

A SUMMARY OF THE FMLA REGULATIONS EFFECTIVE JANUARY 16, 2009

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This document contains a summary of and excerpts from the FMLA regulations effective January 16, 2009. It is intended as a quick reference tool, not as a substitute for the actual regulations. It is not legal advice. All citations are to 29 CFR.

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Subpart A—Coverage Under the Family and Medical Leave Act

§ 825.100 The Family and Medical Leave Act.

This regulation provides a general overview of some employer and employee rights and responsibilities under the FMLA. Those rights and responsibilities are outlined in more detail in the regulations that follow.

§ 825.101 Purpose of the Act.

The stated purposes of the FMLA are to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. Although the regulations state that the goal is to accomplish these purposes in a manner that accommodates the legitimate interests of employers, the following language suggests that the regulations are to be interpreted broadly in favor of employees:

The FMLA was predicated on two fundamental concerns—the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

The FMLA is both intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

§ 825.102 [Reserved]

§ 825.103 [Reserved]

§ 825.104 Covered employer.

Private employers are covered if they employ at least 50 employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

Public agencies and public and private elementary and secondary schools are covered employers without regard to the number of employees employed.

Persons with management authority may be held individually liable for violations of the FMLA.

Normally, the legal entity that employs the employee is the employer for purposes of the FMLA. Separate entities will constitute parts of a single employer for purposes of FMLA if they meet the “integrated employer” test. Factors considered include: (i) common management; (ii) interrelation between operations; (iii) centralized control of labor relations; and (iv) degree of common ownership/financial control. Where this test is met, the employees of all entities making up the integrated employer will be counted in determining employer coverage and employee eligibility.

§ 825.105 Counting employees for determining coverage.

For purposes of the FMLA, the employment relationship is construed broadly. Mere knowledge that an individual is performing work for an employer may be sufficient to establish an employment relationship under the FMLA. The FMLA uses an “economic reality” test. Under this test, an employee is an individual who is dependent on the business which he/she serves. By contrast, an independent contractor generally must be engaged in a business of his/her own. **Remember: It is possible for an individual to qualify as an “independent contractor” under some employment and/or tax laws, but not others.**

Any employee (full or part time) whose name appears on the payroll is considered employed each working day of the calendar week and must be counted. However, the FMLA applies only to employees who are employed within any State of the United States, the District of Columbia or any Territory or possession of the United States.

Employees on leaves of absence or suspension are counted as long as the employer has a reasonable expectation that the employee will return to active employment. Laid off and terminated employees generally are not counted.

An employee who does not begin to work for an employer until after the first working day of a calendar week, or who terminates employment before the last working day of a calendar week, is not considered employed on each working day of that calendar week.

Once a private employer meets the coverage requirements, the employer remains covered until it reaches a point where it no longer has employed 50 employees for 20 workweeks in the current and preceding calendar year

§ 825.106 Joint employer coverage.

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. A joint employment relationship often arises in the context of a temporary placement agency supplying employees to a second employer.

Professional Employer Organizations (“PEO”) do not enter into a joint employment relationship with the employees of its client companies when it merely performs such administrative functions as payroll, benefits, regulatory paperwork, and updating employment policies. If, however, a PEO has the right to hire, fire, assign, or direct and control the client’s employees, or benefits from the work that the employees perform,

such rights may lead to a determination that the PEO would be a joint employer with the client employer.

In joint employment relationships, the primary employer is responsible for giving required notices to its employees, providing FMLA leave, maintaining health benefits, and job restoration. The secondary employer is responsible for accepting the employee returning from FMLA leave in place of the replacement employee if the secondary employer continues to utilize an employee from the temporary placement agency, and the agency chooses to place the employee with the secondary employer. A secondary employer is also responsible for compliance with the FMLA's prohibited acts provisions (e.g., no interference, discrimination, etc.) with respect to its jointly employed employees, regardless of whether the secondary employer is covered by FMLA.

Employees jointly employed by two employers must be counted by **both** employers, whether or not maintained on one of the employer's payroll, in determining employer coverage and employee eligibility (a special rule may apply in the case of an assignment of more than one year (see § 825.111)).

§ 825.107 Successor in interest coverage.

When an employer is a "successor in interest," employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer.

§ 825.108 Public agency coverage.

For purposes of the FMLA, a "public agency" is defined as the government of the United States; the government of a State or political subdivision of a State; or an agency of the United States, a State, or a political subdivision of a State, or any interstate governmental agency. "State" includes any State of the United States, the District of Columbia, or any Territory or possession of the United States.

All public agencies are covered by the FMLA regardless of the number of employees. However, employees of public agencies must meet all of the requirements of eligibility, including the requirement that the employer employ 50 employees at the worksite or within 75 miles.

§ 825.109 Federal agency coverage.

Most employees of the government of the United States, if they are covered by the FMLA, are covered under Title II of the FMLA, which is administered by the U.S. Office of Personnel Management. Exceptions are identified in this section of the regulations.

§ 825.110 Eligible employee.

An "eligible employee" is an employee of a covered employer who:

- Has been employed by the employer for at least 12 months;
- Has actually worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and

- Is employed at a worksite where at least 50 employees are employed by the employer within 75 miles of that worksite.

The 12 months an employee must have been employed by the employer need not be consecutive months. However, employment periods prior to a break in service of seven (7) years or more need not be counted unless:

- The employee's break in service is occasioned by the fulfillment of his or her National Guard or Reserve military service obligation. The time served performing the military service must be also counted in determining whether the employee has been employed for at least 12 months by the employer; or
- A written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service.

As for the 1250 hours worked requirement, pursuant to USERRA, an employee returning from fulfilling his or her National Guard or Reserve military obligation must be credited with the hours of service that would have been performed but for the period of military service in determining whether the employee worked the 1,250 hours of service. In order to determine the hours that would have been worked during the period of military service, the employee's pre-service work schedule can generally be used for calculations.

If an employer does not maintain an accurate record of hours worked by an employee, the employer has the burden of showing that the employee has not worked the required 1250 hours. **This may be one reason to require exempt salaried employees to keep accurate records of their hours worked.**

Sometimes an employee meets the eligibility requirements for FMLA leave while the employee is on a non-FMLA leave. In such case, once the employee meets the FMLA's eligibility requirements, any portion of the leave taken for an FMLA qualifying reason after the employee meets the eligibility requirement would be job-protected FMLA leave.

The determination of whether an employee has met the 12 month of employment requirement or the 1250 hours worked requirement is made **as of the date the FMLA leave is to start**. In contrast, the determination of whether 50 employees are employed within 75 miles is determined **when the employee gives notice of the need for leave**.

§ 825.111 Determining whether 50 employees are employed within 75 miles.

An employee's worksite ordinarily is the site the employee reports to or, if none, from which the employee's work is assigned. For employees with no fixed worksite (for example, construction workers, transportation workers, salespersons), the "worksite" is the site to which they are assigned as their home base, from which their work is assigned, or to which they report.

An employee's personal residence is not a worksite in the case of employees, such as salespersons, who travel a sales territory and who generally leave to work and return from work to their personal residence, or employees who work at home. Rather, their worksite is the office to which they report and from which assignments are made.

In a joint employment arrangement, the employee's worksite ordinarily is the primary employer's office from which the employee is assigned, however, if an employee has physically worked for at least one year at a facility of a secondary employer, the employee's worksite is that location.

§ 825.112 Qualifying reasons for leave, general rule.

Eligible employees may take job-protected, unpaid leave (or substitute accrued paid leave in certain circumstances) for up to **12 workweeks in a 12 month period** because:

- of the birth of a son or daughter and to care for the newborn child;
- of the placement with the employee of a son or daughter for adoption or foster care;
- the employee is needed to care for a son, daughter, spouse, or parent with a serious health condition;
- the employee's own serious health condition makes the employee unable to perform the functions of his or her job; or
- because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

In addition, eligible employees may take job-protected, unpaid leave (or substitute accrued paid leave in certain circumstances) for up to **26 workweeks in a "single 12-month period"** to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

§ 825.113 Serious health condition.

For purposes of the FMLA, "serious health condition" means an illness, injury, impairment or physical or mental condition that involves "inpatient care" (see § 825.114) or "continuing treatment by a health care provider" (see § 825.115).

"Incapacity" means inability to work, attend school or perform other regular daily activities due to the serious health condition.

"Treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition, but not routine physical examinations, eye examinations, or dental examinations.

A regimen of continuing treatment includes (but is not limited to) a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. The taking of over-the-counter medications, bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider is not, alone, a regimen of continuing treatment for purposes of the FMLA.

§ 825.114 Inpatient care.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility.

§ 825.115 Continuing treatment.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- **Incapacity and treatment.** A period of incapacity of **more than three consecutive, full calendar days**, and any subsequent treatment or period of incapacity relating to the same condition, **that also involves:**
 - (1) Treatment (an **in-person visit within seven (7) days of the first day of incapacity is required**) two or more times (a **second in-person visit within 30 days of the first day of incapacity is required** unless extenuating circumstances exist, i.e., circumstances beyond the employee's control that prevent the follow-up visit from occurring **as planned by the health care provider**), by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (2) Treatment (an **in-person visit within seven (7) days of the first day of incapacity is required**) by a health care provider on at least one occasion, which results in a regimen of continuing treatment (see § 825.113) under the supervision of the health care provider.

Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period must be **determined by the health care provider**, not the employee.

- **Pregnancy or prenatal care.** Any period of incapacity due to pregnancy or for prenatal care qualifies for FMLA leave **even though the employee does not receive treatment** from a health care provider during the absence, and **even if the absence does not last more than three consecutive, full calendar days** (for example, severe morning sickness).
- **Chronic conditions.** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition qualifies for FMLA leave **even though the employee or the covered family member does not receive treatment** from a health care provider during the absence, and **even if the absence does not last more than three consecutive, full calendar days** (for example, onset of asthma attack). A chronic serious health condition is one which:
 - (1) Requires periodic visits (**at least twice a year**) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
 - (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

- **Permanent or long-term conditions.** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- **Conditions requiring multiple treatments.** Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
 - (1) Restorative surgery after an accident or other injury; or
 - (2) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), or kidney disease (dialysis).

§ 825.116 [Reserved]

§ 825.117 [Reserved]

§ 825.118 [Reserved]

§ 825.119 Leave for treatment of substance abuse.

FMLA leave may be taken for treatment of the employee or covered family member for substance abuse. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

Treatment for substance abuse does not prevent an employer from terminating an employee (whether or not the employee is presently taking FMLA leave) pursuant to an established policy, applied in a nondiscriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse.

§ 825.120 Leave for pregnancy or birth.

Eligible mothers and fathers are entitled to FMLA leave for the birth of a child and to be with the healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth.

A husband and wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. However, a husband and wife may each take 12 weeks of FMLA leave (assuming such leave is available) if needed to care for their newborn child with a serious health condition, even if both are employed by the same employer.

An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.

A husband is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for the spouse following the birth of a child if the spouse has a serious health condition.

Employees are not entitled to intermittent or reduced schedule leave to be with a healthy newborn child. However, eligible employees may take intermittent leave when such leave is required for the serious health condition of the mother or newborn child.

§ 825.121 Leave for adoption or foster care.

Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.

An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement.

A husband and wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. However, a husband and wife may each take 12 weeks of FMLA leave (assuming such leave is available) if needed to care for their newly placed adopted or foster child with a serious health condition, even if both are employed by the same employer.

Employees are not entitled to intermittent or reduced schedule leave to be with a healthy newly placed adopted or foster child. However, eligible employees may take intermittent leave when such leave is required for the serious health condition of the newly placed child.

§ 825.122 Definitions of spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on active duty or call to active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember.

Spouse means a husband or wife as defined or recognized under State law.

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter, but does **not include parents "in law."**

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or

older and incapable of self care because of a mental or physical disability **at the time that FMLA leave is to commence.**

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA (in which case the designated individual will be the only next of kin).

Adoption means legally and permanently assuming the responsibility of raising a child as one's own.

Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian through State action or agreement.

Son or daughter on active duty or call to active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

Son or daughter of a covered servicemember means the servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.

Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember, but does **not include parents "in law."**

The employer may require the employee giving notice of the need for leave to provide reasonable documentation of the family relationship.

§ 825.123 Unable to perform the functions of the position.

An employee is "unable to perform the functions of the position" where the **health care provider finds** that the employee is unable to perform **any one** of the **essential functions** within the meaning of the ADA.

When requiring a certification of health care provider, an employer may provide a statement of the essential functions of the employee's position for the health care provider to review. A medical certification must specify what functions of the employee's position the employee is unable to perform.

§ 825.124 Needed to care for a family member or covered servicemember.

"Needed to care for" a family member or covered servicemember encompasses both physical and psychological care.

An employee's intermittent leave or a reduced leave schedule necessary to care for a family member or covered servicemember includes not only a situation where the

condition of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with others.

§ 825.125 Definition of health care provider.

The regulation defines “health care provider” as including, to some degree, doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse mid-wives, clinical social workers, physician assistants, Christian Science practitioners, and other providers accepted by the employer’s group health plan. In other words, the term is defined much more broadly than just “doctor,” therefore, **employers may not require that the certification be completed by a doctor.**

§ 825.126 Leave because of a qualifying exigency.

Eligible employees may take FMLA leave while the employee’s spouse, son, daughter, or parent (the “covered military member”) is on active duty or call to active duty status for one or more of the following qualifying exigencies:

- **Short-notice deployment.** Up to **seven (7) calendar days leave** to address **any issue** that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment (the leave must be taken within the seven day period beginning on the date notice is received by the covered servicemember).
- **Military events and related activities.** To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member, and to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member.
- **Childcare and school activities.**
 - (1) To arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in existing childcare arrangements for the child of a covered military member;
 - (2) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) for the child of a covered military member when the need to provide such care arises from the active duty or call to active duty status of a covered military member;
 - (3) To enroll in or transfer to a new school or day care facility the child of a covered military member when enrollment or transfer is necessitated by the active duty or call to active duty status of the covered military member;
 - (4) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for the child of a covered military member when such meetings are necessary due to circumstances

arising from the active duty or call to active duty status of the covered military member.

- **Financial and legal arrangements.** To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust, and to act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for a period of 90 days following the termination of the covered military member's active duty status.
- **Counseling.** To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the child of a covered military member, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member.
- **Rest and recuperation.** To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take **up to five days of leave for each instance of rest and recuperation.**
- **Post-deployment activities.** To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and to address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.
- **Additional activities.** To address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Leave under this section applies only if the employee's family member is a member of the Reserve or a retired member of the Regular Armed Forces or Reserve. An employee whose family member is on active duty or call to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency. In addition, to be covered, the call to active duty must be Federal, not State (unless the State call is by order of the President).

§ 825.127 Leave to care for a covered servicemember with a serious injury or illness.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the

Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. **Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.**

A “serious injury or illness” means an injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

“Outpatient status,” with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember. These terms are defined in the regulation.

An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a “single 12- month period.” This “single 12-month period” begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.

An eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any “single 12-month period.”

A husband and wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 26 workweeks of leave during the “single 12-month period” if the leave is taken to care for a covered servicemember with a serious injury or illness and for birth of the employee’s son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee’s parent with a serious health condition.

Subpart B—Employee Leave Entitlements Under the Family and Medical Leave Act

§ 825.200 Amount of leave.

12 Weeks. Eligible employees are entitled to up to 12 weeks of FMLA leave for:

- (1) the birth of the employee’s son or daughter, and to care for the newborn child;
- (2) the placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
- (3) to care for the employee’s spouse, son, daughter, or parent with a serious health condition;

- (4) because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job; and
- (5) because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

Employers may choose any one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement occurs:

- (1) the calendar year;
- (2) any fixed 12-month "leave year";
- (3) the 12-month period measured forward from the date any employee's first FMLA leave for one of the above reasons begins; or
- (4) a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

The alternative selected must be applied consistently and uniformly to all employees (except for multi-State employers with employees in one or more States that require a single method). A change requires, among others, a 60-day notice.

If an employer fails to select one of the options for measuring the 12-month period for the leave entitlements, the option that provides the most beneficial outcome for the employee will be used. **Employers should consider making the election in their FMLA policy.**

26 Weeks. An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness. **The "single 12-month period" in which the 26 weeks of leave entitlement occurs is the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins.** During the "single 12-month period," the total amount of FMLA leave that an employee may take, regardless of reason, is 26 weeks.

§ 825.201 Leave to care for a parent.

Although an eligible employee may take FMLA leave needed to care for a parent with a serious health condition, care for parents-in-law is not covered by the FMLA. Spouses employed by the same employer may be limited to a combined total of 12 weeks of leave during a 12-month period to care for a parent with a serious health condition.

§ 825.202 Intermittent leave or reduced leave schedule.

For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, **there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule.**

Employees are not entitled to intermittent or reduced schedule leave to be with a healthy newborn or newly placed adopted or foster child. However, eligible employees may take

intermittent leave when such leave is required for the serious health condition of the mother or newborn or newly placed child.

Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

§ 825.203 Scheduling of intermittent or reduced schedule leave.

If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, **the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.**

§ 825.204 Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave.

If an employee needs intermittent leave or leave on a reduced leave schedule that is **foreseeable based on planned medical treatment**, the employer may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates the leave.

The alternative position must have equivalent pay and benefits but does not have to have equivalent duties. If a full time employee is temporarily reclassified as part time (which may be permitted provided the employee is not required to take more leave than medically necessary), **the employer may not eliminate benefits which otherwise would not be provided to part time employees**, but may proportionately reduce benefits such as vacation leave where the normal practice is to base such benefits on the number of hours worked.

When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he or she left when the leave commenced.

§ 825.205 Increments of FMLA leave for intermittent or reduced schedule leave.

When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employer must account for the leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave **provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.**

Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed "clean room" during a certain period of time, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement.

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.

§ 825.206 Interaction with the FLSA.

If an employee is otherwise exempt from minimum wage and overtime requirements of the FLSA, providing unpaid FMLA qualifying leave to such an employee will not cause the employee to lose the FLSA exemption.

For an employee paid in accordance with the fluctuating workweek method of payment for overtime (see 29 CFR 778.114), the employer, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The regulations outline the proper procedure for doing so.

§ 825.207 Substitution of paid leave.

When an employee chooses, or an employer requires, substitution of accrued paid leave for otherwise unpaid FMLA leave, the employer must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy in connection with the receipt of such payment. If an employee does not comply with the additional requirements in an employer's paid leave policy, the employee is not entitled to substitute accrued paid leave, but the employee remains entitled to take unpaid FMLA leave. If neither the employee nor the employer elects to substitute paid leave for unpaid FMLA leave, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

Because leave pursuant to a disability benefit plan and/or pursuant to a worker's compensation claim is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employer may require the substitution of paid leave. However, employers and employees may agree, where state law permits, to have paid leave supplement the disability plan or worker's compensation benefits, such as in the case where a plan or worker's compensation benefits only provides replacement income for two-thirds of an employee's salary.

Section 7(o) of the Fair Labor Standards Act (FLSA) permits public employers under prescribed circumstances to substitute compensatory time off accrued at one and one-half hours for each overtime hour worked in lieu of paying cash to an employee when the employee works overtime hours. If an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employer requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

§ 825.208 [Reserved]

§ 825.209 Maintenance of employee benefits.

During any FMLA leave, an employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee was not on leave. Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

Except as required by COBRA and for "key employees", the employer's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when:

- the employment relationship would have terminated if the employee had not taken FMLA leave
- an employee informs the employer of his or her intent not to return from leave; or
- the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

If a "key employee" (see § 825.218) does not return from leave when notified by the employer that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employer that the employee does not desire restoration to employment at the end of the leave period, or the FMLA leave entitlement is exhausted, or reinstatement is actually denied.

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

§ 825.210 Employee payment of group health benefit premiums.

Any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are changed, the employee is required to pay the new premium rates.

Maintenance of health insurance policies which are not a part of the employer's group health plan are the sole responsibility of the employee.

If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction. If FMLA leave is unpaid, the employer has a number of options for obtaining payment from the employee (see the regulations). The employer must provide the

employee with advance written notice of the terms and conditions under which these payments must be made.

§ 825.211 Maintenance of benefits under multi-employer health plans.

An employer under a multiemployer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employers party to the plan.

Coverage and benefits must be maintained at the level applicable to the employee at the time FMLA leave commenced.

An employee using FMLA leave cannot be required to use “banked” hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

§ 825.212 Employee failure to pay health plan premium payments.

In the absence of an established employer policy providing a longer grace period, an employer’s obligations to maintain health insurance coverage cease under FMLA if an employee’s premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date.

The employer may recover the employee’s share of any premium payments missed by the employee for any FMLA leave period during which the employer maintains health coverage by paying the employee’s share after the premium payment is missed.

If coverage lapses because an employee has not made required premium payments, upon the employee’s return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

§ 825.213 Employer recovery of benefit costs.

An employer may recover its share of health plan premiums during a period of **unpaid** FMLA leave from an employee if the employee fails to “return” to work after the employee’s FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to: (1) the continuation, recurrence, or onset of either a serious health condition of the employee or the employee’s family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or (2) other circumstances beyond the employee’s control.

If the employer may not recover its share of health plan premiums, the employer may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employer's request.

Under some circumstances an employer may elect to maintain other benefits, e.g., life insurance, disability insurance, etc., by paying the employee's share of premiums during periods of unpaid FMLA leave. If the employer elects to maintain such benefits during the leave, at the conclusion of leave, the employer is entitled to recover only the costs incurred for paying the employee's share of any premiums, whether or not the employee "returns" to work.

An employee who returns to work for at least 30 calendar days is considered to have "returned" to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have "returned" to work.

When paid leave is substituted for FMLA leave, or when the employee obtains disability or worker's compensation benefits during FMLA leave, the employer may not recover its share of health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave.

The amount that self insured employers may recover is limited to only the employer's share of allowable "premiums" as would be calculated under COBRA, excluding the 2% fee for administrative costs.

§ 825.214 Employee right to reinstatement.

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

§ 825.215 Equivalent position.

An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

If a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to re-qualify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages).

Although an employee is not entitled to accrue additional benefits during unpaid FMLA leave, benefits accrued at the time leave began (e.g., paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

The employee ordinarily must be reinstated to the same or a geographically proximate worksite from where the employee had previously been employed and to the same shift or the same or an equivalent work schedule. Further, the employee must have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and nondiscretionary payments.

§ 825.216 Limitations on an employee's right to reinstatement.

An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.

An employer may deny job restoration to salaried eligible employees ("key employees," as defined in the regulations) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer.

An employer may delay restoration to an employee who fails to provide a properly required fitness-for-duty certificate to return to work.

If the employee is unable to perform an essential function of the position because of a physical or mental condition, the employee has no right to restoration to another position

under the FMLA. The employer's obligations may, however, be governed by the Americans with Disabilities Act (ADA) or other applicable law.

An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration or maintenance of health benefits provisions.

If the employer has a uniformly applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave.

§ 825.217 Key employee, general rule.

A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees (both salaried and non-salaried) employed by the employer within 75 miles of the employee's worksite.

§ 825.218 Substantial and grievous economic injury.

In order to deny restoration to a key employee, an employer must determine that the restoration of the employee to employment will cause "substantial and grievous economic injury" to the operations of the employer, **not whether the absence of the employee will cause such substantial and grievous injury**. An employer may take into account its ability to replace the employee on a temporary basis or temporarily do without the employee.

§ 825.219 Rights of a key employee.

An employer who believes that reinstatement may be denied to a key employee must give written notice to the employee at the time the employee gives notice of the need for FMLA leave that he or she qualifies as a key employee. At the same time, the employer must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employer should determine that substantial and grievous economic injury to the employer's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier).

As soon as an employer determines that substantial and grievous economic injury to its operations will result if a key employee is reinstated, the employer shall notify the employee **in writing** of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. The employer must serve this notice either **in person or by certified mail**. This notice must explain the basis for the employer's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work.

An employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employer's notice. The employer must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined

that substantial and grievous economic injury will result, the employer shall notify the employee **in writing (in person or by certified mail)** of the denial of restoration.

§ 825.220 Protection for employees who request leave or otherwise assert FMLA rights.

The FMLA prohibits interference with an employee's rights under the FMLA, and with legal proceedings or inquiries relating to those rights. For example, an employer may not use FMLA leave as a negative factor in employment actions, and FMLA leave may not be counted under no fault attendance policies.

An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

Employees cannot waive their prospective rights under FMLA. However, employees may settle or release FMLA claims based on past employer conduct.

Employees may voluntarily accept a "light duty" assignment while recovering from a serious health condition. An employee's acceptance of such "light duty" assignment does not constitute a waiver of the employee's right to be restored to the same position the employee held at the time the employee's FMLA leave commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

Subpart C—Employee and Employer Rights and Obligations Under the Act

§ 825.300 Employer notice requirements.

- **General Notice.** Covered employers must post a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints of violations of the FMLA with the Wage and Hour Division. Electronic posting is permitted as long as it otherwise meets the requirements of the regulations.

Covered employers with eligible employees also must provide this general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring. Electronic distribution is permitted.

WH Publication 1420 (Notice to Employees of Rights Under FMLA) may be used.

- **Eligibility Notice.** When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances. The eligibility notice must state whether the employee is eligible

for FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

DOL Form WH-381 (Notice of Eligibility and Rights and Responsibilities (Family and Medical Leave Act)) may be used.

All FMLA absences for the **same qualifying reason** are considered a single leave, and employee eligibility **as to that reason** for leave does not change during the applicable 12 month period. In contrast, if the employee's eligibility status has changed at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period **due to a different FMLA-qualifying reason** (e.g., if the employee has worked less than 1,250 hours of service for the employer in the 12 months preceding the commencement of leave for the subsequent qualifying reason), the employer must notify the employee of the change in eligibility status within five (5) business days, absent extenuating circumstances. **This means that it is possible for an employee to be granted FMLA leave for one FMLA-qualifying reason while being denied FMLA leave for a different FMLA-qualifying reason.**

- **Rights and Responsibilities Notice.** Employers must provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations.

DOL Form WH-381 (Notice of Eligibility and Rights and Responsibilities (Family and Medical Leave Act)) may be used. If applicable, Form WH-380-E, Form WH-380-F, Form WH-384, or Form WH-385 may be attached to Form WH-381.

If the specific information provided by the notice of rights and responsibilities changes, the employer shall, within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed.

- **Designation Notice.** The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee. The employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five (5) business days of receipt of enough information to make the determination (e.g., after receiving a certification) absent extenuating circumstances.

DOL Form WH-382 (Designation Notice) may be used.

Failure to follow the notice requirements may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

§ 825.301 Designation of FMLA leave.

The employer's decision to designate leave as FMLA-qualifying must be based only on information received from the employee or the employee's spokesperson. In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, **the employer should inquire further of the employee or the spokesperson to ascertain whether leave is potentially FMLA-qualifying.** Once the employer has acquired knowledge that the leave is being taken for a FMLA qualifying reason, the employer must notify the employee.

An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the FMLA or even mention the FMLA to meet his or her obligation to provide notice. However, the employee must state a qualifying reason for the needed leave. An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the employer to determine whether the leave qualifies. If the employee fails to explain the reasons, leave may be denied.

If there is a dispute between an employer and an employee as to whether leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employer. **Such discussions and the decision must be documented.**

An employer may retroactively designate leave as FMLA leave with appropriate notice to the employee **provided that the employer's failure to timely designate leave does not cause harm or injury to the employee.** In all cases where leave would qualify for FMLA protections, an employer and an employee can mutually agree that leave be retroactively designated as FMLA leave.

If an employer's failure to timely designate leave causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

§ 825.302 Employee notice requirements for foreseeable FMLA leave.

An employee must provide the employer at least 30 days advance notice of foreseeable FMLA leave. If 30 days notice is not practicable, notice must be given as soon as practicable. **If an employee fails to provide at least 30 days notice of foreseeable leave, the employee must explain why if the employer asks.** For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.

"As soon as practicable" ordinarily means the same day the employee learns of the need for leave, or the next business day.

An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA qualifying leave, and the anticipated timing and duration of the leave.

When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. In contrast, **when an employee seeks leave due to a FMLA-qualifying reason for which the employer has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave.**

In all cases, the employer should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave. An employer may also request certification to support the need for leave for a qualifying exigency or for military caregiver leave. When an employee has been previously certified for leave due to more than one FMLA-qualifying reason, the employer may need to inquire further to determine for which qualifying reason the leave is needed.

An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. **Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA qualifying.**

An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. An employee also may be required by an employer's policy to contact a specific individual. Where an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied. However, FMLA protected leave may not be delayed or denied where the employer's policy requires notice to be given more than 30 days in advance or, if 30 days notice is not practicable, as soon as practicable, and the employee provides notice at least 30 days in advance or, if 30 days notice is not practicable, as soon as practicable.

When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider.

Intermittent leave or leave on a reduced leave schedule must be medically necessary. **An employee shall advise the employer, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable.** The employee and employer must attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

§ 825.303 Employee notice requirements for unforeseeable FMLA leave.

When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employer as soon as practicable.

Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally.

An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. In contrast, **when an employee seeks leave due to a qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.** Calling in "sick" without providing more information will not be considered sufficient notice to trigger an employer's obligations under the Act.

The employer will be expected to obtain any additional required information through informal means. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. **Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA qualifying.**

When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. This may include, for example, a requirement to call a designated number or specific individual. Failure to comply could result in the delay or denial of FMLA leave.

§ 825.304 Employee failure to provide notice.

In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employer's proper posting of the required notice at the worksite where the employee is employed and the employer's provision of the required notice in either an employee handbook or employee distribution.

When the need for FMLA leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employer may delay FMLA coverage until 30 days after the date the employee provides notice.

When the need for FMLA leave is foreseeable fewer than 30 days in advance, or where the need is unforeseeable, and an employee fails to give notice as soon as practicable under the particular facts and circumstances, the extent to which an employer may delay FMLA coverage for leave depends on the facts of the particular case.

The employer may take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances,

as long as the actions are taken in a manner that does not discriminate against employees taking FMLA leave and the rules are not inconsistent with the FMLA regulations.

§ 825.305 Certification, general rule.

An employer may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employer may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification.

The employer ordinarily should make the request for a certification within five (5) business days of the date the employee gives notice of the need for leave. The employee must provide the requested certification to the employer within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so.

The employer shall advise an employee whenever the employer finds a certification incomplete or insufficient, and shall state **in writing** what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if one or more of the applicable entries have not been completed. A certification is considered insufficient if the information provided is vague, ambiguous, or non-responsive. The employer must provide the employee with seven (7) calendar days (unless not practicable under the particular circumstances) to cure any such deficiency. If the deficiencies specified by the employer are not cured in the resubmitted certification, the employer may deny the taking of FMLA leave.

Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year, the employer may require the employee to provide a new medical certification in each subsequent leave year. This new certification may be subject to second and third opinions.

§ 825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

See regulations and DOL Form WH-380-E (Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)) and Form WH-380-F (Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act)).

If an employee's serious health condition may also be a disability within the meaning of the Americans with Disabilities Act, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA. Any information received pursuant to these procedures may be considered in determining the employee's entitlement to FMLA-protected leave.

§ 825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions.

If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider. However, the employer may contact the health care provider for purposes of clarification and authentication of the medical certification after the employer has given the employee an opportunity to cure any deficiencies. **To make such contact, the employer must use a health care provider, human resources professional, leave administrator, or management official. Under no circumstances, however, may the employee's direct supervisor contact the employee's health care provider.** Employers may not ask health care providers for additional information beyond that required by the certification form.

If an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear.

An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employer's established leave policies.

The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider.

The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within five business days unless extenuating circumstances prevent such action.

If the employer requires the employee to obtain either a second or third opinion, the employer must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The

employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

In circumstances in which the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English, the employee must provide the employer with a written translation of the certification upon request.

§ 825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

As a general rule, an employer may request recertification no more often than every 30 days and only in connection with an absence by the employee. However, if the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless (1) the employee requests an extension of leave; (2) circumstances described by the previous certification have changed significantly; or (3) the employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employer must wait 40 days before requesting a recertification.

Notwithstanding the above, in all cases, an employer may request a recertification of a medical condition every six months **in connection with an absence by the employee**. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employer would be permitted to request recertification every six months in connection with an absence.

The employer may ask for the same information when obtaining recertification as that permitted for the original certification. **As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.**

The employee must provide the requested recertification to the employer within the timeframe requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so.

Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.

§ 825.309 Certification for leave taken because of a qualifying exigency.

The first time an employee requests leave because of a qualifying exigency arising out of the active duty or call to active duty status of a covered military member, an employer may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. This information need only be provided to the employer once. A copy of new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member.

DOL Form WH-384 (Certification of Qualifying Exigency for Military Family Leave) may be used.

If the qualifying exigency involves meeting with a third party, the employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employer. An employer also may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty or call to active duty status; no additional information may be requested and the employee's permission is not required.

§ 825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

When leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification: (1) A United States Department of Defense ("DOD") health care provider; (2) A United States Department of Veterans Affairs ("VA") health care provider; (3) A DOD TRICARE network authorized private health care provider; or (4) A DOD non-network TRICARE authorized private health care provider.

DOL Form WH-385 (Certification for Serious Injury or Illness of Covered Servicemember - - for Military Family Leave (Family and Medical Leave Act)) may be used.

An employer may seek authentication and/or clarification of the certification, but second and third opinions are not permitted for leave to care for a covered servicemember. Additionally, recertifications are not permitted for leave to care for a covered servicemember. An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember.

An employer requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification, in lieu of the Department's optional certification form (WH-385) or an employer's own certification

form, “invitational travel orders” (“ITOs”) or “invitational travel authorizations” (“ITAs”) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. **An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary.** An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

§ 825.311 Intent to return to work.

An employer may require an employee on FMLA leave to report periodically on the employee’s status and intent to return to work.

It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employer may require that the employee provide the employer reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The employer may also obtain information on such changed circumstances through requested status reports.

§ 825.312 Fitness-for-duty certification.

As a condition of restoring an employee whose FMLA leave was occasioned by the employee’s own serious health condition that made the employee unable to perform the employee’s job, an employer may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee’s health care provider that the employee is able to resume work.

An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee’s need for FMLA leave. The certification from the employee’s health care provider must certify that the employee is able to resume work. Additionally, an employer may require that the certification specifically address the employee’s ability to perform the essential functions of the employee’s job. In order to require such a certification, an employer must provide an employee with a list of the essential functions of the employee’s job no later than with the designation notice (see DOL Form WH-382), and must indicate in the designation notice that the certification must address the employee’s ability to perform those essential functions. **If an employer does not indicate in the designation notice that a fitness-for-duty certification will be required, one cannot be required as a condition of reinstatement.**

An employer is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. However, an employer is entitled to

a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took such leave. If an employer chooses to require a fitness-for-duty certification under such circumstances, the employer shall inform the employee at the same time it issues the designation notice (see DOL Form WH-382) that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days. Alternatively, an employer can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employer advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave.

If an employee's serious health condition may also be a disability within the meaning of the ADA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA.

§ 825.313 Failure to provide certification.

Foreseeable Leave. In the case of foreseeable leave, if an employee fails to provide certification in a timely manner, then an employer may deny FMLA coverage until the required certification is provided.

Unforeseeable Leave. In the case of unforeseeable leave, an employer may deny FMLA coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. Absent such extenuating circumstances, if the employee fails to timely return the certification, the employer can deny FMLA protections for the leave following the expiration of the 15-day time period until a sufficient certification is provided. If the employee never produces the certification, the leave is not FMLA leave.

Recertification. An employee must provide recertification within the time requested by the employer (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances. If an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employer may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

Fitness-For-Duty Certification. When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work if the employer has provided the required notice (see § 825.300). The employer may delay restoration until the certification is provided. If the employee fails to provide either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, termination might be a possibility.

Subpart D—Enforcement Mechanisms

§ 825.400 Enforcement, general rules.

The employee has the choice of: (1) filing, or having another person file on his or her behalf, a complaint with the Secretary of Labor, or (2) Filing a private lawsuit.

If an employer has violated one or more provisions of FMLA, and if justified by the facts of a particular case, an employee may receive one or more of the following: Wages, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or, where no such tangible loss has occurred, such as when FMLA leave was unlawfully denied, any actual monetary loss sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 26 weeks of wages for the employee in a case involving leave to care for a covered servicemember or 12 weeks of wages for the employee in a case involving leave for any other FMLA qualifying reason.

In addition, the employee may be entitled to interest on such sum, calculated at the prevailing rate. An amount equaling the preceding sums may also be awarded as liquidated damages.

When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion. When the employer is found in violation, the employee may recover a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action from the employer in addition to any judgment awarded by the court.

§ 825.401 Filing a complaint with the Federal Government.

This regulation provides instructions for filing complaints with the federal government.

§ 825.402 Violations of the posting requirement.

This regulation provides information about how employers are notified by the Department of Labor of civil money penalties for violating the notice posting provisions of the FMLA.

§ 825.403 Appealing the assessment of a penalty for willful violation of the posting requirement.

This regulation provides information about how an employer may appeal the assessment of a penalty.

§ 825.404 Consequences for an employer when not paying the penalty assessment after a final order is issued.

The Regional Administrator may seek to recover the unpaid penalty pursuant to the Debt Collection Act (DCA), 31 U.S.C. 3711 *et seq.*, and, in addition to seeking recovery of the unpaid final order, may seek interest and penalties as provided under the DCA. The final order may also be referred to the Solicitor of Labor for collection. The Secretary may file

suit in any court of competent jurisdiction to recover the monies due as a result of the unpaid final order, interest, and penalties.

Subpart E—Recordkeeping Requirements

§ 825.500 Recordkeeping requirements.

No particular order or form of records is required. However, employers must keep the records specified by these regulations for no less than three years and make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request. The records may be maintained and preserved on microfilm or other basic source document of an automated data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period, and that extensions or transcriptions of the information required herein can be and are made available upon request. Records kept in computer form must be made available for transcription or copying.

Covered employers who have eligible employees must maintain records that must disclose the following:

- (1) Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
- (2) Dates FMLA leave is taken by FMLA eligible employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as FMLA leave; leave so designated may not include leave required under State law or an employer plan which is not also covered by FMLA.
- (3) If FMLA leave is taken by eligible employees in increments of less than one full day, the hours of the leave.
- (4) Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all written notices given to employees as required under FMLA and these regulations. Copies may be maintained in employee personnel files.
- (5) Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.
- (6) Premium payments of employee benefits.
- (7) Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

Covered employers in a joint employer situation must keep all the above records with respect to any primary employees, and must keep the records required by paragraph (1) with respect to any secondary employees.

Covered employers with no eligible employees must maintain basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

If FMLA-eligible employees are not subject to FLSA's recordkeeping regulations for purposes of minimum wage or overtime compliance (i.e., not covered by or exempt from FLSA), an employer need not keep a record of actual hours worked (as otherwise required under FLSA, 29 CFR 516.2(a)(7)), provided that:

- (1) Eligibility for FMLA leave is presumed for any employee who has been employed for at least 12 months; and
- (2) With respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record maintained in accordance with paragraph (b) of this section.

Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the ADA, as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements.

Subpart F—Special Rules Applicable to Employees of Schools

[This summary has intentionally left the following sections blank. Please see the regulations.]

§ 825.600 Special rules for school employees, definitions.

§ 825.601 Special rules for school employees, limitations on intermittent leave.

§ 825.602 Special rules for school employees, limitations on leave near the end of an academic term.

§ 825.603 Special rules for school employees, duration of FMLA leave.

§ 825.604 Special rules for school employees, restoration to “an equivalent position.”

Subpart G—Effect of Other Laws, Employer Practices, and Collective Bargaining Agreements on Employee Rights Under FMLA

§ 825.700 Interaction with employer's policies.

An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the

FMLA. Conversely, the rights established by the FMLA may not be diminished by any employment benefit program or plan.

§ 825.701 Interaction with State laws.

Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA.

§ 825.702 Interaction with Federal and State anti-discrimination laws.

Nothing in FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

If an employee is a qualified individual with a disability within the meaning of the ADA, the employer must make reasonable accommodations, etc., barring undue hardship, in accordance with the ADA. At the same time, the employer must afford an employee his or her FMLA rights. ADA's "disability" and FMLA's "serious health condition" are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation.

Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, an employer should provide the same benefits for women who are pregnant as the employer provides to other employees with short-term disabilities.

Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301–4333 (USERRA), veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning service member would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employer during the period of military service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months and 1,250 hours of employment.

Subpart H—Definitions

§ 825.800 Definitions.

See Regulations for definitions of the following terms/phrases:

- Act or FMLA
- Active duty or call to active duty status
- ADA
- Administrator
- COBRA
- Commerce and industry or activity affecting commerce
- Contingency operation
- Continuing treatment by a health care provider
- Covered military member

- Covered servicemember
- Eligible employee
- Employ
- Employee
- Employee employed in an instructional capacity
- Employer
- Employment benefits
- FLSA
- Group health
- Health care provider
- Incapable of self-care
- Instructional employee
- Intermittent leave
- Mental disability
- Physical or mental disability
- Next of kin of a covered servicemember
- Outpatient status
- Parent
- Parent of a covered servicemember
- Person
- Physical or mental disability
- Public agency
- Reduced leave schedule
- Secretary
- Serious health condition
- Serious injury or illness
- Son or daughter
- Son or daughter of a covered servicemember
- Son or daughter on active duty or call to active duty status
- Spouse
- State
- Teacher