

Policy Guide – Policy 4.20, Family Medical Leave Act Transition to 12-Month Rolling Period

APPLICATION: Full-time, quasi full-time and part-time classified employees, wage employees, and at-will employees.

BACKGROUND: Twelve workweeks (480 work hours) of FMLA leave are available to eligible employees for the 12-month measurement period using the leave year (January 10th to the next January 9th). Effective January 10, 2023, Policy 4.20 changes the 12-month measurement period from the fixed 12-month period using the Leave Year to a rolling 12-month period.

What is the Rolling 12-Month Period?

The rolling 12-month period looks back to the previous 12 months prior to the requested period of FMLA leave. Agencies must:

- Calculate the amount of FMLA taken during the previous 12-month period; and
- Determine the amount of FMLA available for the current request.
 - The amount of FMLA leave available to the employee is determined by the amount of FMLA taken during the previous 12-months. Each time an employee uses FMLA leave, the remaining unused balance of the 480 work hours is adjusted. See the STEP chart provided below for more details.

How should Agencies Transition to the 12-Month Rolling Period?

Before changing to this new method and during the transitional first year (12 months) of the rolling 12-month period, agencies must:

- Provide all employees with at least 60 days' notice of the policy change to the 12-month period no later than November 4, 2022; and
- The agency must use the 12-month measurement method that is the most beneficial to the employee during the first year of this transition to the 12-month rolling period. The transition must take place in such a way that employees retain the full benefit of their leave entitlement.
- Employees who are on an approved FMLA leave during the current Leave Year (prior to January 10, 2023) will continue to be in a certified and approved status through the end of the FMLA event. For these employees, there is no need for any action to be taken until the time already approved has ended, or additional FMLA is requested by the employee.
- Employees who have not used FMLA in the prior 12-month period are eligible for the 480 FMLA hours or the prorated number of hours corresponding to the percentage of hours they normally are scheduled to work.
- Employees must also meet the eligibility requirements for using FMLA Leave which includes:
 - Employed by the Commonwealth of Virginia for a total of at least 12 months in the past seven years, and
 - Worked for at least 1250 hours in the previous 12-month period. (Note: leave and holiday hours are not counted in the calculation of work hours.)

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Steps for Calculating FMLA Availability Using the Rolling 12-Month Period

The below table illustrates the steps that an Agency should take to determine the amount of FMLA Leave available to an employee using the Rolling 12-Month period. If an employee has not used any FMLA Leave during the prior 12-months, they will have the full 480 hours available for use.

Step 1:	Review the amount of FMLA Leave requested. <ul style="list-style-type: none"> Review the employee’s FMLA request to assess the expected duration of the leave. (e.g.: two work weeks, three work weeks, etc.)
Step 2:	Determine the total FMLA Leave previously taken by the employee in the past 12 months. <ul style="list-style-type: none"> Review the employee’s time and leave records to calculate the FMLA Used.
Step 3:	Determine the remaining FMLA Leave available to the employee <ul style="list-style-type: none"> Subtract the FMLA Hours Used in the past 12-months from the FMLA Hours the employee is eligible to take. (480 Hours for Full-Time Employees which is pro-rated for Quasi Full-Time, Part-Time and Wage Employees.)
Step 4:	Communicate to employee the status of FMLA leave request.

Consider these Scenarios:

The below scenarios illustrate the above steps used for determining the FMLA leave available for the employee of the date of the request:

Scenario One:

Selena requests four weeks of FMLA Leave beginning September 4, 2023.

	12-Month Rolling Measurement Period (9/4/2023 back to 9/4/2022)
Step 1	160 FMLA Hours Requested (40 hours x 4 weeks)
Step 2	96 FMLA Leave hours used 11/1/2022 to 11/19/2022* <u>120 FMLA Leave hours used</u> 4/3/2023 to 4/21/2023 216 Total FMLA Leave Hours Used
Step 3	Available FMLA Leave is 264 Hours (480 hours – 216 hours used)
Step 4	Advise Selena she may use the 160 hours of FMLA Leave

Note: Accounted for holidays on 11/8 and 11/11/22

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Scenario Two:

Joan requests two workweeks (80 hours) of FMLA leave to begin on November 1, 2023.

	12-Month Rolling Measurement Period (11/1/2023 back to 11/2/2022)
Step 1	80 FMLA Hours Requested (40 hours x 2 weeks)
Step 2	160 FMLA Leave hours used 1/3/2023 to 1/31/2023*
	160 FMLA Leave hours used 3/7/2023 to 4/1/2023
	<u>120 FMLA Leave hours used</u> 6/5/2023 to 6/23/2023
	440 Total FMLA Leave Hours Used
Step 3	Available FMLA Leave is 40 Hours (480 hours – 440 hours used)
Step 4	Advise Joan she may use 40 hours of FMLA Leave. Additional FMLA is not available until January 3, 2024 as the FMLA hours of the previous January leave will “roll off.”

*Note: Accounted for Holiday on 1/16/23

The below scenarios illustrate the process for determining which measurement period is the most beneficial to the employee.

Scenario 3:

Sam is requesting two weeks (80 hours) of FMLA Leave effective November 1, 2023.

Leave Year Period

HR reviewed Sam’s FMLA leave usage beginning 1/10/23 (beginning of the Leave Year.) Sam used a total of eleven weeks (440 hours) of FMLA leave during the period of January 10 through October 31, 2023. This leaves Sam with one week (40 hours) of available FMLA through January 9, 2024.

Rolling 12-Month Period

HR reviews Sam’s FMLA leave usage from November 1, 2023 to November 2, 2022. During this 12-month look back period Sam used eleven weeks (440 hours) of FMLA Leave to include 160 hours used March 1 to March 27, 2023; 160 hours used May 8 to June 2, 2023; and 120 hours used July 31 to August 18, 2023. He has one week (40 hours) of FMLA Leave available.

Best Option:

Option 1. Use of leave year (January 10th through January 9th) measurement period: Sam can take one week of FMLA leave beginning November 1st but is not eligible to take additional FMLA leave until the next January 10th, the beginning of the new leave year.

Option 2 – Use of rolling year to measure the 12-month period: The agency looks back (November 1st of this year to November 2nd of the previous year) and Sam has one week of FMLA-protected leave available. After Sam takes the one week in November, he can next take FMLA leave beginning March 1st as the days of the previous March leave will “roll off” the 12-month rolling year.

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In the above scenario, Option 1 benefits the employee as he only has to wait until January 10th to begin using FMLA leave. His rolling twelve month period will begin on the next start date of a new FMLA request.

Scenario 4:

Alice requests 6 weeks of FMLA leave beginning September 1, 2023. She has not used any FMLA Leave during the Leave Year.

Leave year (January 10th through January 9th) Period: Alice may use the 6 weeks of FMLA as requested. If needed, Alice has 6 additional weeks available through next January 9th. Future FMLA requests will involve the Rolling 12-Month Measurement.

Rolling year Period: Alice may use the 6 weeks of FMLA as requested. She has 6 more weeks of FMLA available through September 1, 2024.

Best Option:

The Rolling 12-Month Period affords Alice the greater benefit as she has until September of the following year to use the remaining six weeks of FMLA Leave.