

FIRST FINANCIAL EMPLOYEE LEASING, INC.
GUIDANCE ON NEW FMLA REGULATIONS, EFFECTIVE 1/16/09

1. *How do I determine whether my Company has 50 or more employees for each working day during each of 20 or more calendar weeks in the current or preceding calendar year?*

The easiest way is to count the number of employees on your payroll during any given week. Note that the Company must employ 50 or more *for each working day* during the week. Therefore, if your workweek is Monday through Friday and you have 49 employees on Monday and then hire a new employee on Tuesday, you do not have 50 or more employees for that week because the new hire was not employed on Monday. Likewise, if you have 50 employees on Monday and layoff an employee on Tuesday, you do not have 50 or more employees for that week because the laid off employee did not work after Tuesday during that week. Remember that the requirement is 50 or more in either the current OR the preceding calendar year. Therefore, even if you have less than 50 employees in 2009, if you had 50 or more in at least 20 calendar workweeks in 2008, you are a covered employer under the FMLA.

2. *What if I have more than one Company that does business with First Financial Employee Leasing, Inc.?*

Pursuant to the Department of Labor's (DOL's) joint employer regulation, independent businesses (i.e., with different FEINs) may be considered a "joint employer" for FMLA under certain circumstances. The DOL will consider various factors in this analysis; such as, whether the companies share or interchange employees, act directly or indirectly in the interest of each other, or have common ownership and control over employees. If more than one business is deemed a "joint employer," the employees of all of these businesses will be aggregated together and, if the total for all joint employers exceeds 50 or more for the requisite period, those companies will be subject to FMLA requirements as a joint employer. First Financial Employee Leasing, Inc. can assist in providing FMLA assistance to joint employers so long as all companies who are deemed to be joint employers also have a co-employment relationship with First Financial Employee Leasing, Inc.

3. *What if I have other businesses that are not in a PEO relationship?*

The joint employer analysis, as summarized above and described in 29 C.F.R. §825.106, still would be applied to your situation.

4. *What if my business that has a co-employment relationship does not presently qualify as a FMLA employer, but I hire additional employees, merge with another business, or otherwise meet the 50 employee threshold at some point later on?*

You will want to continuously monitor your status. Keep in mind that, in order to stay in compliance with the FMLA, if at any time you meet the requirements to be a FMLA employer, you must take necessary action to meet your obligations as a FMLA employer.

5. *What if I have an employee currently on FMLA leave? How does the new regulation affect my legal obligations to that employee?*

While it may be possible to argue that the revised regulations have changed your legal obligations, it is our belief that you should continue to provide FMLA to employees already on leave or already approved for leave under the old rules, at least with respect to those employees who have not yet returned to work and/or been given notice of the changes. Regulations are interpretations by a governmental agency of a statute. They do not have the force of law and normally are not given retroactive effect. Your employees may have relied on the prior rules when making arrangements and it would not be fair to cut off their rights with no advance notice. Therefore, we believe it is more prudent to “grandfather” in employees who already are receiving or were promised FMLA leave until their leave entitlement expires. This approach should reduce the number of claims and lawsuits that would arise if a contrary position was adopted.

6. *How do I handle FMLA leave going forward for new employees?*

Each new hire should be provided with an individual copy of the new FMLA policy and sign an acknowledgement of receipt until such time as the First Financial Employee Leasing, Inc. employee handbook is revised to reflect the changes. If you are not using the First Financial Employee Leasing, Inc. handbook, you should replace your own FMLA policy with an updated version similar to the one provided with this packet. You also should post a copy of the new FMLA policy in the area of your worksite where other employment posters are displayed.

7. *What other notices am I required to provide to employees under the revised FMLA regulations if I meet the definition of FMLA employer?*

There is a new FMLA poster and new forms for notifying an employee of eligibility and designation of leave, all of which are available on the DOL’s website: www.dol.gov/esa/whd/fmla. In addition, the revised regulations require changes to the existing employee handbook, whether you are using First Financial Employee Leasing, Inc.’s handbook or your own. Please contact First Financial Employee Leasing, Inc. for more information.

8. *Can I continue to provide FMLA leave to my employees even if I do not meet the definition of a covered employer?*

There may be state or local laws that require leave to be given to your employees and these laws, if applicable, will control. In addition, benefits that are provided by First Financial Employee Leasing, Inc. cannot be extended under a non-FMLA unpaid leave and the employee will be offered benefit continuance under COBRA.

9. *What is the effective date of the new policy for determining FMLA employer status?*

The new regulations are effective as of January 16, 2009 so the new policy can be put into effect immediately upon receipt. First Financial Employee Leasing, Inc. will provide each employee with a general notice of the new regulations as they affect co-employment relationships, regardless of whether it is determined that you currently are a covered employer under the FMLA. As already noted, employees who already were on FMLA leave or promised such leave prior to receipt of the new policy, should be given the same rights they would have been entitled to in the absence of the new regulations.