**Question 1:** When will eligibility will be checked?

**Answer:** Eligibility will be checked on January 1 for employees currently on FMLA/OFLA (either on a block of time or intermittently) and for employees who have exhausted entitlements in the previous leave year but still have active medical certification(s).

Eligibility will be checked for all other employees upon the first request of a new condition in the leave year.

\*An agency has the option to check eligibility for all agency employees on January 1, whether or not they have an active medical certification. When Workday is implemented, eligibility will be checked automatically on January 1st for all employees.

Eligibility will be calculated using the method below that is the greatest benefit to the employee:

1. Hours worked between January 1 and December 31 of the previous year
2. For FMLA: Hours worked in the 12 months immediately preceding the request for leave

For OFLA: Hours worked in the 180 days immediately preceding the request for leave

Upon eligibility, the employee may use their full leave entitlement for any qualifying condition(s) through December 31of the same year. This means eligibility will not be checked for each subsequent new condition in the leave year once eligibility has been met. Entitlements may not carry over into the new leave year.

*FOR THE TRANSITION TO A CALENDAR YEAR (2019) ONLY*

* An employee with an active certification for protected leave who does not exhaust their 12 week entitlement prior to December 31, 2018 *and* does not meet eligibility on January 1, 2019, may use the remaining balance in 2019 until exhausted.
* After exhausted, eligibility for the ongoing condition or at the first request for a new condition will be checked. Upon meeting eligibility, the employee may use up to 12 more weeks of leave for any qualifying condition(s) in 2019.
* New medical certification solely due to the change to the new leave year is not required.
* Entitlements are not automatically given to employees solely due to the change to the leave year.

**Question 2:** Do employees need to be notified of their eligibility to take protected leave?

**Answer:** Yes. Notice must be provided at the first instance of leave for each qualifying reason in the leave year.

**Question 3:** When will entitlements be calculated?

**Answer:** Eligible employees are entitled to 12 weeks of leave on January 1.

Entitlements for part-time employees are pro -rated. For example, if an employee normally work 30 hours per week, they are entitled to up to 12 weeks of leave at 30 hours per week.

Leave taken on an intermittent basis is calculated by the hour. A full-time employee working 40 hours per week is entitled to up to 480 hours of leave. A part-time employee’s hourly entitlement is prorated. For example, if the employee normally works 30 hours per week, their hourly entitlement is 360 hours.

Entitlement calculation -

* On January 1 – look back 12 months and calculate hours worked and any FMLA/OFLA protected leave taken within the 12 month period *and*
* Prior to the exhaustion of leave. Determine which is the greatest benefit to the employee –
	+ Calculate entitlement by looking back from the first date leave was taken in the leave year for the condition that is projected to exhaust. Look back to January 1 and calculate average weekly scheduled hours.
	+ Calculate entitlement by looking back twelve months from the first date leave is used for the condition that is projected to exhaust and calculate average weekly scheduled hours.

**Question 4:** Will all agencies be required to determine if more than 480 hours is due to an employee?

**Answer:** Yes, all agencies will be in compliance with 29 CFR 825.205(b)(3) using the calculations in Question 5 and Question 6.

**Question 5:** How are entitlements calculated when looking at a 12 month period of time?

**Answer:** Add all hours worked and any FMLA/OFLA protected leave taken within the 12 month period. Divide that number by 52 (weeks in a year) to calculate the average number of hours worked per week. The average work week is then multiplied by 12 (weeks of leave).

*NOTE:* If the average hours worked per week are less than 40, the employee receives 480 hours of protected leave. (pro-rated for part-time employees).

*Example A:* A full time employee works 2180 hours in the 12 month period.

Calculation -

2180/52 = 41.92 average hours per week

41.92 X 12 weeks of leave = 503.08 (round up to the next whole number)

The employee is entitled to use 504 hours of protected leave in the leave year.

When calculating entitlements prior to exhaustion, ensure the employee receives the greater of entitlement upon eligibility or the 12 month look back entitlement.

*Example B:* An employee is projected to exhaust their protected leave entitlements on August 16, 2019. The first date leave was taken for the condition was May 16, 2019. The employee worked 2250 hours between May 2018 and April 2019. On August 16, 2019, they will have used 480 hours of protected leave since January 1.

Calculation -

2250/52 = 43.27 average hours per week

43.27 X 12 weeks of leave = 519.23 (round up to the next whole number)

519.23-480 hours (initial entitlement) = 39.23 (round up to the next whole number)

The employee is entitled to 40 additional hours of protected leave prior to exhaustion.

Part time employees are calculated differently.

**Question 6:** How are entitlements calculated prior to exhaustion during the leave year when looking at a period of less than 12 months?

**Answer:** Entitlements are calculated using the number of weeks from January 1 of the current year through the first date leave is used for the condition (use whole weeks, rounding up). Add all hours worked and FMLA/OFLA protected leave taken. Divide that number by the number of weeks in the time frame being used. This will calculate the average number of hours worked per week. The average number of hours per week is then multiplied by 12.

*Example C:* An employee is projected to exhaust their protected leave entitlements on August 16, 2019. The first date leave was taken for the condition was May 16, 2019. The employee worked 831 hours from January 1, 2019 to May 16, 2019. On August 16, 2019, they will have used 480 hours of protected leave since January 1.

There are 20 weeks between January 1, 2019 and May 16, 2019.

Calculation -

831/20 weeks = 41.55 average hours worked per week

41.55 X 12 weeks of leave = 498.60 hours

498.60 – 480 hours (initial entitlement) = 18.60 hours (round up to the next whole number)

The employee is entitled to 19 additional hours of protected leave prior to exhaustion.

*NOTE:* If the average hours worked per week are less than 40, the employee receives 480 hours of protected leave. (pro-rated for part-time employees).

**Question 7:** When may an agency request an annual medical recertification?

**Answer:** Medical recertification may be requested once per leave year. An agency may choose to request annual recertification for an ongoing condition on January 1 to match the leave year, one year from the date of the current med cert, or any set date within the leave year.

For agencies choosing to move to a January 1 date – it is not recommended to request an annual medical certification if one was just received towards the end of the year. Rather, we suggest waiting until you have the certification a year and request a new one the following January.

*Example D:* Medical certification was received October 7, 2018 for an ongoing, chronic condition. The agency requests an annual updated certification January 1, 2020.

**Question 8:** Do we start counting occurrences for the non-serious health condition of a child at the start of each new leave year (January 1)?

**Answer:** Yes. An agency may require medical certification from a health care provider on the fourth day or subsequent occurrence of sick child leave within the leave year.

**Question 9:** May an employee use more than 12 weeks of Parental Leave if their leave crosses into the new leave year and they are eligible for up to 12 weeks of leave on January 1?

**Answer:** Yes. An eligible employee may use up to 12 weeks of FMLA/OFLA leave for qualifying condition(s) through December 31 of the same year, provided the leave concludes within one year of the birth or adoptive or foster placement of the child.

An employee who uses 12 weeks of Parental Leave in the leave year will be entitled to an additional 12 weeks of OFLA Sick Child leave.

**Question 10:** Will temporary employees receive Family and Medical leave entitlements in the new leave year?

**Answer:** All eligible employees may use up to 12 weeks of FMLA/OFLA leave for qualifying condition(s) through December 31 of the same year.

**Question 11:** What if an employee is on unprotected leave without pay, which the agency is in the process of addressing, on January 1?

**Answer:** An employee who is eligible on January 1 may use up to 12 weeks of FMLA/OFLA leave for qualifying condition(s) through December 31 of the same year.

**Question 12:** The collective bargaining agreement is in conflict with the statewide Family and Medical Leave policy. Which do I follow?

**Answer:** Collective bargaining agreement language overrides policy. However, Letters of Agreements are being negotiated to align contract language with the Family and Medical Leave policy.