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My Three Separate Entities Each Have Less Than 50 Employees. These Entities Don't Have To Comply With FMLA, Right? – WRONG!

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The Family Medical Leave Act (FMLA) only applies to employers who have 50 or more employees within a seventy five (75) mile radius. Separate businesses with fewer than 50 employees may together trigger the FMLA if they are located within a seventy five (75) mile radius of each other AND are considered a "single employer." To be considered a single employer, the employers must be "integrated" or "joint". If such a determination is made, the employees from all three entities would be included in each entity's headcount to determine if they must comply with the FMLA.

Regarding an **integrated employer**, the regulation provides:

A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

1. Common management;
2. Interrelation between operations;
3. Centralized control of labor relations; and
4. Degree of common ownership/financial control.

Regarding a **joint employer**, the regulation provides:

(a) Where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under FMLA. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(2) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or,

(3) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

(b)(1) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when a temporary placement agency supplies employees to a second employer.

So, before determining if an entity must comply with FMLA, there must be a thorough "integrated" or "joint" employer analysis.

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