

# BUSINESS IN 2025

## WEEKLY WEBINAR SERIES



# Your Host



**Kerry W. Langan**

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# Today's Agenda

**Kerry Langan – (12:00 p.m.)**

- Welcome and Agenda

**Jennifer Tsyn – (12 – 12:05 p.m.)**

- New York City's Proposed Rule Regarding Restaurant Surcharges

**Hailey Trippany – (12:05 – 12:10 p.m.)**

- IRS 2026 Cost-of-Living Adjustments

**Michelle Piasecki – (12:10 – 12:20 p.m.)**

- New York's All-Electric Act

**Rachel Kreutzer – (12:20 – 12:30 p.m.)**

- U.S. Department of Labor Opinion Letter: Calculating FMLA Leave

**Kerry Langan – (12:30 p.m.)**

- Questions / Wrap Up

# New York City's Proposed Rule Regarding Restaurant Surcharges



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# IRS 2026 Cost-of-Living Adjustments



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<b>Retirement Plan Contribution Limits</b>	<b><u>2025</u></b>	<b><u>2026</u></b>
401(k) and 403(b) plan elective deferral limit [Code section 402(g)(1)]	\$23,500	<b>\$24,500</b>
Catch-up contribution limit (participants aged 50 or older) [Code section 414(v)(2)(B)(i)]	\$7,500	<b>\$8,000</b>
“Super” catch-up contribution limit (participants aged 60-63) [Code section 414(v)(2)(E)(i)]	\$11,250	\$11,250
Max. annual additions to defined contribution plan [Code section 415(c)]	\$70,000	<b>\$72,000</b>
Max. annual defined benefit plan accrual amount [Code section 415(b)]	\$280,000	<b>\$290,000</b>
Plan compensation limit [Code section 401(a)(17)]	\$350,000	<b>\$360,000</b>
457(b) plan annual contribution limit [Code section 457(e)(15)]	\$23,500	<b>\$24,500</b>
Pension-Linked Emergency Savings Account (PLESA) limit [Code section 402A(e)(3)(A)(i)]	\$2,500	<b>\$2,600</b>

Other Retirement Plan Limits and Thresholds	<u>2025</u>	<u>2026</u>
“Highly compensated employee” compensation threshold [Code section 414(q)(1)(B)]	\$160,000	\$160,000
“Key employee” compensation threshold [Code section 416(i)(1)(A)(i)]	\$230,000	<b>\$235,000</b>
Domestic abuse distribution limit [Code section 72(t)(2)(K)(ii)(I)]	\$10,300	<b>\$10,500</b>
Annual amount used to determine the lengthening of the 5 year ESOP distribution limit [Code section 409(o)(1)(C)(ii)]	\$280,000	<b>\$290,000</b>
Maximum ESOP account balance subject to the 5 year distribution limit [Code section 409(o)(1)(C)(ii)]	\$1,415,000	<b>\$1,455,000</b>
Prior year’s FICA (Form W-2 Box 3) wage threshold to determine whether a participant is subject to the mandatory Roth catch-up requirement in the current year [Code section 414(v)(7)(A)]		<b>\$150,000</b>



## HSA, HDHP and FSA Limits

2025

2026

HSA annual contribution limit [Code section 223(b)(2)]

Self: \$4,300

**Self: \$4,400**

Family: \$8,550

**Family: \$8,750**

HSA catch up contribution (participants aged 55 or older) limit

\$1,000

\$1,000

HDHP minimum annual deductible [Code section 223(c)(2)(A)]

Self: \$1,650

**Self: \$1,700**

Family: \$3,300

**Family: \$3,400**

FSA annual carryover limit [Code section 125(i)]

\$660

**\$680**

Dependent care account annual contribution limit

\$5,000

**\$7,500**



# New York's All-Electric Act



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# U.S. Department of Labor Opinion Letter: Calculating FMLA Leave



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# U.S. Department of Labor, Wage and Hour Division

## Opinion Letter (FMLA2025-02-A)

- September 30, 2025
- How to calculate hours of FMLA leave available to correctional law enforcement employees who work a fixed “Pitman Schedule” requiring 12-hour shifts over a 2-week cycle including mandatory overtime.
- May volunteer for additional hours apart from the fixed schedule.

# Opinion

- Based exclusively on facts provided to DOL and may not apply to different facts in this or other situations.
- Calculate the hourly equivalent of FMLA leave available to an employee based on actual, normally scheduled workweek.
- Work time comprising the normal, actual workweek, including mandatory hours.
- Do not include additional voluntary hours the employee may work.
- Cannot require employees to use FMLA leave when employees do not work these voluntary hours.

# The Employer's Inquiry

- Calculates 12-workweek FMLA leave entitlement as 504 hours
- Based on hours employees required to work under employer's published schedule mandating 84 hours every 2 weeks
- Is such an approach correct? Is it appropriate to exclude additional hours that an employee may volunteer to work, but that are not part of the published schedule?
- Confirming the hours for which an employee may volunteer, but is not required to and does not work due to an FMLA-qualifying reason, should not count against FMLA leave entitlement.

# FMLA Entitlement, Generally

- Entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.
  - 29 U.S.C. §§ 2612–2614.
- Eligible employees may generally take up to 12 “workweeks of leave” in a 12-month period (leave year) for qualifying reasons.
  - 29 U.S.C. § 2612(a)(1); 29 U.S.C. § 2612(a)(3) (26 workweeks of leave during a single 12-month period to care for a servicemember).

# Accrual, Generally

- An employee does not accrue FMLA-protected leave at any particular hourly rate
- Calculate employee's FMLA leave entitlement by converting fractions of a workweek of leave to hourly equivalent in a manner that equitably reflects employee's total normally scheduled hours
- Generally hours would have worked but for use of leave



# Converting Entitlement, Generally

- Entitled to 12 workweeks of leave per leave year
- Common for employers to convert entitlement to 480 hours of FMLA leave per leave year for employees who work 40-hour workweek
  - $40 \text{ hours per workweek} \times 12 \text{ workweeks} = 480$

## However . . .

- The specific employee's actual schedule determines the conversion calculation.
- Where an employee otherwise would work 30 hours/workweek, the employee is entitled to 360 hours of leave per leave year
  - $30 \text{ hours per workweek} \times 12 \text{ workweeks} = 360$
- An employee who works 60 hours/workweek entitled to 720 hours
  - $60 \text{ hours per workweek} \times 12 \text{ workweeks} = 720$

# Calculation of Leave

“If an employee’s schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked (but for the taking of FMLA leave), a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee’s leave entitlement.”

29 CFR 825.205(b)(3).

# Taking of FMLA Leave

- The principles used to calculate an employee's FMLA entitlement similarly apply when deducting an employee's FMLA leave use from the employee's entitlement.

# Using Less than a Full Workweek of Leave

When an employee uses less than a full workweek of leave, the leave use “shall not result in a reduction in the total amount of leave to which the employee is entitled . . . beyond the amount of leave actually taken.”

29 U.S.C. § 2612(b)(1); 29 CFR 825.205(b)(1).

## Actual Workweek Determines Amount of Leave Used

- The employee's actual workweek determines the amount of FMLA leave used.
- For example, if an employee who would otherwise work 40 hours per workweek uses 8 hours of leave, the employee would use one-fifth ( $1/5$ ) of a week of FMLA leave.

29 CFR 825.205(b)(1)

# Mandatory Overtime

“If an employee would normally be required to work overtime but is unable to do so because of a FMLA-qualifying reason that limits the employee’s ability to work overtime, the hours which the employee would have been required to work may be counted against the employee’s FMLA entitlement.”

29 CFR 825.205(c).



## In contrast . . .

Voluntary overtime hours that an employee is not required to work, and that an employee does not work due to an FMLA qualifying reason, are not counted against the employee's FMLA leave entitlement.

29 CFR 825.205(c).

# The U.S. DOL's Opinion

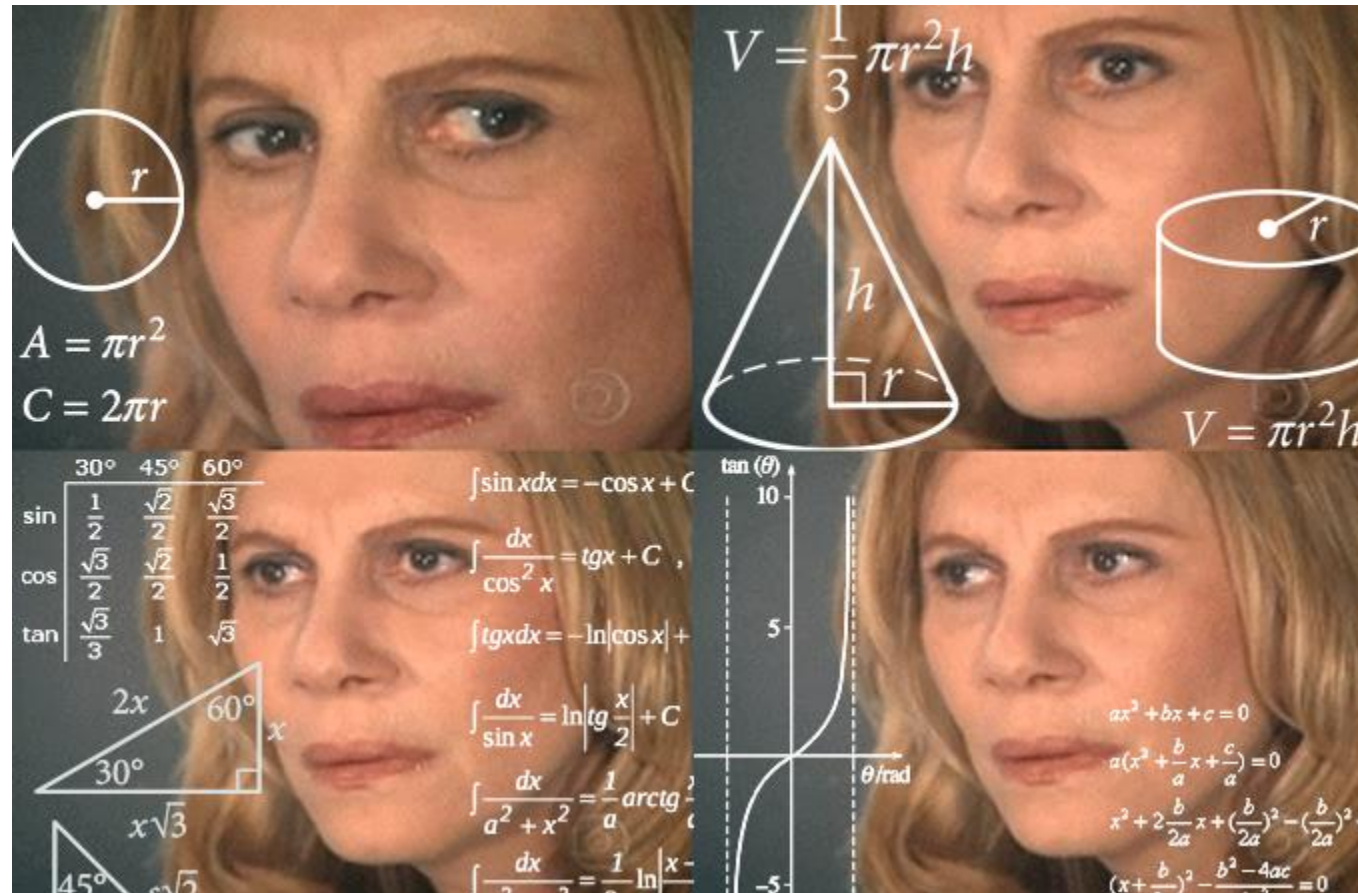
The conversion of the 12-workweek FMLA leave entitlement to a 504-hour leave entitlement as described is in accordance with FMLA's requirements, as it is consistent with what would be 12 normally scheduled workweeks for an employee working a mandatory 84 hours every 14 days.

# Determining the Amount of Leave

- In determining the appropriate amount of an employee's FMLA leave entitlement, an employer may convert the workweek to its hourly equivalent in a manner that equitably reflects the employee's total normally scheduled hours.
- Employer's calculation properly appears to account for normally scheduled hours while disregarding voluntary additional hours an employee could potentially work.

# FMLA Usage Deductions

- When calculating employee's FMLA leave usage to be deducted from entitlement, employer was correct to count as FMLA leave any hours the employee would normally work but for the FMLA absence, which includes mandatory overtime hours.
- Consistent with DOL regulations providing that additional voluntary hours an employee does not work due to an FMLA qualifying reason are not deducted from FMLA leave entitlement.



## An example

- Mark is a correctional police officer who works a schedule that requires him to work 84 hours every two weeks. He is required to work mandatory overtime hours as part of this schedule. Mark may volunteer for extra work above his scheduled hours.
- Mark's employer considers his 12-workweek FMLA leave entitlement equivalent to 504 hours. The conversion is based on his actual schedule and does not include availability of additional voluntary hours.

Mark has 504 hours of FMLA leave available when he requests 2.5 hours of leave to attend an appointment for the treatment of a qualifying serious health condition. Mark requests leave from 9:15 to 11:45 a.m. on a day on which he is scheduled to work during that time. Mark's employer approves him for 2.5 hours of FMLA leave and calculates that he has 501.5 hours of FMLA leave remaining available in the employer's 12-month leave year. **That Mark had the option to but did not and was not required to volunteer for additional hours in the workweek is not a factor in the calculation of how much FMLA leave he has available to use or how much FMLA leave he has used.**



## In conclusion:

- The actual workweek is the basis of FMLA leave entitlement.
- The employer properly included mandatory overtime hours when calculating its employee's FMLA leave entitlement and usage.
- Additional voluntary overtime hours should not be added to the calculation of an employee's FMLA leave entitlement, and any voluntary hours an employee is not required to work and does not work due to an FMLA-qualifying reason should not be counted against the employee's FMLA leave entitlement.

# Questions



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### **Sexual Harassment Prevention Training**

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training [click here](#) or email [bondonline@bsk.com](mailto:bondonline@bsk.com)

# Thank You

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