

PLAW Question Followup

During the Q&A there were two questions that Karen Milner said she'd look into and follow up on. Below is the answers copied from an email received 8/18/2023. – Kate

The two questions I indicated I would answer via email are set forth below.

1. If an employer is going to front-load the 40 hours of paid time off required under PLAW Act (as opposed to using the accrual method), does the employer need to frontload 40 hours for part time employees? The answer is unclear. 820 ILCS 192/15(b) states that paid leave under the Act accrues at the rate of one hour of paid leave for every 40 hours worked up to a minimum of 40 hours. Then subsection (c) states that an employer may make available the minimum number of hours of paid leave, **subject to the pro rata requirements provided in subsection (b)**. The bolded language suggests that an employee who works 20 hours per week only needs to be frontloaded 26 hours of PLAW leave (20 hr. x 52 weeks)/40 hours = 26 hours. However, we will need to wait for regulations to clarify this issue (administratively this may create a kerfuffle especially if the employee's actual hours vary from the 20).
2. Whether an employer can designate time off under PLAW Act as FMLA time if the employer learns that the time off is taken for a FMLA qualifying reason. The PLAW Act does not address this issue so, looking to FMLA regulations and specifically 29 CFR 825.301, an employer can designate leave as FMLA leave based only on information received from the employee or the employee's spokesperson (such as a spouse). If an employer does not have sufficient information about the employee's use of leave, the employer should inquire further . . . **[Because the PLAW Act does not allow an employer to require the employee to provide information about why he is taking the time off, I would NOT suggest inquiring further if the time off is taken as PLAW leave]** BUT if the employee has already advised that he is taking the time off for a FMLA qualifying reason, you can designate it as FMLA leave, and send the designation notice required in 29 CFR 825.300(d).