

The Numbers Game: Determining coverage under FMLA and COBRA

By Megan Boiarsky

If you're like many businesses in this economy, you may have had to downsize your staff. In the wake of staff reductions, if your employee numbers have dwindled below 50 or even 20, the magic numbers that trigger Family and Medical Leave Act (FMLA) and continuation-coverage obligations for employers, you may think you're off the hook when it comes to offering those benefits. Think again.

The 50/20 rule under FMLA: Under the FMLA, an employer with 50 or more employees working within 75 miles must provide 12 weeks of leave to eligible employees with qualifying conditions. What you may not know is that if your employee numbers fall below 50, you are still required to comply with the FMLA --- at least for a while.

Under the FMLA, an employer remains covered if it maintained 50 or more employees on the payroll during 20 or more calendar workweeks (not necessarily consecutive workweeks) in either the current or preceding calendar year. Once an employer meets the 50-employee/20-workweek threshold, the employer remains covered until it no longer has employed 50 employees for 20 (non-consecutive) workweeks in the current and preceding calendar year. So, for example, if an employer who met the 50/20 test as of September 1, 2009 subsequently dropped below 50 employees before the end of 2009 and continued to employ fewer than 50 throughout 2010, the employer would continue to be subject to the FMLA throughout 2010 because it met the coverage criteria for 20 workweeks of the preceding (i.e. 2009) year.

In a time of workforce reductions, staffing and scheduling become even more challenging, so be certain before assuming that you are no longer required to grant extended leaves.

The 20/50 Rule under COBRA: Though the threshold requirements are different, the same reasoning is applied to coverage under COBRA, the principal federal law that governs continuation health insurance coverage for employers with more than 20 employees. Under COBRA, an employer is covered if it employed 20 or more total employees (including part-timers) for over 50% of the preceding calendar year's working days, regardless of how many employees participated in the health benefits plans. For COBRA purposes, part-time employees are counted as fractions of full-time employees.

To determine coverage under COBRA, then, an employer would need to look back over the preceding 12 months. If, during that time, it met the 20/50 requirement, it would be subject to federal COBRA requirements. Unlike the FMLA, which does not have a state counterpart in Ohio, an employer who is not covered under federal COBRA would still have to comply with Ohio's version of continuation coverage, sometimes referred to as "mini-COBRA".

Calculations can be overwhelming whether or not you're good with numbers. In any case, it is well worth talking with counsel to ensure your calculations are correct under FMLA, COBRA, and mini-COBRA and to ensure you are meeting your obligations under the law.

For more information about these and other employment issues, please contact Megan Boiarsky or your CPM attorney.