave if the delay complies with a collective bargaining agreement (“CBA”) and the employee wants the designation delayed?

Answer:

No. Once the employer has the ability to designate the leave request as FMLA-qualifying, the employer must do so without delay.

Opinion Letter available at

https://www.dol.gov/whd/opinion/FMLA/2019/2019_09_10_3A_FMLA.pdf