

Employers have at least one favorable provision with FMLA

By ANN BOWDEN-HOLLIS

Nearing the end of a year lends itself to consideration of what is left to do and what might be coming up in the new year. In terms of the Family and Medical Leave Act of 1993, a few thoughts come to mind.



Bowden-Hollis

Generally, private businesses with 50 or more employees on the payroll are subject to requirements of the FMLA. Public employers are covered regardless of the number of employees; school employers have special rules.

Under the FMLA, eligible employees of covered employers are entitled to up to 12 workweeks of job-protected FMLA leave in a 12-month period for specified reasons: serious health condition of employee or covered family members and childbirth and care of a newborn, newly adopted or new foster child. Other provisions flesh out the parameters and requirements of the leave, and special provisions address leave for employees with covered family members in military service. Eligible employees are those who have worked for the same or successor employer for at least 12 months, which are not consecutive, and in the most recent 12 months prior to the leave starting, have worked at least 1,250 hours.

The FMLA is an employee leave benefits law; thus, very few parts of it are particularly advantageous to employers. One provision, however, does favor employers if properly utilized. From several choices, a covered employer can select the 12-month period used to determine how much FMLA leave an eligible employee has at a given point in time. Employers have several options: a fixed period of 12 months, for example a calendar year or a year based on an employment anniversary date; a 12-month period measured forward from the date of the first FMLA leave; and most advantageous to the employer — the rolling backward option. The last involves looking backward for 12 months from the point at which an employee's FMLA leave is to start to determine how much FMLA leave has been taken. That in turn determines how much FMLA leave remains.

If an employer does not select any "FMLA year," the employee gets to pick the one that most favors the employee. Typically, the calendar or other fixed year favors the employee because when the fixed period ends, the next fixed period begins. Consequently, an employee's 12 workweeks of FMLA leave per 12 months starts all over again at the start of the next fixed period. This means an employee could have taken 12 workweeks of leave at the end of the previous fixed period and be eligible for another 12 work-

weeks of leave as soon as the new fixed period begins.

Not all is lost, however. Employers who have never selected a FMLA year or who have selected a fixed year or look-forward year may select the rolling backward year. The employer must give the workforce a 60-day advance notice of the new FMLA year. The notice should be in writing. During the 60-day period, an employee needing FMLA leave must be afforded the most beneficial outcome to the employee. At expiration of the notice period, the employer may implement the newly selected FMLA year.

So, when contemplating how better to manage employees' time away from work in the coming year, employers covered by the FMLA should think about what leave year option they have and would like to have.

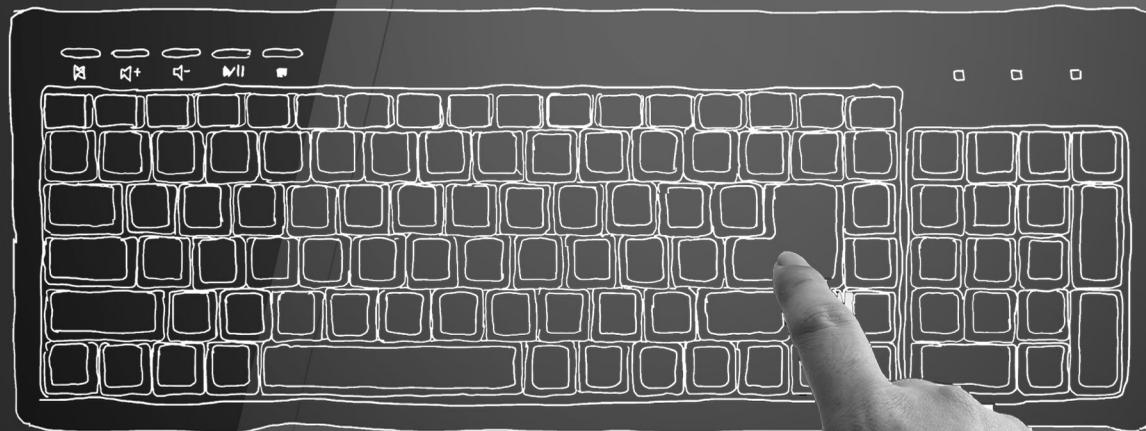
A caution: Because the FMLA is a complex law often difficult to administer a monthly column can touch only on the high points and cannot substitute for appropriate legal advice. For more details, go to www.dol.gov, look for "leave benefits" and follow the prompts from there.

Ann Bowden-Hollis is a senior attorney with Butler, Snow, O'Mara, Stephens & Cannada, PLLC, a law firm with offices in Gulfport, Bay St. Louis, and other cities and states. She is a member of the Labor and Employment Practice Group and has been practicing law for more than 30 years. If you have a question of general interest that you would like to see addressed in this column, send an email to ann.bowden-hollis@butlersnow.com. The column is for topics of general legal interest, and is not intended to be substituted for legal advice.

Just the right touch of business banking.

Checking & Money Market
Express Deposit
Small Business Loans
Treasury Management

Business Credit Card
Retirement Planning
Insurance
Merchant Services



Open an account with an associate today.

For a location near you, call us at 228-436-5000, or visit our Branch Locator at bancorpsouth.com.

Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member FINRA/SIPC. Insurance and investment products are • Not a deposit • Not FDIC insured • Not insured by any federal government agency • Not guaranteed by the bank • May go down in value

 **BancorpSouth**[®]

Right Where You Are

NYSE: BXS

www.bancorpsouth.com