

# HR QUESTION ? of the month



## *Unpaid FMLA and paid holidays?*

**Question:** We received a question regarding unpaid FMLA leave and holiday pay. An employee has requested unpaid FMLA leave. There are paid holidays during the leave period. Is the employee entitled to holiday pay?

**Response:** In determining whether an employee on FMLA leave is entitled to holiday pay for a holiday that falls during the leave period, the employer's policy governs. The FMLA Regulations provide specifically that "[a]n employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate.)" See 29 CFR 825.209(h). In other words, the employer's policy relative to holiday pay eligibility and whether FMLA leave affects it should be uniformly enforced for all types of leaves to avoid potential discrimination or retaliation claims. If employees on other types of leaves of absence, whether protected by the FMLA or not, are eligible for holiday pay, employees on FMLA leave should be, too.

If your policy does not specifically address holiday pay eligibility under these circumstances, we recommend that you consider revising your policy to ensure it addresses this issue in a manner that comports with your company's objectives while remaining compliant with applicable law. Any policy that is changed should be communicated in advance of its implementation, and uniformly enforced to avoid discrimination concerns. From an employee relations standpoint, if this is the first situation of its kind and your policy is silent, you may want to consider paying the subject employee for the holidays until such time as the policy is changed (and then move forward consistent with the new policy), even though strictly speaking this is not a statutory requirement. Want to learn more about how to handle issues like this? [Click here](#) to listen to our Podcast about FMLA and holiday pay.

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