received. The rule notes that an employer may be unable to choose one method from among the available regulatory options if a particular method is dictated by a State family leave law. In this regard, employers operating in multiple States with differing State family/medical leave provisions affecting the 12-month calculation must follow the method required by the State laws. Absent a conflict with State law, employers must select a single, uniform policy covering its entire workforce. Employers must inform employees of the applicable method for determining FMLA leave entitlement when informing employees of their FMLA rights. If an employer fails to designate one of the methods, employees will be allowed to calculate their leave entitlement under whichever method is most beneficial to them. The employer in that case would subsequently be able to designate a choice prospectively, but would have to follow the rule for employers wishing to change to another alternative (i.e., give 60 days notice to all employees, and employees retain the full benefit of 12 weeks of leave under whichever method yields the greatest benefit to employees during the 60-day transition period).

When determining the amount of FMLA leave taken, a holiday occurring within a week of FMLA leave has no effect-the week is still counted as a week of FMLA leave. If however, the employer's activities temporarily cease for one or more weeks and employees generally are not expected to report for work (e.g., a school that closes two weeks for the Christmas and New Year holiday or for the summer vacation; a plant that closes two weeks for repairs or retooling), the days on which the employer's activities have ceased do not count against an employee's FMLA leave entitlement.

The "rolling backward" method is a snapshot of the 12-month period that changes daily (*i.e.*, as each new day is added to the 12-month period, one day from 12-months ago is eliminated). While many comments were received opposing this method, it has been retained as one of the available options because it is the one method that most literally tracks the statutory language.

Once the 12-month period is determined, an employee's FMLA leave entitlement is limited to a total of *up to* 12 workweeks of leave in that 12-month period for any and all reasons that qualify for taking leave under FMLA. If an employer selects the calendar year as the 12-month period, there is no authority under the statutory language to limit an employee's entitlement to a "per event" concept. (This would be

akin to saying that if an employee under the calendar year method suffered a heart attack in the month of December, that employee would no longer qualify, once the new year arrived, to take FMLA leave for that serious health condition. We ardently reject this strained interpretation.) The only limitation the Act places on an employee's taking FMLA leave in a subsequent 12-month period to care for a newborn or newly-adopted child is that the entitlement to leave for such purposes expires 12 months after the date of the birth or placement.

If an employee begins a requested 12week leave of absence and, three weeks into the leave, asks to return to work earlier than originally planned, the employer is obligated to promptly restore the employee. An employee may only take FMLA leave for reasons that qualify under the Act, and may not be required to take more leave than is necessary to respond to the need for FMLA leave. If circumstances change and the employee no longer has a need for FMLA leave (which could include a parent's changed decision not to stay home with a newborn child as long as originally planned), the employee's FMLA leave is concluded and the employee has an absolute right under the law to be promptly restored to his or her original or an equivalent position of employment. This view does not mean that employees do not also have obligations to provide notice to the employer of such changing circumstances. If an employee's status changes and the employee is able to return to work earlier than anticipated, the employee should give the employer reasonable advance notice, generally at least two working days. This is addressed in §825.309(c). An employer may also obtain such information through periodic status reports on the employee's intent to return to work.

Conclusion of Leave for Birth or Adoption (§ 825.201)

Under § 102(a)(2) of FMLA, an employee's entitlement to leave for a birth or placement of a son or daughter "shall *expire* at the *end* of the 12-month period *beginning* on the date of such birth or placement" (emphasis added). This section of the regulations repeated the statutory terms with the added qualifications that State law may require, or an employer may permit, a longer period; any such *FMLA* leave, however, must be *concluded* within this statutory 12-month period.

The Los Angeles County Metropolitan Transportation Authority recommended this section be revised to state clearly that leave for the birth of a child, or placement of a child with the employee for adoption or foster care, must be initiated and completed within 12 months after the birth or placement. Nationsbank Corporation (Troutman Sanders) stated that the termination date for an employee's entitlement to leave under this section should occur 12 months after the first FMLA leave is taken in connection with the event, rather than 12 months after the date of birth or placement, suggesting this approach would be more consistent with other regulatory provisions allowing such leave to begin before the actual date of birth or placement. (Otherwise, they suggest, the 12 weeks of leave could be spread over a period greater than the 12-month period provided by FMLA's requirements.)

The Employers Association of New Jersey questioned whether a provision under the New Jersey law that requires leave to *commence* (but it need not conclude) within one year of the date of birth would prevail over the FMLA.

The Women's Legal Defense Fund considered the language in this section of the regulations too restrictive, suggesting it removes scheduling flexibility for employees. WLDF suggested replacing "concluded" with "begun" (which, thus, would read like the New Jersey law cited above).

The Chamber of Commerce of the USA suggested modifications that would limit an employee's leave entitlement to a single 12-week period for the birth or placement of a child, to make it clear that an employee is not entitled to "stack" leave periods in connection with a single birth or placement. The Association of Washington Cities expressed similar views.

Our review of the statute and its legislative history in the context of the comments received has confirmed our initial views on this section. The statute clearly states that the entitlement to leave *expires* at the end of one year following the date of birth or placement of the child. Thus, the leave must be concluded (i.e., completed) within the statutory entitlement period. There is no authority to provide by regulation that the leave need only begin within the statutory 12-month period. If a State provision (as is the case in New Jersey) allows for a longer or more generous period, the more generous State provision would prevail but such leave beyond what FMLA requires would not count as FMLA leave (see § 401(b) of FMLA, discussed below in connection with § 825.701 of the regulations). There is no authority to shorten the statutory 12-month period under the regulations where an employee begins leave for the