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A Refresher on the Interaction of PTO With the FMLA

Overshadowed by the turmoil and turnover at the Department of Labor, [the Department recently issued an opinion letter](#) (which states its official position, but lacks regulatory authority) on how the Family and Medical Leave Act's leave requirement for 12 weeks of unpaid leave interplay with state and local leave laws, as well as an employer's own paid leave policies. Here's the skinny:

- The FMLA regulations allow an employer to require an employee to use available paid time off (PTO) under its own policies concurrently with FMLA leave. However, to do so, your FMLA policy must specify that this is a requirement, and the correct box must be checked on the Designation Notice. If the policy does expressly include such a requirement, it is the employee's option whether to use available paid time off.
- In some cases, an employee on FMLA also qualifies for worker's comp benefits or short-term disability (STD) benefits. When an employee is on both FMLA and worker's comp or STD, you cannot require the employee to also use available PTO, even if that is in your FMLA policy. However, if you and the employee agree, the employee can elect to supplement other leave payments with available PTO to bring their total compensation up to their regular full pay amount.
- Likewise, some states now run paid family and medical leave insurance programs (*e.g.*, California, Colorado, Connecticut, Delaware, D.C., Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, and Washington). The opinion letter specifies that the same rules that apply to payments under worker's comp and STD apply to state-funded benefits. **Where employees receive payments under such programs, the use of PTO cannot be required but may be mutually agreed upon.**

The recent opinion letter is a friendly reminder for employers to review their FMLA policies to ensure that your policy reflects how you want FMLA to be applied and also remains consistent with evolving state and local leave laws in the jurisdictions where you operate.

If you have any questions or would like additional information, please contact Al Vreeland at (205) 323-9266 or avreeland@lehrmiddlebrooks.com.