

Practical Answers to Your HR Questions

By Sam Meziani

Q *Many of our employees are paid for on-call time. Does this time count for eligibility under FMLA?*

A If you have ever heard the phrase “it depends” from a lawyer, you are about to hear it again. Actually, you are going to hear it either way.

Whether paid on-call time counts toward an employee’s FMLA eligibility depends on whether the on-call time is spent primarily for the company’s benefit or the employee’s benefit. A recently issued decision by the federal Court of Appeals with jurisdiction over Utah and several surrounding states makes this point and provides an example. In this decision, the appellate court held that an airline pilot’s on-call time did not count as hours worked for FMLA-eligibility purposes because, it concluded, the on-call time was not spent primarily for the benefit of the airline. The pilot had argued that her paid on-call time should count towards FMLA eligibility because, during that time, she was prohibited from drinking alcohol and required to be available by telephone and to report to the airport within one hour of a call from the airline. The pilot contended that these restrictions prevented her from making or attending doctors’ appointments for herself or her children, going scuba diving, or taking her children on field trips. Thus, she argued, her on-call time should count toward FMLA eligibility.

The court noted that employees are eligible for FMLA leave if they have worked for their employer for at least 12 months, and at least 1,250 hours over the previous 12 months. The court then explained that on-call time counts toward FMLA eligibility if it satisfies Fair Labor Standards Act criteria for determining compensable hours worked. Although courts will consider a range of factors in making this determination, the primary test is whether the on-call time is spent predominately for the employers’ benefit or for the employee’s. In the case of the pilot, the appellate court concluded that her activities during her on-call time were not sufficiently curtailed so as to make the on-call time predominately for the benefit of her employer. Basically, the pilot was free to make what use of her time as she wished, so long as she remained sober and ready to report to the airport within one hour of being called.

The bottom line: on-call time counts for FMLA eligibility if it is spent predominately for the employer’s benefit. The more restrictions an employer puts on an employee’s activities during on-call time, the more likely it is that the time will count towards eligibility for FMLA leave.



“Practical Answers” is provided courtesy of the Labor and Employment Law Group of Van Cott, Bagley, Cornwall & McCarthy, P.C., and is authored this month by Sam Meziani, a litigation attorney and member of Van Cott’s Labor and Employment Law Group. You can reach Mr. Meziani at 801.532.3333. If you have questions you would like considered for publication in future issues of HR Views, please send them to pamgunnell@pipelinewireless.net.

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