

# Spot the Lie: Testing Your Intermittent Leave Knowledge

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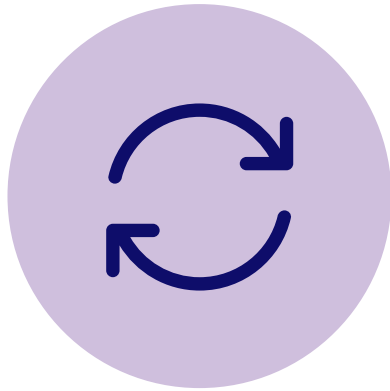
# What is Intermittent and Continuous Leave and why does it matter?



# What is...?



Intermittent  
Leave



Continuous  
Leave



Reduced  
Schedule Leave

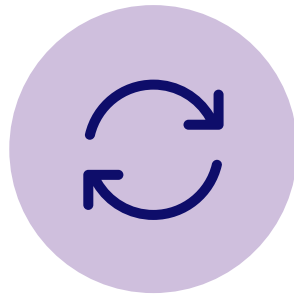
# Exercise

For each type of leave:

1. Devise a one sentence definition
2. Come up with an example



Intermittent  
Leave



Continuous  
Leave

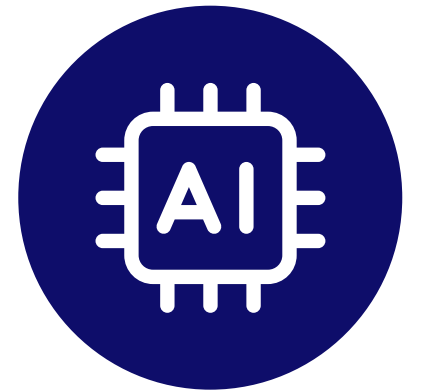


Reduced  
Schedule Leave



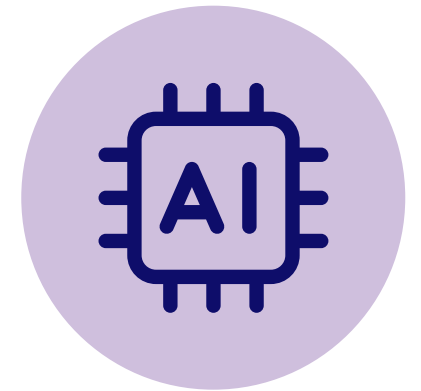
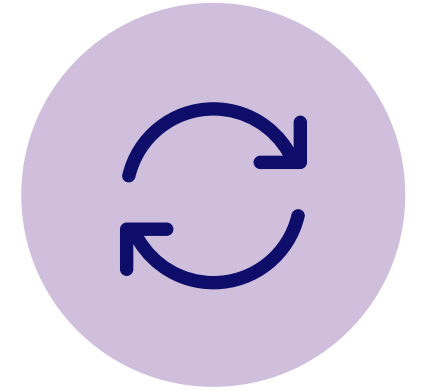
# What is Intermittent Leave?

- Time off taken in separate blocks rather than all at once.
- Leave granted for unforeseeable needs, like migraines or asthma attacks.
- Leave that allows an employee to miss work occasionally, like every Thursday afternoon for physical therapy.
- When someone uses their leave in small increments (e.g., an hour or two at a time).
- A leave of less than 3 days.



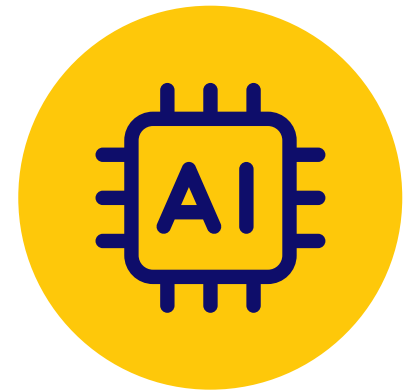
# What is Continuous Leave?

- A period of leave taken without any return to work, typically for a single qualifying event such as a serious health condition, childbirth, or surgery recovery.
- Leave in full-day increments.
- Leave in full week increments.
- A leave period with a clearly established beginning and anticipated return-to-work date.
- A leave period supported by one medical certification covering the entire duration, rather than multiple certifications for separate episodes.
- An absence longer than three workdays.



# What is Reduced Schedule Leave?

- An absence in which the employee works fewer hours each day or fewer days per week.
- A way to gradually return to work after a serious health event.
- A leave in a consistent, predictable reduction in daily or weekly hours.



# Reduced Schedule Leave?



- Mon through Fri
- Half days
- For 2 months

- Mon, Wed, Fri on
- Tues, Thurs off
- For 1 month

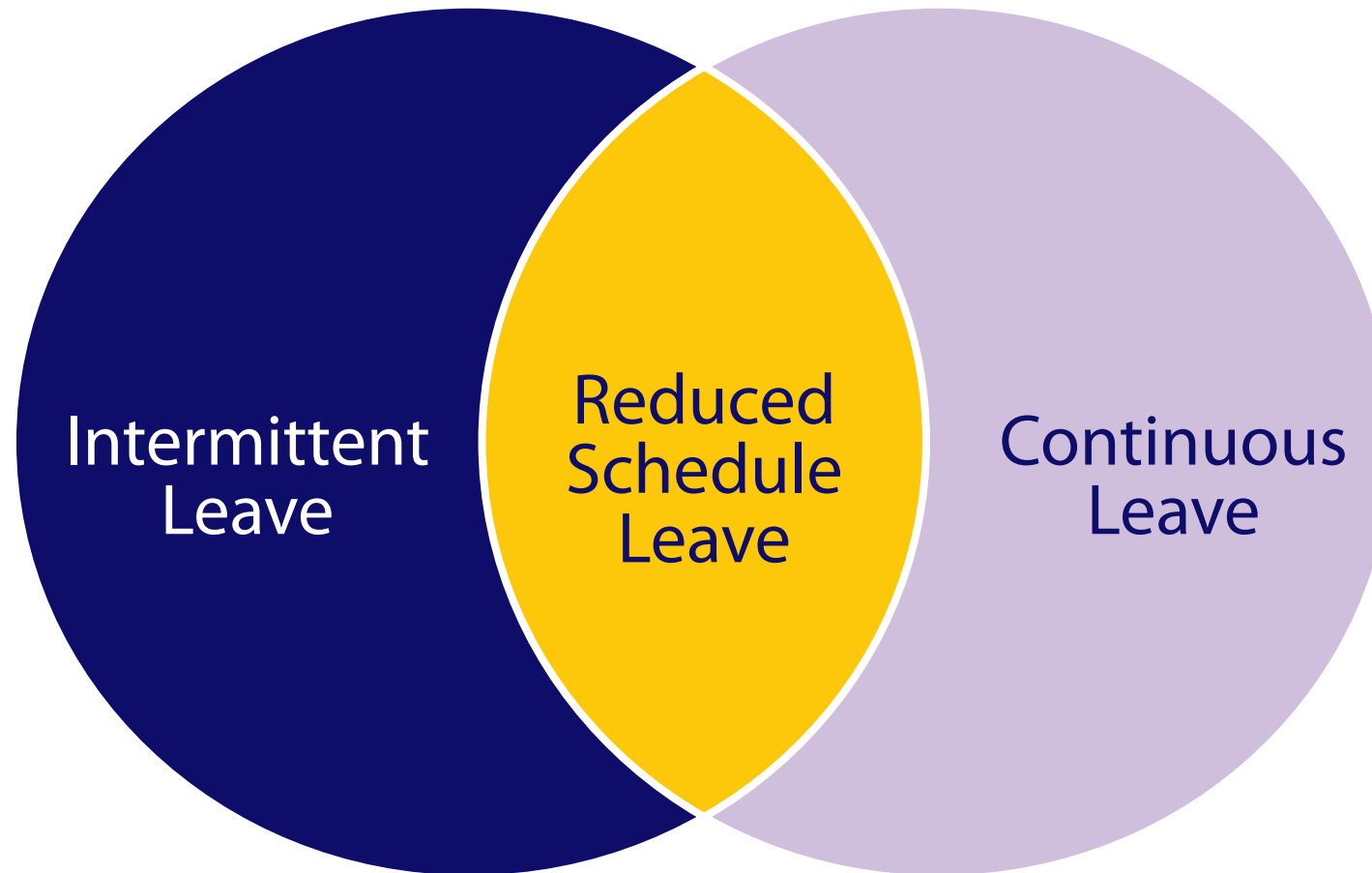
- Mon & Fri mornings
- 2-hour appointment
- Every week

**Yes or No?**





# Reduced Schedule Leave



# How do the laws define intermittent and continuous?



Federal



Colorado



Oregon



Massachusetts



# Federal FMLA

**Intermittent leave** is FMLA leave taken in separate blocks of time due to a single qualifying reason.

A **reduced leave schedule** is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time. 29 CFR 825.202(a):





# Colorado

**Continuous leave** means one non-recurring uninterrupted period of leave.

**Intermittent leave** (Colorado FAQ) is taken in separate blocks of time occurring at irregular intervals that are not continuous or steady within a six-month period. These blocks of time are not continuous or steady.



7 CCR 1107-3.2



# Colorado (cont.)

**Continuous Leave** is taken for a specific period of time without any interruption. Some examples include:

- Your family member is recovering from heart surgery and needs your full-time care for several weeks at a time.
- You welcome a new child and would like to take twelve consecutive weeks of leave to bond with the child.
- You welcome a new baby and would like to take four weeks to bond with the baby right after birth, return to work for several weeks, then go back on leave to bond with the baby for the remaining eight weeks before the child's first birthday. This scenario would be taken as two separate continuous leave claims. When you go to open your second (or third) block of continuous leave to bond with your child after returning to work for a period of time during the first year of birth or placement, you'll be able to link it to the first claim, which will result in faster processing times.

**Intermittent Leave** is taken in separate blocks of time occurring at irregular intervals that are not continuous or steady within a six-month period. These blocks of time are not continuous or steady. Some examples of when to take intermittent leave include:

- You undergo periodic medical treatment twice a week over the course of three to six months and the dates of treatment vary each week.
- You must care for a family member with a medical condition that has episodic flareups.
- You experience unexpected, chronic migraines that prevent you from working.

<https://famli.colorado.gov/individuals-and-families/how-famli-works/how-famli-leave-can-be-used>





# Oregon PFML

**Intermittent leave** means leave taken periodically in separate blocks of time or when leave is taken for two or more leave types simultaneously for an entire work day or work week from all employment.



471-070-1000 (19)





# Massachusetts PFML

Leave taken in separate periods of time due to a single qualifying reason, rather than for one continuous period of time.

458 CMR 2.02



# Potential Definitions

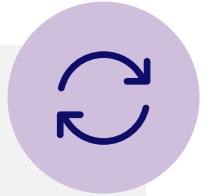
## Intermittent Leave

More than one instance leave for a single leave reason with a return to work in between the instances.



## Continuous Leave

Leave for a reason taken in one single segment with no return to work.



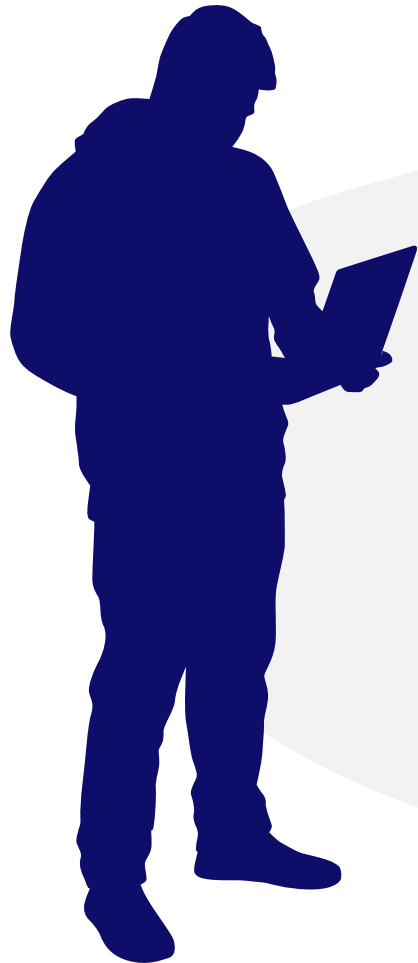
## Reduced Schedule Leave

A leave arrangement where an employee works fewer hours per day or fewer days per week than their normal schedule.





# Can Leave retroactively change?



**January 10:**

//

I need to take 6 weeks of leave to recover from back surgery starting in mid-February.

I will be back at work on March 10.

//

On January 10, was the February leave intermittent or continuous?

Intermittent or Continuous?



# Can Leave retroactively Change? (cont.)



**March 17:**

//

I am having a complication.

I will need to be off from March 17 to March 30.

//

Is the March 17 leave intermittent or continuous?

Intermittent or Continuous?

Does the March 17 leave change how we look at the February leave?



# Classification Exercise

Let's look at some examples:



Intermittent or Continuous?

# **Your family member is recovering from heart surgery...**

and needs your full-time care for several weeks at a time.

You will take 2-3 weeks at a time, 3 times a year.



# You welcome a new child...

You would like to take twelve consecutive weeks of leave to bond with the child.



# You welcome a new baby...

and would like to take four weeks to bond with the baby right after birth and return to work for several weeks

Then go back on leave to bond with the baby for the remaining eight weeks before the child's first birthday.





# You undergo periodic medical treatment...

twice a week over the course of three to six months and the dates of treatment vary each week.



# You must care for a family member...

with a medical condition that has episodic flareups.





# You experience unexpected...

chronic migraines that prevent  
you from working.



# Due to a health condition...

you must complete medical treatment 2 days a week for 6 weeks.

You will be absent from work every Monday and Tuesday for 6 weeks.



# Why does it matter? Intermittent Bonding

## Permitted, with Employer Agreement

- AL Parental
- CT FMLA
- CT PFML
- DC FMLA
- Fed FMLA
- MA Parental
- MA PFML
- MD Parental
- ME FML
- ME PFML

## Permitted, must be in 2-week segments (with exceptions)

- CFRA

## Permitted, no employer restrictions

- NJ FLA
- NJ FLI
- NY PFL
- OR PFML
- VT Parental
- WA PFML

## Permitted, as long as it does not unduly disrupt

- WI FMLA

## Permitted, but must try to schedule so as not to disrupt

- MD PFML



# Why does it matter? Holidays

## Colorado PFML

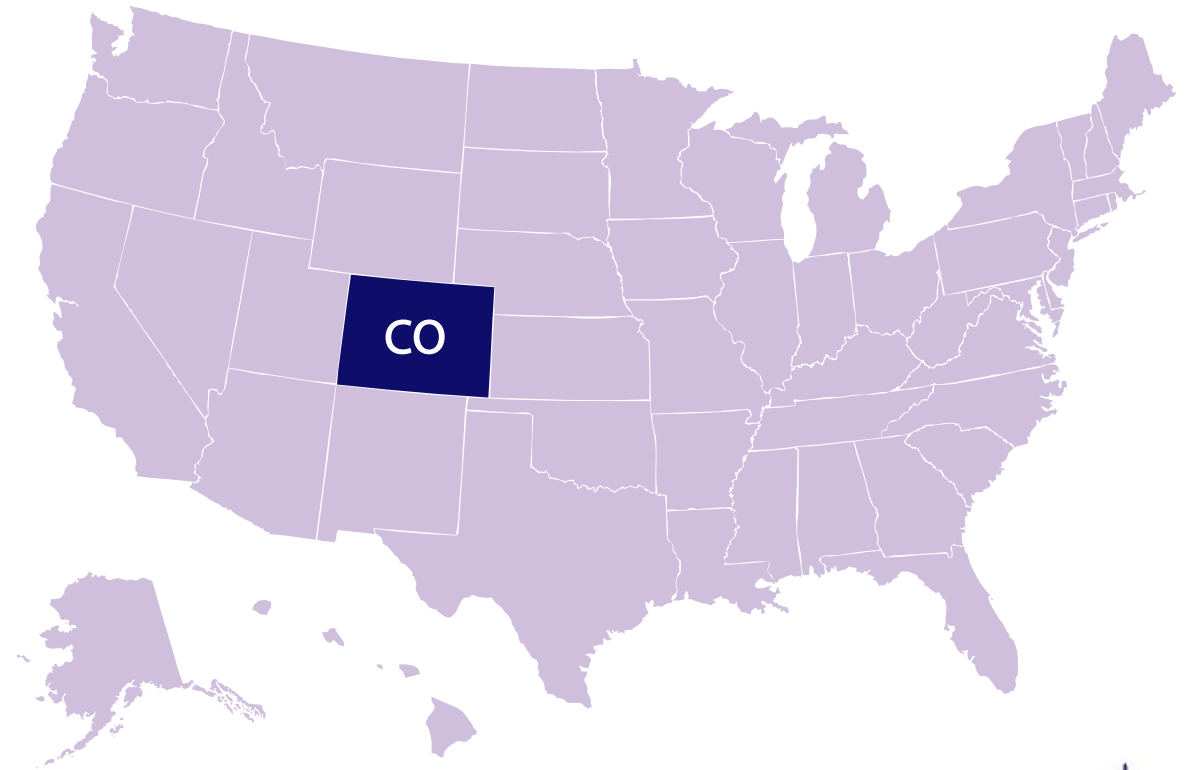
A holiday during continuous leave:

Equals paid and deducted.

**A holiday during intermittent leave:**

No pay, no deduction unless  
employee was scheduled to work  
that day.

7 CCR 1107-3.4(2).



# Why does it matter? Holidays (cont.)

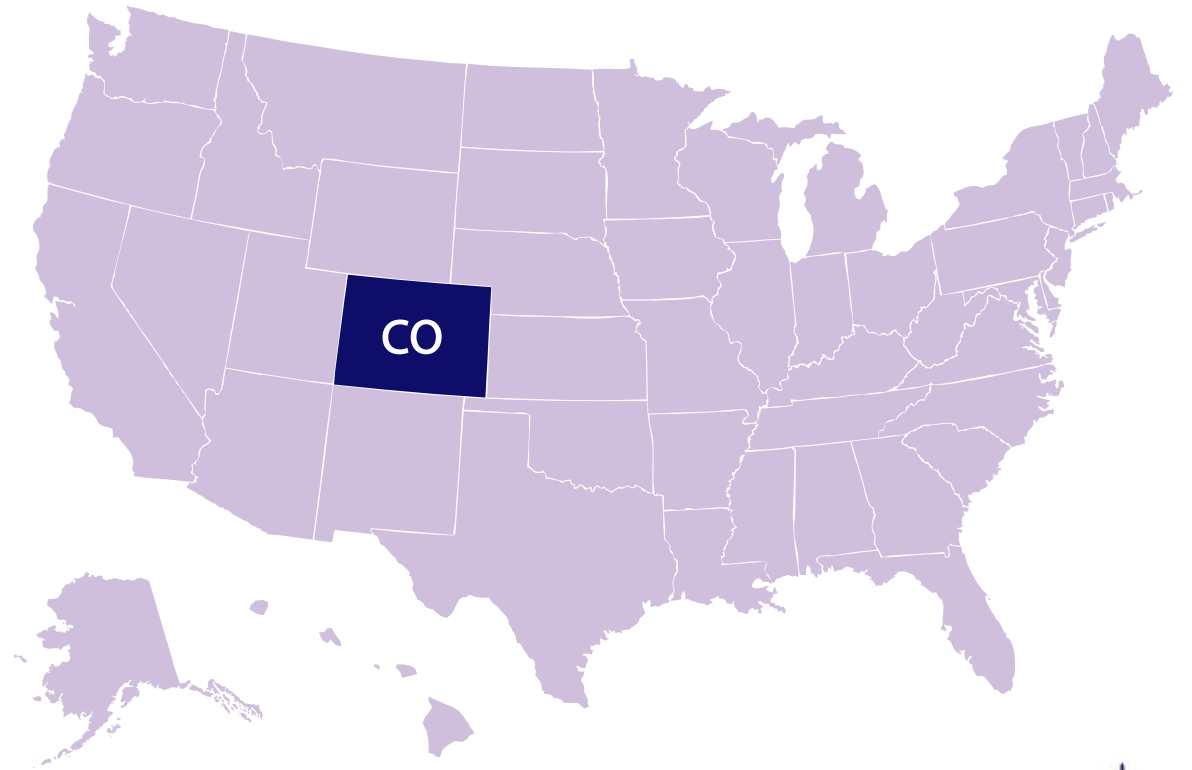
## Note:

This differs from the Fed FMLA!

A holiday during a week leave = paid and deducted.

A holiday during less than a week of leave:

No pay, no deduction (unless employee was scheduled to work that day) 29 CFR 825.200(h)



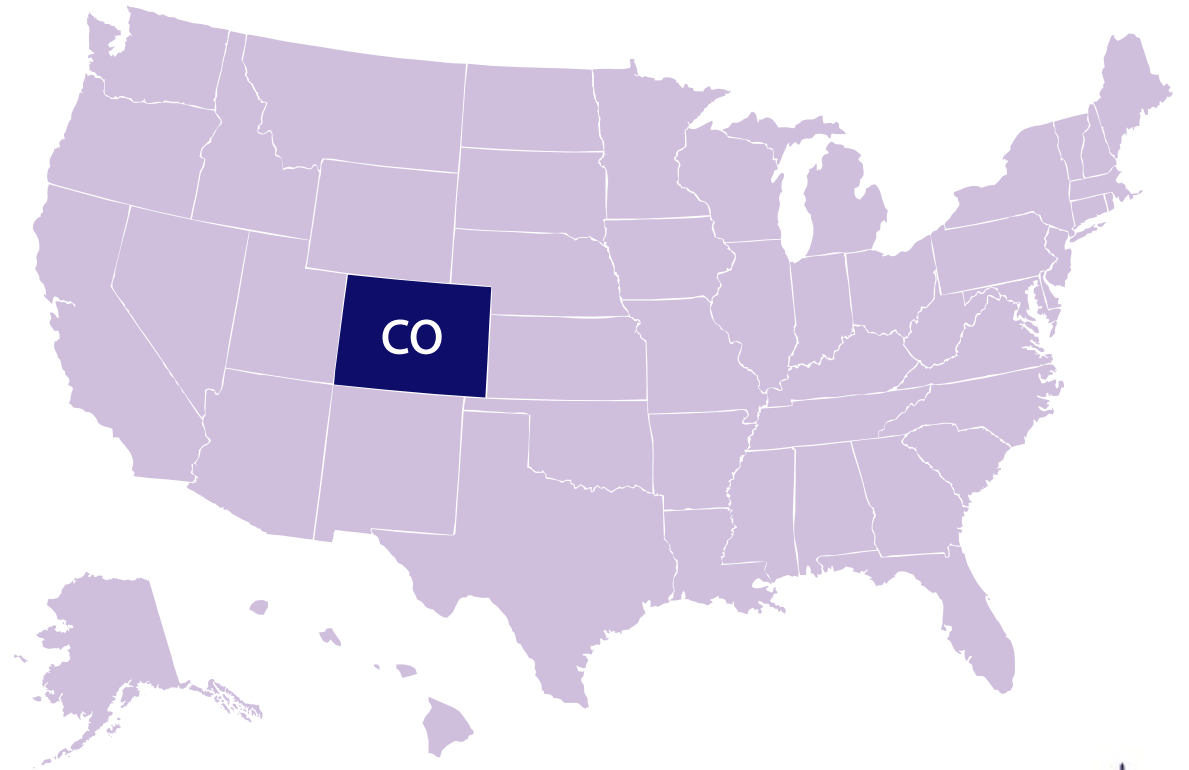
# Why does it matter? Job Restoration

## Colorado PFML

An employee who has been employed for at least 180 days must be restored to the position held prior to the leave, or to be restored to an equivalent position with equivalent employment benefits.

Continuous leave commences once at the outset of the leave. This means that if a covered individual has not been employed with their current employer for at least 180 days before the beginning of the leave, they will not become entitled to the job restoration rights, regardless of whether their 180th day of employment occurs during their continuous leave.

7 CCR 1107-7.3

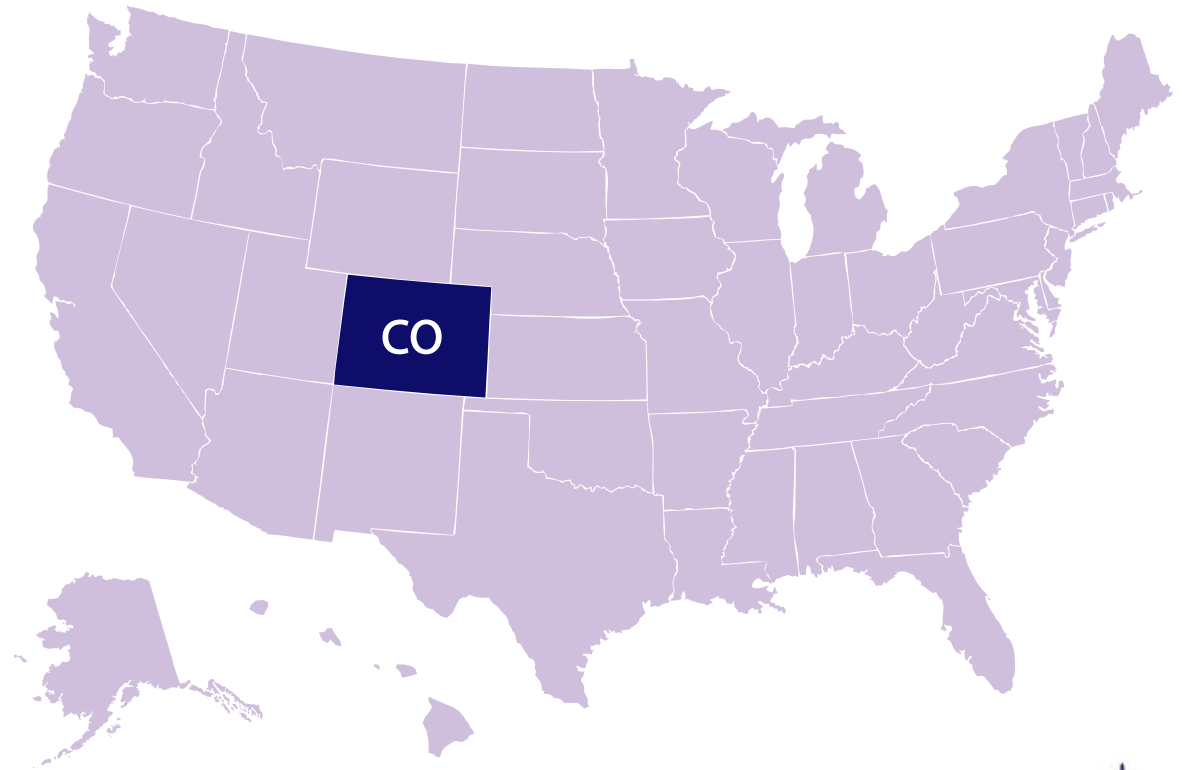


# Why does it matter? Job Restoration (cont.)

## Colorado PFML

Intermittent leave and reduced leave schedule commence upon each covered absence. This means that if a covered individual has not been employed with their current employer for at least 180 days before their first covered absence, but their 180th day of employment occurs before a subsequent covered absence, they will become entitled to the job restoration rights for absences after their 180th day.

7 CCR 1107-7.3

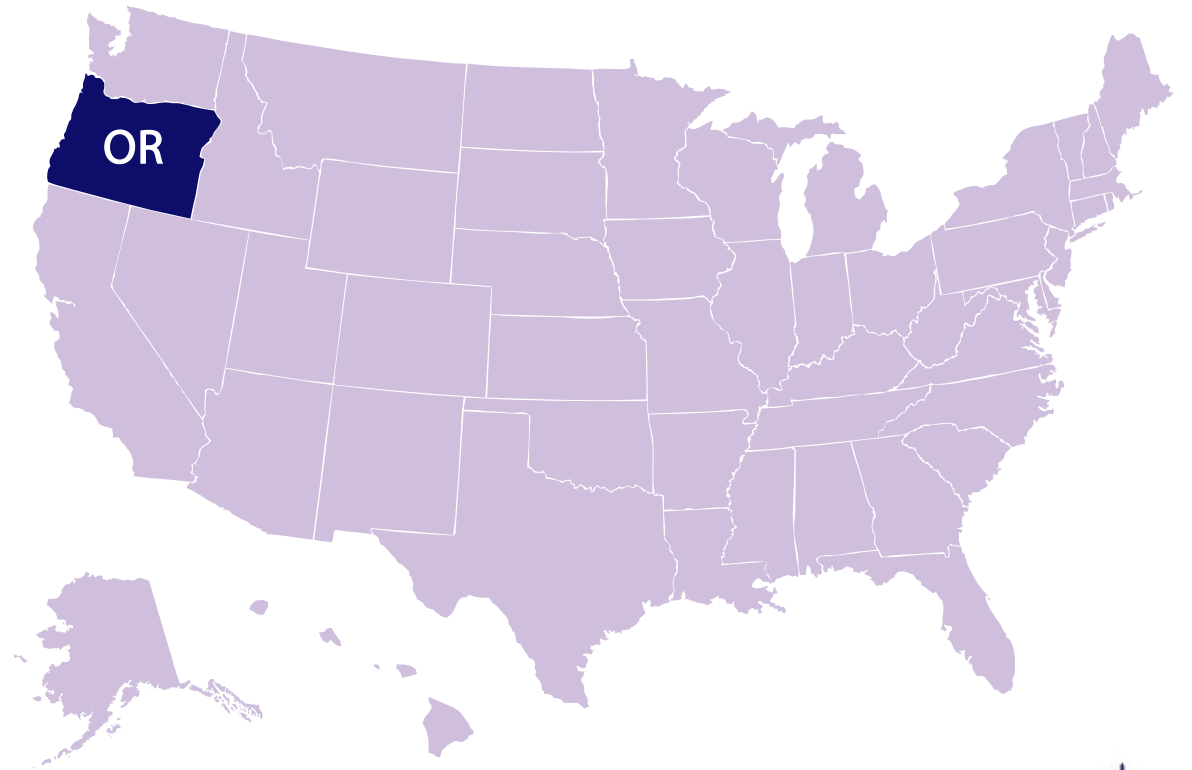




# Why does it matter? Proration

## Oregon Paid Leave

For intermittent leave, the number of days of leave eligible in a work week cannot exceed the average number of work days worked per week, minus the number of days actually worked during the work week.





# Why does it matter? Proration (cont.)

Employee works an average of 3 days per week.

In December, she is scheduled for 6 days in Week 1 and 5 days in Week 2.

During Week 1 and 2, she requests 4 days off each week.

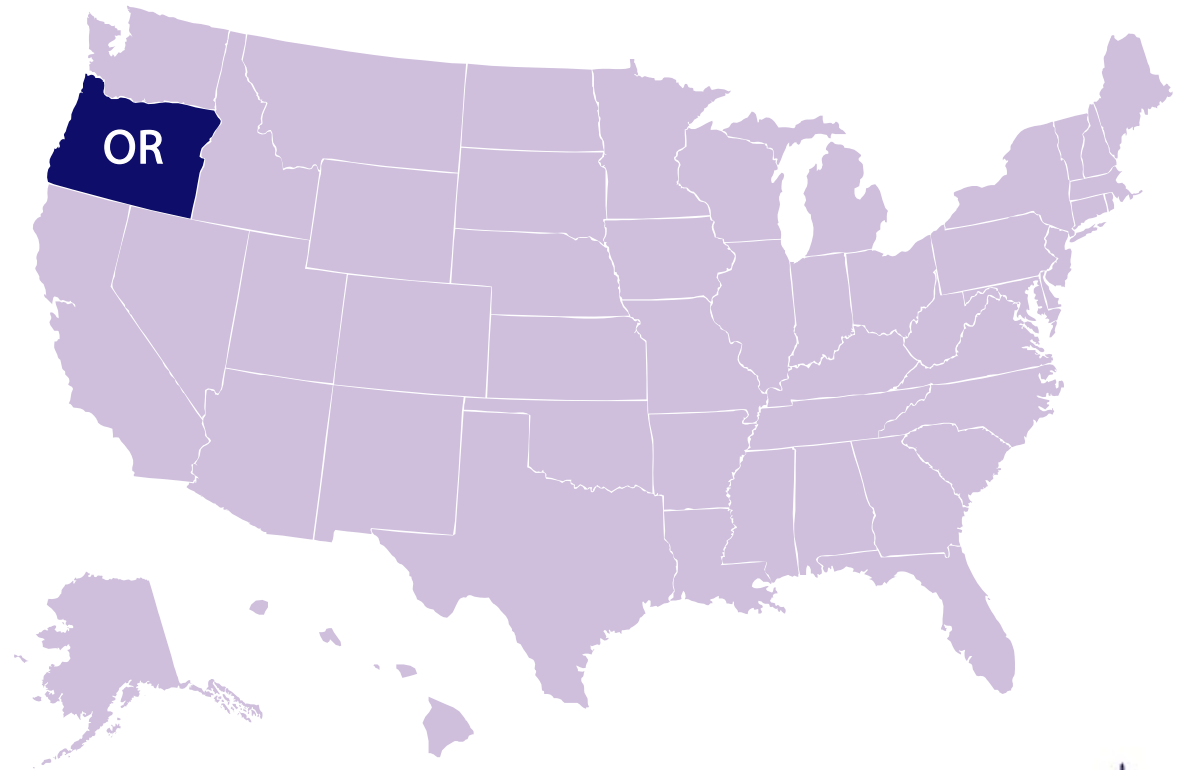
Her regular weekly benefit amount = \$500

Days eligible cannot exceed:

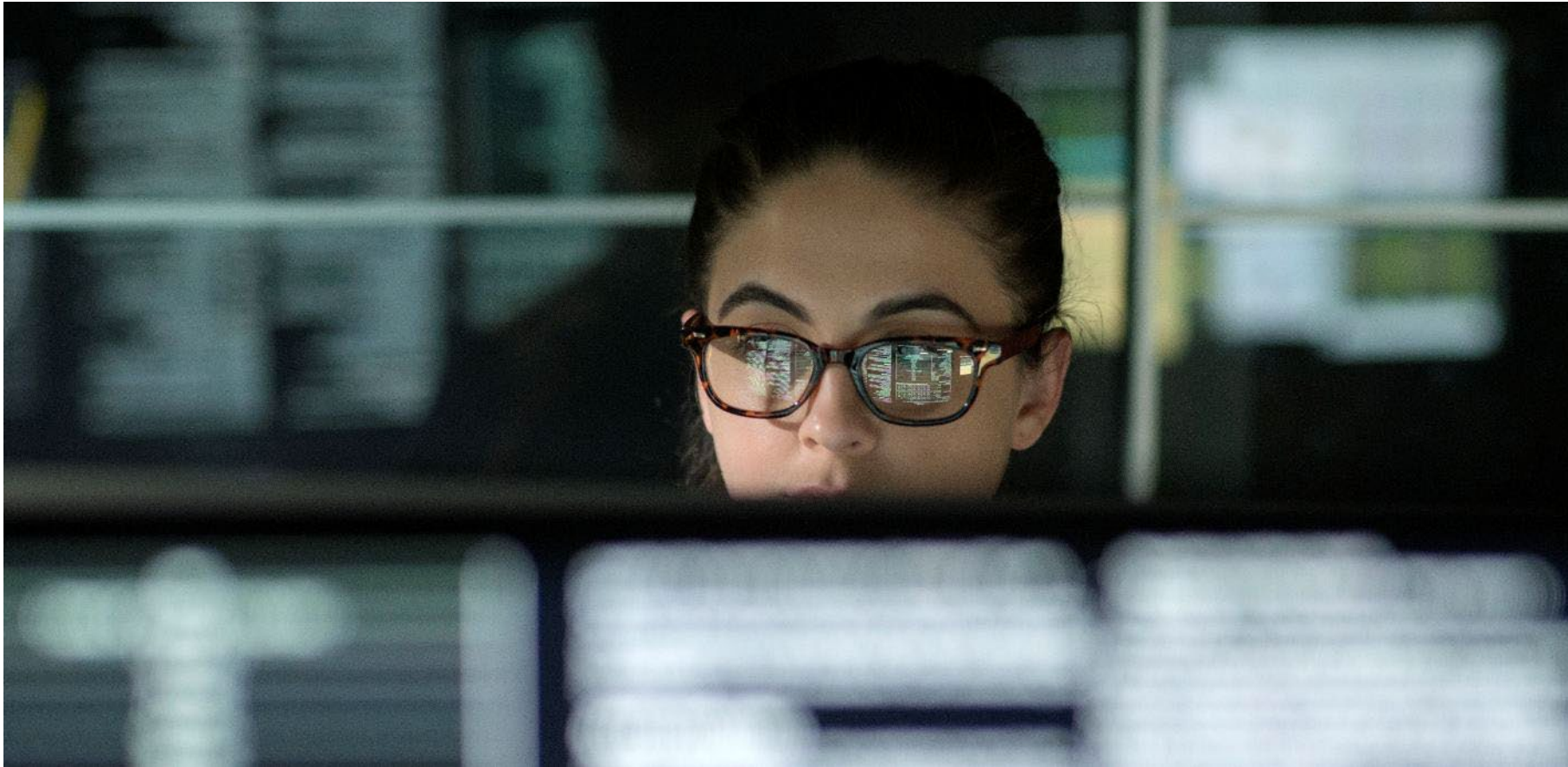
Week 1:  $3 - 2 = 1$  day of leave

Week 2:  $3 - 1 = 2$  days of leave

**Note:** In Oregon, Pre-placement leave can only be on an intermittent basis.



# Why does it matter? Software



# Transfers



# Transfer

## FMLA 29 CFR § 825.204

If an employee needs intermittent leave that is foreseeable based on planned medical treatment for the employee or a family member, the employer may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave.

The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job.



# Speed Exercise I - Transfer

James's father is undergoing heart surgery in June and will have ongoing health needs as a result.

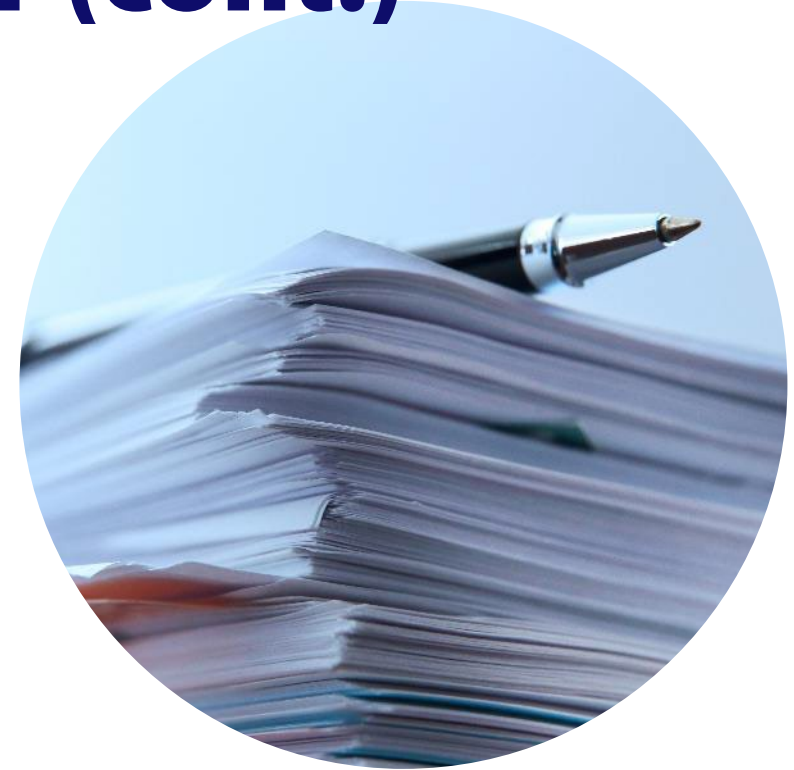
- James requests 1 week of leave during his father's initial recovery.
- After that, he requests a half-day every Monday and Wednesday for a three-month period of time to take his father to his physical therapy and other follow-up care appointments.
- James works for AcmeParts on an assembly line, and it is disruptive to his employer to have his spot empty for a half-day twice a week, and difficult to find a replacement for his spot for such a part-time role.





# Speed Exercise I - Transfer (cont.)

- AcmeParts would like to transfer James instead to a clerical role for the three-month period. James enjoys his role on the line and does not enjoy clerical work.
- The clerical role usually pays \$2/hour less than the line role, but AcmeParts is willing to bring up the pay for James during his time in this role.
- Can AcmeParts insist on this transfer?



**Legit or Lie?**



# Speed Exercise II - Transfer

An employee at UtilityWorks works in a **clerical role** and needs 2 half-days off per week, which causes a great inconvenience to her employer.

It would be much easier for them if she worked in the role of a laborer digging holes for telephone pole placement during that time. Can UtilityWorks insist on this transfer?



**Legit or Lie?**



# Speed Exercise III - Transfer

An employee at UtilityWorks works in the day shift of the telephone pole factory.

She requests 2 days/week for a 3-month period, which causes a great inconvenience to her employer.

They propose that she transfer to the night shift which is easier to schedule around. Can UtilityWorks insist on this transfer?



**Legit or Lie?**





# Speed Exercise IV - Transfer

An employee works in the Chicago headquarters of UtilityWorks.

She requests to work half-days for 3 months.

UtilityWorks agrees, but only if he transfers to the Joliet location, an hour away. Can UtilityWorks insist on this transfer?



**Legit or Lie?**



# Speed Exercise V - Transfer

Employee works on a small crew in the night shift as a utility representative.

Due to his migraines, he would regularly miss 2-3 days of work 1-2 times per month.

His employer requested that he move to the day shift which would be easier to fill his role when he was absent.



# Speed Exercise V - Transfer (cont.)

He objected because...

1. He had to take his mother to appointments during the day and
2. The jackhammers during the day made his migraines worse.

His employer says if he doesn't take the offer, they'll assume he voluntarily resigned. Can UtilityWorks insist on this transfer?



**Legit or Lie?**





# Speed Exercise VI - Transfer

An employee works in a role in the accounts payable department and suffers from migraine headaches which are unpredictable in nature.

His employer wants to switch him to a role in the mail room that has less urgent tasks to perform.

He refuses, arguing that he is highly trained and does not want to work in the mail room. Can his employer insist on this transfer?



**Legit or Lie?**



# Intermittent Leaves and Accommodations



# **DOL Opinion Letter Accommodations and FMLA**

An employee may continue to use FMLA leave for an indefinite period of time as long as they continue to be eligible and have a qualifying reason for leave. Thus, if the employee never exhausts their FMLA leave, they may work the reduced schedule indefinitely... The requirements and protections of the FMLA are separate and distinct from those of the ADA, and an employee may be entitled to invoke the protections of both laws simultaneously. Nothing in the ADA modifies or limits the protections of the FMLA; nor does the FMLA modify or limit the protections of the ADA.



# Exercise:

## Accommodations and FMLA

Employee works in a food manufacturing plant for a Dairy-free cracker company, Cheese-Nots.

The normal schedule for his role is 10 hours per day, 4 days per week.

He has an eye condition that flares up after 8 hours, so he requests to take off the last 2 hours of his shift, indefinitely.

He asks for schedule flexibility as an accommodation to allow him to take the time off as needed.

Although he is eligible for FMLA, she never mentions or asks for it, and instead asks for schedule flexibility.





# Exercise:

## Accommodations and FMLA (cont.)

In a given week this would mean taking off 8/40 hours, or 1/5 of a week.

Given that he has 12 weeks of leave available, he will never run out of FMLA time and will be able to work the adjusted shift all year.



# Exercise:

## Accommodations and FMLA (conclusion)

Coincidentally, there are multiple employees who have similar requests for a variety of different conditions, making it hard for the employer to keep the schedule on track.

Can CheeseNots approach this as a request for an accommodation and engage in the interactive process to find a solution that works better?

**Legit or Lie?**



# Certification & Intermittent Leave



# General Rules of Certification

- An employer can require an employee to obtain a certification that includes the following information:
- Contact information for the certifying health care provider,
- The date the serious health condition began and how long it will last,
- Appropriate medical facts about the condition such as symptoms, hospitalization, or doctor's visits,



# General Rules of Certification (cont.)

- For leave for the employee's own serious health condition, information showing that the employee cannot perform the essential functions of the job,
- For leave to care for a family member, a statement establishing the family member needs care, and an estimate of when and how long the leave is needed, or
- For leave that needs to be taken in short blocks of time, an estimate of how much time will be needed for each absence, how often absences may occur, and information establishing the medical necessity for taking such intermittent leave.





# Exercise – Certification

Jennifer works for a homebuilding company and requests leave for ongoing back pain.

She will need time off, 1-4 days per month, when she has flare ups.

Jennifer provided sufficient FMLA documentation about her condition and the need for leave.



# Exercise – Certification (cont.)

After 3 months of absences, her employer notices that she always requests Monday or Fridays off for her condition. Her employer institutes a new rule:

In order for me to know when to apply FMLA to an absence, a medical note will be required from your provider for that absence. The note will need to indicate you were seen by a provider during the absence and how the absence relates to the FMLA qualifying condition. Without this information, I would be unable to apply FMLA to any specific absence.



# Exercise – Certification (conclusion)

Jennifer refuses. She doesn't always see a doctor for her flare-ups and her doctor is not going to provide these notes. Her employer denies the leave.

Is the employer right?

Legit or Lie?



# Certification – Return to Work

- Returning to work. An employee may be required to provide the employer with a "fitness-for-duty," certification from the employee's health care provider showing that the employee is able to resume work, if the employer has a policy or practice that requires employees in similar job positions who take leave for similar health conditions to provide such a certification....
- In general, a fitness-for-duty certification may not be required for each absence taken on an intermittent or reduced leave schedule.
- However, the employee may be required to provide a fitness-for-duty certification up to once every 30 days if the employer has a reasonable belief that the employee's return to work presents a significant risk of harm to the employee or to others.



# Recertification

- General rule: An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee.
- BUT - If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification
- If the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employer must wait 40 days before requesting a recertification.





# Recertification (cont.)

- In all cases, an employer may request a recertification of a medical condition every six months in connection with an absence by the employee. So even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employer can request recertification every six months in connection with an absence.
- Note: Employer CAN request recertification more often if:
  - Circumstances have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications).
  - Pattern of using days of leave in conjunction with scheduled days off, the timing might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every 30 days; or
  - Fraud/doubt



# Increments of Leave



# Increments

- Incremental leave, a subset of intermittent leave, is leave of less than an employee's full day of scheduled work.
- An employer must account for leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave.
- That increment must not be greater than one hour.
- An employee's FMLA leave entitlement cannot be reduced by more than the amount of leave actually taken.
- An employer may not require an employee to take more leave than is necessary for the leave, subject to the rule that leave is counted using the shortest increment of leave used to account for any other type of leave .
- 29 CFR 825.205



# Exercise I

Employer sets forth a policy that employees must take leave in 1-hour increments, consistent with their rules around PTO.

When Marissa requests to take 3.5 hours of leave at the start of her shift due to a scheduled prenatal appointment, her employer says she either has to clock-in within 3 hours, or she'll have to wait for a full 4-hours to clock in.

**Is this compliant?**



**Legit or Lie?**



# Exercise II

An employee suffers from chronic migraine headaches. She typically works an eight-hour shift, from 8-5pm.

At 4:15pm, a migraine headache hits, and she cannot continue her shift.

Her employer denies the leave, because there is only 45-min left in the shift and the policy requires a 1-hour increment.

Is this compliant?



**Legit or Lie?**





# Exercise III

Employer's PTO policy requires employees to take a minimum of 4 hours of PTO for each PTO request.

Their FMLA policy only requires a 1-hour minimum, per the FMLA rules.

Employees have the choice about whether they want to run PTO along with their FMLA so they can receive full pay.



**Legit or Lie?**



# Exercise IV

Employee decides she does want to run her PTO with her FMLA. She requests 2 hours of FMLA leave for a doctor's visit.

Her employer tells her if she wants to run her PTO with her FMLA, she has to take her FMLA in a minimum of 4-hour segments.

Is this compliant?

Legit or Lie?

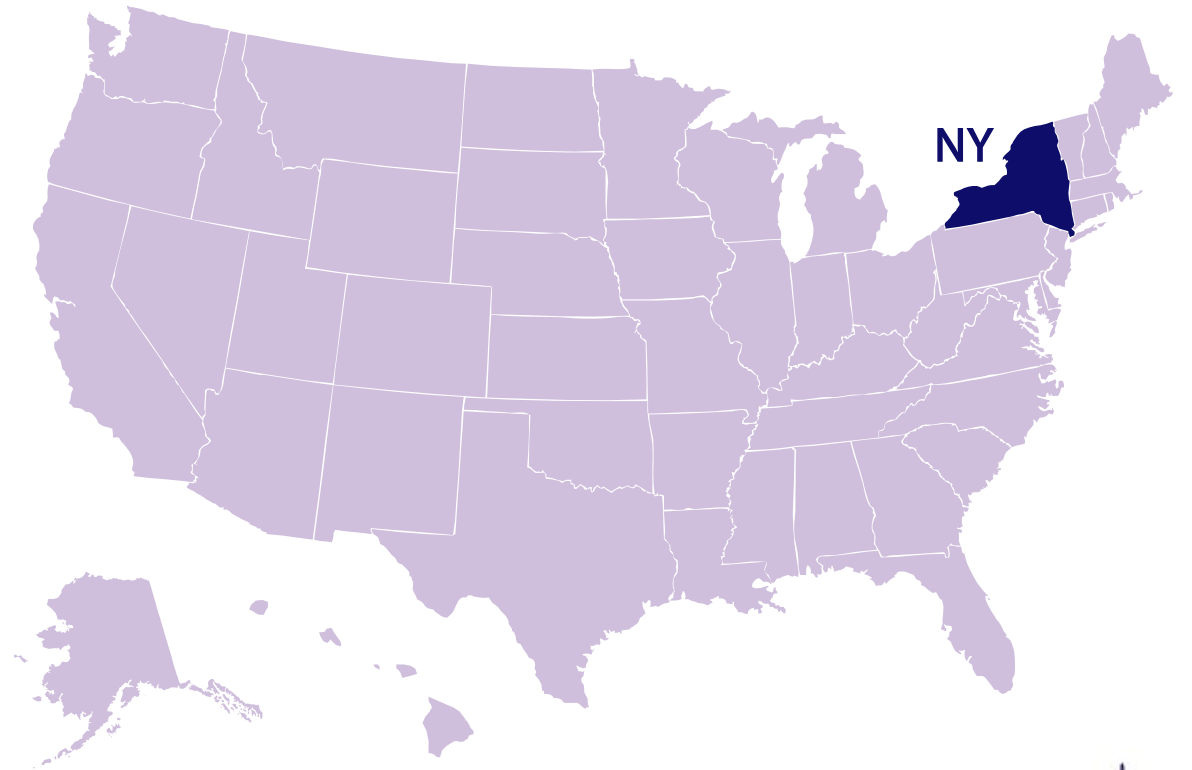


# FMLA & PFML I

Employer is located in New York state and has a policy that if the employee qualifies for both FMLA and NY PFL, they must run together.

The employee requires 4 hours of leave and wants to receive her NY PFL benefits during her leave.

**Legit or Lie?**



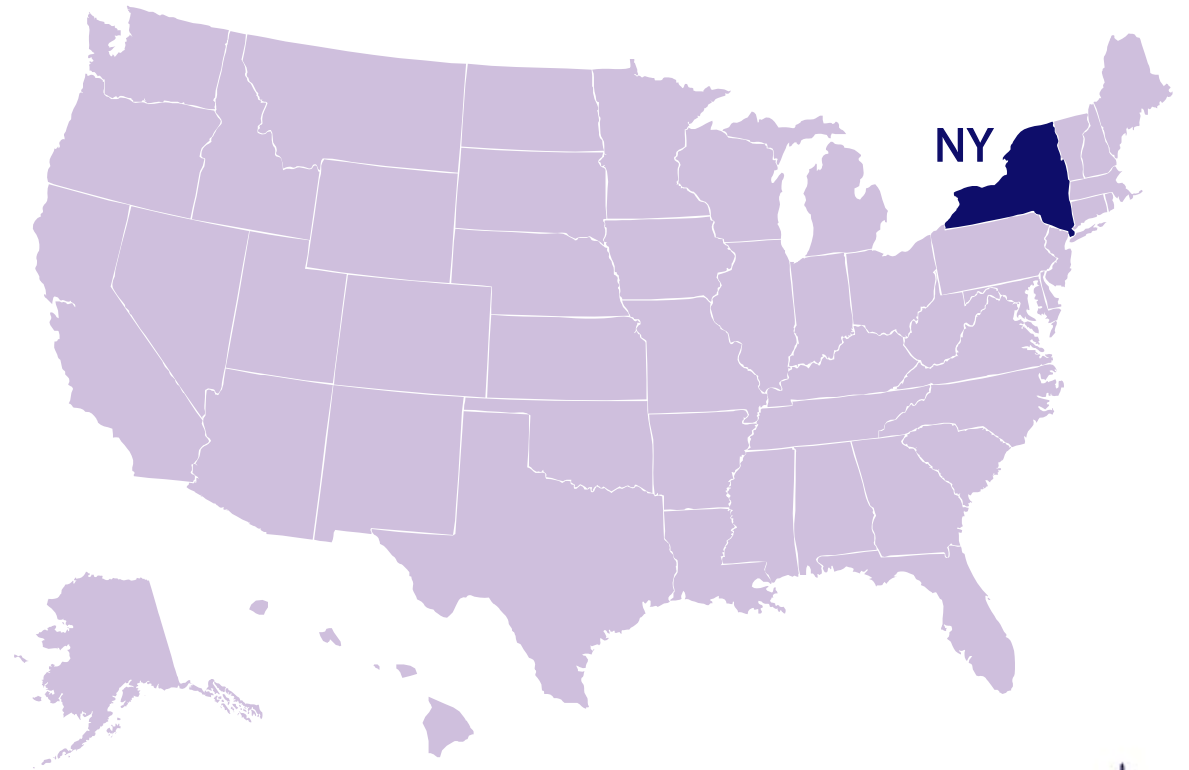
# FMLA & PFML II

Employer says she will be approved for the leave, but only if she takes a full day of leave. She agrees, and takes the full day off.

Should she also be deducted for a full day of FMLA?

What if the certification only provides evidence of the need for a half-day?

**Legit or Lie?**



# FMLA & PFML Rules

State	Rule Summary
DE PFML	<b>Covered leave that also qualifies as leave under the FMLA runs concurrently...and may not be taken in addition to leave under the FMLA. 19 Del C. § 3709</b>
NY PFL	<b>If an employee declines to apply for NY PFL benefits for time applicable used under the FMLA, the employer can deduct the time from the employee's NY PFL entitlement. N.Y. Comp. Codes R. &amp; Regs. Tit. 12 §§ 380-2.5(g)(3).</b>
MA PFML	<b>An employee's MA PFML allotment shall be reduced by the amount of family or medical leave taken by the covered individual for any qualifying reason during the benefit year. 458 CMR 2.12(6)(e).</b>
MD PFML	<b>An employees MD PFML allotment can be deducted by leave that is designated under the federal Family and Medical Leave Act if the employee declines to apply for MD PFML benefits. Md. Labor and Employment Code Ann. §8.3-702</b>
WA PFML	<b>An employee is entitled to a total of 18 weeks of job protected leave composed of leave under WA PFML and leave under FMLA for which the employee could have claimed WA PFML benefits</b>





# FMLA & PFML Increments

State	Largest Permitted Minimum Increment
DE PFML	1 day
MN PFML	1 day
ME PFML	1 day
MD PFML	4 hours
NY PFL	1 day
OR PFML	1 day



# Exercise

Employee needed FMLA leave to fill a prescription for her son. While on her travels to obtain the prescription, she took a five-minute detour for an errand.

She arrived at work at 9:45am for her 8:00 am shift, and claimed 1.75 hours of FMLA leave.



# Exercise (cont.)

Her employer alleged a violation of the FMLA for “stealing time” by using five minutes for an errand, arguing because she “used five minutes of the 1.75 hours designated as FMLA leave for personal reasons”, she was not exercising her rights under the FMLA.

Is her employer right?

**Legit or Lie?**



# Employer Tips



# Best Practices

1. **Establish a Clear Leave Policy:** Ensure your handbook defines intermittent leave, outlines procedures, and aligns with federal and state laws.
2. **Communicate Expectations Clearly:** Reinforce call-in procedures, documentation requirements, and the importance of advance notice when possible.
3. **Track Leave in Smallest Increments Allowed:** Under FMLA, this can be as large as one hour, and as little as 1 minutes.
4. **Consider Temporary Transfers:** For foreseeable intermittent leave, reassigning to a role that better accommodates absences may be lawful and practical.
5. **Don't Penalize for Protected Leave:** Avoid using intermittent absences as a factor in performance evaluations or attendance-based discipline.
6. **Stay Current on State-Specific Rules:** States like California, New York, and Washington have unique intermittent leave provisions under paid leave laws.
7. **Review and Update Policies Annually:** Laws change—make sure your policies and practices evolve accordingly.





# Thank you!

August 4, 2025



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