gcg risk management, Inc.

TRUNCATED COMPENDIUM OF THE DEVILISH DETAILS

OF THE REFORMED 2008, FMLA, FAMILY MEDICAL LEAVE ACT

HIGHLIGHTS FOR GCG CLIENT

Notes To the User:

The following are minimally summarized and edited notes on specific aspects of the new FMLA regulation that may be of particular interest to GCG clients.

***"(PE)"** is the note for "Plain English", meaning that these are our plain English notes in **blue** font of the original regulatory language, which will follow in black font.*

*Text in **black** is the original regulatory text that had been reedited in blue (PE) text, or Plain English preceding it.*

***Text in blue without the (PE)** designation is also the original regulatory text that we felt seemed clear and did not require a plain English interpretation, and should be included in your review.*

*Any section in **brown** indicates that it has not been reviewed although its title reference has been held in place within the context of this Truncated Compendium of the FMLA regulation. If you wish certain **brown** sections to be included, please contact us and specify which sections you would like to see included. We can forward the section to you as soon as possible and include them in the next updated version of this working document.*

PART 825 THE FAMILY AND MEDICAL LEAVE ACT OF 1993
Subpart A – Coverage Under the Family and Medical Leave Act

825.100 The Family & Medical Leave Act

- (PE) Employees may take up to a total of 12 workweeks in any 12-month period.

- (PE) Employees may take FMLA leave for the birth of a child, care for the newborn, placement of adopted child or foster care, to care for family member (child, spouse, or parent) with a serious health condition, or a serious health condition rendering them unable to perform their job

1. (PE) Employees may take FMLA for "qualifying" exigency, meaning that the employee's spouse, son, daughter, or parent is a covered military member (NOT in the Regular Army) on active duty, or has been notified of an impending call or order to active duty with less than 7 days notice. Such employees may take leave to make familial, financial, legal, logistical arrangements required as a result of it, and to join them in R&R for up to 4 days, attend certain ceremonies, training, counseling, etc.

(a) FMLA allows "eligible" employees of a covered employer to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months period because of a birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of 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 any impending call or order to active duty) in support of a contingency operation.

- (PE) "Eligible" employees of a "covered" employer may take FMLA leave for up to a total of 26 workweeks in a "single 12-month" period to care for a covered servicemember with a serious injury or illness. It may be taken intermittently rather than all at once.

(b) In addition, "eligible" employees of a covered employer may take job-protected, unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 26 workweeks in a "single 12-month" period to care for a covered servicemember with a serious injury or illness. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

- (PE) Employers must maintain health benefits while employee is out on FMLA leave as if the employee had continued to work. If the employee was paying all or part of the premium payments prior to leave, employee should continue paying the same share during leave. Employers can recover its share only if the employee does not return to work for a reason other than the covered purposes, or basically, if the employee chose not to return when they could have.

(c) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee were paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employer may recover its share only if the employee does not return to work for a reason other

than the serious health condition of the employee of the employee's covered family member, the serious injury or illness of a covered servicemember, or another reason beyond the employee's control.

(d) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefits that accrued prior to the start of leave.

(e) The employer generally has a right to advance notice from the employee. In addition, the employer may require an employee to submit certification to substantiate that the leave is due to the serious condition of the employee or the employee's covered family member, due to the serious injury or illness of a covered servicemember, or because of a qualifying exigency. Failure to comply with these requirements may result in a delay in the start of FMLA leave.

Pursuant to a uniformly applied policy, the employer may also require that an employee present a certification of Fitness-for-Duty when the absence was caused by the employee's serious health condition. The employer may delay restoring the employee to employment without such certificate relating to the health condition that caused the employee's absence.

825.104 COVERED EMPLOYER

(a) Employs 50 or more employees (for each working day during each of the 20 or more nonconsecutive calendar workweeks in the current or preceding calendar year).

825.105 Counting Employees for Determining Coverage

(a) Any employee whose name appears on the payroll.

(b) Part time employees, like full time employees, are considered to be employed each working day of the calendar week, as long as they are maintained on the payroll.

Count employees on paid/unpaid leave, leaves of absences, disciplinary suspension, etc., so long as there is a reasonable expectation the employee will return later to active employment. Do not count temporarily/permanently laid-off employees.

825.106 JOINT EMPLOYER COVERAGE

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

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

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

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

(b1) Determined not on any single criterion, but rather the entire relationship is to be viewed in its totality, i.e. temp placement agencies supplying employees to a second employer.)

(b2) "Professional Employer Organization" – PEO, that contracts with client employers to perform administrative functions such as payroll, benefits, regulatory paperwork, and updating employment policies. The determination of whether a PEO is a joint employer also turns on the economic realities of the situation and must be based upon all the facts and circumstances. A PEO does not enter into a joint employment relationship with the employees of its client companies when it merely performs such administrative functions. On the other hand, if in a particular situation, 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, depending upon all the facts and circumstances.

(c) In joint employment relationships, only the primary employer is responsible for giving required notice to its employees, providing FMLA leave, and maintenance of health benefits. – Factors considered in determining which is the "primary" employer include authority/responsibility to hire and fire, assign/place the employee, make payroll, and provide employment benefits. For employees of temp agencies, i.e., the placement agency is most commonly the primary employer. Whereas, where a PEO is a joint employer, the client employer most commonly would be the primary employer.

(d) 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. (Except for employees jointly employed who physically work at a facility of the secondary employer for a period of at least one year). Client employer would only be required to count employees of the PEO if the client employer jointly employed those employees.

(f) Job restoration is the primary responsibility of the primary employer. 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 prohibited acts provisions with respect to its jointly employed employees, whether or not the secondary employer is covered by FMLA.

This includes the prohibition against interfering with an employee's attempt to exercise rights under the Act, or discharge or discriminating against an employee for opposing a practice that is unlawful under FMLA. A covered secondary employer will be responsible for compliance with all the provisions of the FFMLA with respect to its regular, permanent workforce.

825. 107 Successor in Interest Coverage

825. 108 Public Agency Coverage

825.109 Federal Agency Coverage

825.110 Eligible Employee

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

(1) Has been employed by employer for at least 12 months, and

(2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and

(3) Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

(b) The 12 months an employee must have been employed by the employer need not be consecutive months, provided:

(1) Employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employer for at least 12 months.

(2) Employment periods preceding a break in service of more than seven years must be counted in determining whether the employee has been employed by the employer for at least 12 months were:

i. The employee's break in service is occasioned by the fulfillment of National Guard or Reserve military service obligation. The time served must be also counted in determining whether the employee has been employed for at least 12 months by the employer. However, this does not provide any greater entitlement to the employee than would be available under Uniformed Services Employment & Reemployment Rights Act (USERRA); or

ii. A written agreement (collective bargaining) exists concerning employer's intention to rehire the employee after the break in service (i.e. for education, childrearing).

(3) If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick/vacation) during which other benefits or compensation are provided by the employer (worker's comp, group health plan benefits, etc.), the week counts as a week of employment. For purposes of determining whether intermittent/ occasional/casual employment qualifies as "at least 12 months," 52 weeks is deemed to be equal to 12 months.

(4) Employer must apply recognition of service beyond the 7-year requirement uniformly, if it so chooses to do so at all.

(c)(1) Use FLSA (Fair Labor Standards Act 29 CFR Part 785) principles to determine if employee has worked the minimum 1,250 hours during the previous 12-month period.

(2) In calculating USERRA employees' hours, pre-service work schedules can generally be used for calculations.

(3) Where accurate records are not maintained, employer has the burden of showing that employee has not worked the requisite hours with clear demonstration that 1,250 hours were not fulfilled in the previous 12 months in order to claim ineligible

(d) This 1,250 hours within the past 12-month determination must be made at the date the FMLA leave is to start.

Employee may be on 'non-FMLA" leave when becoming eligible, then, any portion of the leave taken for FMLA qualifying reasons after that would be "FMLA leave".

(e) Determination of the 50 employees within 75 mile eligibility requirement is done when the employee gives

notice of the need for leave. Subsequent changes or reductions, (even planned or routine) during the leave shall not affect employee's eligibility, nor can leave be terminated.

825.111 Determining Whether 50 Employees are Employed within 75 Miles

(a) A worksite can be a single location or a group of contiguous locations. Campuses, separate facilities in proximity with one another, may be considered a single worksite. FMLA worksite will ordinarily be the site the employee reports to, or from which the employee's work is assigned.

(1) Inclusive of one worksite are separate buildings or areas not directly connected or in immediate proximity, but are used for the same purpose, share the same staff and equipment i.e. warehouse in a metropolitan area.

(2) Construction/transit/sales/flexi-place telecommuters, etc. non-site employees are deemed to be counted towards the worksite where their assignments originate from, and where they report to. I.e. A NJ construction firm has a project in Ohio. Ohio construction workers report to a mobile trailer would be counted towards the Ohio worksite. NJ based project manager, foremen, engineers working in Ohio are counted towards the NJ worksite. Pilots working out of a Chicago hub for an airline headquartered in NY would be counted towards Chicago.

(3) For joint employers, the employee's worksite is the primary employer's office from which the employee is assigned or reports to, unless the employee has physically worked for at least one year at a facility of a secondary employer. The employee is also counted by the secondary employer to determine eligibility for secondary employer's full time or permanent employees.

(b) The 75 miles distance is measured by surface miles over public streets, roads, highways and waterways, by the shortest route. (Or use most frequently used mode of transport, i.e. air miles)

(c) Determination of how many employees are employed within 75 miles of the worksite is based on the number of employees maintained on the payroll, i.e. educational institutions where permanent and contracted employees are maintained on the payroll during break, are included and counted throughout the year.

825.112 Qualifying Reasons for Leave, General Rule

(a) Circumstances qualifying for leave. Employers covered by FMLA are required to grant leave to eligible employees:

(1) For birth of a son/daughter, and to care for the newborn child. (see 825.120)

(2) For placement with the employee of a son/daughter for adoption or foster care.

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition (825.113 & 112)

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

(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 and

(6) 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 (122 & 127).

(b) Equal Application. The right to take leave applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child.

(c) Active Employee in situations where the employer/employee relationship has been interrupted, i.e. layoff, the employee must be recalled or otherwise re-employed before being eligible for FMLA leave. If so, then the employee is immediately entitled to further FMLA leave for a qualifying reason.

825.113 Serious Health Condition

(a) For purposes of FMLA, a "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment or physical or mental condition that involves inpatient care as (defined in 114) or continuing treatment by a health care provider (as defined in 115).

(b) The term "incapacity" means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.

(c) The term "treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical exams, eye exams, or dental exams. A regimen of continuing treatment includes, i.e. a course of Rx medication (antibiotics), or therapy requiring special equipment to resolve or alleviate the condition i.e. oxygen. A regiment of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for the purposes of FMLA leave.

(d) Conditions for which cosmetic treatments are administered (acne/plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop.

Ordinarily, unless complications arise, the common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

825. 114 Inpatient Care

Inpatient care means an overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity as defined (113), or any subsequent treatment in connection with such inpatient care.

825.115 Continuing Treatment.

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

(a) 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 two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services i.e. physical therapists, under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) The requirement in paragraphs (a)(1) and (2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment must take place within seven days of the first day of incapacity.

(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the healthcare provider.

(5) The term" extenuating circumstances" in paragraph (a)(1) of this section means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned. Whether a given set of circumstances are extenuating depends on the facts, i.e. no appointments available within the 30-day time period although the health care provider determines that a second in-person visit is needed.

(b) Pregnancy/prenatal care. Any period of incapacity due to pregnancy or for prenatal care (see 120)

(c) Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. 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 direction 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 (i.e. asthma, diabetes, epilepsy, etc.)

(d) Permanent or long-term conditions. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family members must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider. I.e. Alzheimer's, severe stroke, or the terminal stages of a disease.

(e) Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider.

(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).

- (PE) Absences due to pregnancy of chronic conditions qualify for FMLA leave even though the individual does not receive treatment from a healthcare provider during the absence, and even if the absence does not last more than three consecutive days, full calendar days, i.e. chronic asthma or morning sickness.

(f) Absences attributable to incapacity under paragraph (b) or (c) of this section quality for FMLA leave even though the employee or 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. I.e. an asthmatic employee may not report to work due to the onset of an attack or has been advised by the health care provider to stay home when the pollen count exceeds a certain level. A pregnant employee may be unable to report to work due to severe morning sickness.

825.116 Reserved
825.117 Reserved
825.118 Reserved

825.119 Leave for Treatment of Substance Abuse

(a) Substance abuse may be a serious health condition if the conditions of 113 through 115 are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Absences due to the employee's use of the substance, rather than for treatment, do not qualify for FMLA leave.

(b) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his/her right to take FMLA leave for treatment. However, if the employer has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

825.120 Leave for Pregnancy or Birth

(a) General rules. Eligible employees are entitled to FMLA leave for pregnancy or birth of a child as follows:

(1) Both the mother and father are entitled to FMLA leave for the birth of their child.

(2) Both the mother and father are entitled to FMLA leave to be with the healthy newborn child (i.e. bonding time) during the 12-month period beginning on the date of birth. An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth. If state law allows or the employer permits, bonding leave to be taken beyond this period, such leave will not quality as FMLA leave. (See 701 on non-FMLA leave which maybe available under applicable State laws. Under this section, both the mother and father are entitled to FMLA leave even if the newborn does not have a serious health condition.)

For everyone's sake this is how it goes:

- (PE) A husband and wife, working for the "same employer", are limited to a combined total of 12 weeks of leave for the birth of a child, adoption, or foster care placement, or to care for an ill parent. This shall be

counted against their individual 12-week allotment, leaving the difference for other qualified purposes (their own incapacity, or the incapacity of the spouse).

(3) A husband and wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to 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. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as a husband and wife are employed by the "same employer." It would apply, i.e. even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes (i.e. serious health condition of the mother).

(4) The mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave before the birth of the child for prenatal care of 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, i.e. morning sickness.

(5) The 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. (see 124).

- (PE) A husband and wife, working for the same employer, however, will have 12 weeks each, not just combined (as is the case for the birth, foster care placement or adoption of a healthy child), in order to care for a newborn or child with a serious health condition.

(6) Both mother and father are entitled to FMLA leave if needed to care for a child with a serious health condition if the requirements of 113-115 and 112(c) are met. Thus, a husband and wife may each take 12 weeks of FMLA leave if needed to care for their newborn child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) Intermittent and Reduced Schedule Leave. An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employer agrees. An employer and employee may agree to a part-time work schedule after the birth. If the employer agrees to permit intermittent or reduced schedule leave for the birth of a child, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable bargaining agreement, federal law (such as ADA), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employer's agreement is not required for intermittent leave required by the serious health condition of the mother of a newborn child. (See 202-205 on intermittent and reduced

schedule leave. See 12 for adoption or foster care. See 601 for special rules applicable to teachers in schools.)

825.121 Leave for adoption or foster care

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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.

(a) Spouse. Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides including common law marriage in States where it is recognized.

(b) Parent. 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 as defined in paragraph (c) of this section. The term does not include parents "in law."

(c) Son or daughter. For purposes of FMLA leave taken for birth or adoption or to care for a family member with a serious health condition, 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 **(PE – of any age)** either under age 18, or age 18 or older and "incapable of self-care because of mental or physical disability" at the time that FMLA leave is to commence.

(1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADL's) or "instrumental activities of daily living " (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. IADLs include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. (Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the EEOC under ADA define these terms.)

(3) Persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child, or in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(d) Next of kin of a covered servicemember. "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 by court decree or statutory provisions, 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. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either c consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin (see 127(b)(3)).

(e) Adoption. “Adoption” means legally and permanently assuming the responsibility of raising a child as one’s own. The source of an adopted child is not a factor in determining eligibility for FMLA leave (See 121).

(f) Foster care. Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parent custody.

(g) Son or daughter on active duty or call to active duty status. “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 (see 126(b)1(1)).

(h) Son or daughter of a covered servicemember. “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 (see 127(b)(1)).

(i) Parent of a covered servicemember. “Parent of 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. This term does not include parents “in law.” (see 127(b)(2)).

(j) Documenting relationships. For purposes of confirmation of family relationship, the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child’s birth certificate, a court document, etc. The employer is entitled to examine documentation such as this, but the employee is entitled to the return of the official documents submitted for this purpose.

825.123 Unable to Perform the Functions of the Position

(a) Definition. An employee is “unable to perform the functions of the position” where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee’s position within the meaning of the ADA. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(b) Statement of functions. An employer has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee’s position for the health care provider to review. A sufficient medical certification must specify what functions of the employee’s position the employee is unable to perform so that the employer can then determine whether the employee is unable to perform one or more essential functions of the employee’s position. For purposes of FMLA, the essential functions of the employee’s position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier (see 306).

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

(a) The medical certification provision that an employee is “needed to care for” a family member or covered servicemember encompasses both physical and psychological care. It includes situations, of example, where because of a serious health condition, the family member is unable to care for his/her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport him/herself to the doctor. The

term also includes providing psychological comfort and reassurance that would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member of covered servicemember.

(c) 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 another member of the family or a third party. (see 202-205).

825.125. Definition of health care provider.

825.126 Leave because of a qualifying exigency.

(a) 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 (as defined in 126(b)(2)) for one or more of the following qualifying exigencies:

(1) Short-notice Deployment.

i. 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.

ii. Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation;

(2) Military events and related activities.

i. 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 service member; and

ii. 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 of a covered military member;

(3) Childcare and school activities.

(i) To arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands 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

(ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the active duty or call to active duty status of a covered military member for a biological, adopted, or foster child, a

stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands 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.

(iii) To enroll in a transfer to a new school or day care facility a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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, when enrollment or transfer is necessitated by the active duty or call to active duty status of a covered military member; and

(iv) 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 a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental of physical disability at the time that FMLA leave is to commence, when such meetings are necessary due to circumstances arising from the active duty or call to active duty status of a covered military member;

(4) Financial and legal arrangements.

i. 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

ii. 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;

(5) Counseling. To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member or a child for whom the covered military member stands 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, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member;

(6) Rest and recuperation.

i. To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;

ii. Eligible employees may take up to five days of leave for each instance of rest and recuperation;

(7) Post-deployment activities.

i. 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

ii. 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;

(8) 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.

(b) A "covered military member" means the employee's spouse, son, daughter, or parent on active duty or call to active duty status.

(1) A "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 s stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

(2) "Active duty or call to active duty status" means duty under a call or order to active duty (or notification of any impending call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation (pursuant to Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service, Section 12301(a) of Title 10, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406, which authorizes calling the National Guard into federal service in certain circumstances; chapter 15 of Title 10 of USC, which authorizes call the National Guard and state military into federal service in case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.)

i. Employees are eligible to take FMLA leave because of a qualifying exigency when the covered military member is on active duty or call to active duty status in support of a contingency operation pursuant to one of the provisions of law identified in paragraph (b)(2) of this section as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, air National Guard of the U.S., Air Force Reserve and Coast Guard 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.

ii. A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State c alls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (b)(2) of this section in support of a

contingency.

(3) The active duty orders of a covered military member will generally specify if the servicemember is serving in support of a contingency operation by citation to the relevant section of Title 10 and/or by reference to the specific name of the contingency operation. A military operation qualifies as a contingency operation if it:

i. is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

ii. results in the call or order to, or retention on, active duty of members of the uniformed services under section 688 . . .. or any other provision of law during a war or during a national emergency declared by the President or Congress. . ..

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

(a) 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.

(1) 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.

(2) "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.

(b) 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.

(1) A "son or daughter of a covered servicemember" means the covered servicememeber's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(2) A "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. This term does not include parents "in law."

(3) "The "next of kin of a covered servicemember" is 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 servicemember by court decree or statutory provisions, 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. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designed a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember (122(j)).

(c) 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".

(1) The "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, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this "single 12-month period," the remaining part of his/her 26 workweeks of leave entitlement to care for the covered servicemen is forfeited.

(2) The leave entitlement is to be applied on a per-covered-servicemember, per-injury basis such that 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." An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent one. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury/illness of the same covered servicemember, and the "single 12-month periods' corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each "singe 12-month period."

(3) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA qualifying reason during the "single 12-month period" described

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employer is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in 825.300. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the "single 12-month period' described in paragraph (c) of this section, the employer must designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the "single 12-month period" must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employers may retroactively designate leave as leave to care for a covered servicemember pursuant to 825.301(d).

(d) 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" described in paragraph (c) in this section 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, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as a husband and wife are employed by the "same employer." It would apply, for example, even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 26 workweeks of FMLA leave.

SUBPART B – EMPLOYEE LEAVE ENTITLTEMENTS UNDER FMLA

825.200 Amount of Leave

(a) Except in the case of leave to care for a covered servicemember with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(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, or 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 the active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

(b) The employer is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement described in paragraph (a) of this section occurs:

(1) The calendar year;

(2) Any fixed 12-month "leave year," such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary" date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave begins.

(4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

(c) Under methods (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in

paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12 month period. Under the method in paragraph (b)(4) 9f this section, the "rolling" 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2008, four weeks beginning June 1, 2008, and four weeks beginning December 1, 2008, the employee would not be entitled to any additional leave until February 1, 2009. However, beginning on February 1, 2009, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day in FMLA leave each day for four weeks, commencing February 1, 2009. The employee would also begin to recoup additional days beginning on June 1, 2009, and additional days beginning on December 1, 2009. Accordingly, employer using the rolling 12-month period may need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested, and employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior 12 months. For example, in the example above, if the employee needs six weeks of leave for a serious health condition commencing February 1, 2009, only the first four weeks of leave would be FMLA –protected.

(d) (1) Employers will be allowed to choose any one of the alternatives in paragraph (b) 9f this section for leave entitlements described in paragraph (a) f this section provided the alternative chosen is applied consistently and uniformly to all employees. An employer wishing to change to changer alternative is required to give at least 60 days notice to all employee, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act's leave requirements.
(2) An exception to this required uniformity would apply in the case of a multi-State employer who has eligible employees in a State that has a family and medical leave statute. The State may require a single method of determining the period during which use of the leave entitlement is measured. This method may conflict with the method chosen by the employer to determine "any 12 months" for purposes of the Federal statute. The employer may comply with the State provision for all employees employed within that State, and uniformly use another method provided by this regulation for the leave entitlement described in paragraph (a) for all other employees.

(e) If an employer fails to select one of the options in paragraph (b) of this section for measuring the 12-month period for the leave entitlement described in paragraph (a), the option that provides the most beneficial outcome for the employee will be used. The employer may subsequently select an option only by providing the 60-day notice to all employees of the option the employer intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period, the employer may implement the selected option.

(f) 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 servicememeber with a serious injury or illness. An employer shall determine the "single 12-month period" in which the 26-weeks-of-leave entitlement occurs using the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins (see 825.127(d)(1)).

(g) During the "single 12-month period", an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. (see 825.127(d)(2))

(h) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (i.e., a school closing two weeks for Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in 825.205.

825.201 Leave to Care for a Parent

(a) General rule. An eligible employee is entitled to FMLA leave if needed to care for the employee's parent with a serious health condition. Care for parents-in-law is not covered by FMLA.

(b) "Same employer" limitation. 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 to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as a husband and wife are employed by the "same employer." It would apply, for example, even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement . . . the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes.

825.202 Intermittent Leave or Reduced Leave Schedule

(a) Definition. FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) Medical necessity.
(1) Intermittent leave may be taken for a serious health condition of a parent, son, or daughter,
(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated

(c) Birth or placement.

(d) Qualifying exigency.

825.204 Transfer of an Employee to an Alternative Position During Intermittent Leave or Reduced Schedule Leave

(a) Transfer or reassignment. If an employee needs intermittent leave or leave on a reduced leave

schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from one's own serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury or illness of a covered servicememeber of if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, 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 recurring periods of leave than does the employee's regular position. (see 825.6601 for special rules applicable to instructional employees of schools).

(b) Compliance. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (ADA), and state law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

(c) Equivalent pay and benefits. The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits for an existing alternative position, so as to make them equivalent to the pay and benefits of the employer's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

(d) Employer limitations. An employer may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white-collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employer to make such a transfer will be held to the contrary to the prohibited acts of the FMLA.

(e) Reinstatement of employees. 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. An employee may not be required to take more leave than necessary to address the circumstances that precipitated the need for leave.

825.205 Increments of FMLA Leave for Intermittent or Reduced Schedule Leave

(a) Minimum Increment.

(1) 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 the employer uses to account for use of other forms of leave provided that s 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. If an employer accounts for use of leave in varying increments at different times of the day or shift, the employer may not account for FMLA leave in a larger increment than the shortest

period used to account for other leave during the period in which h the FMLA leave is taken. If an employer accounts for other forms of leave use in increments greater than one hour, the employer must account for FMLA leave use in increments no greater than one hour. An employer may account for FMLA leave in shorter increments than used for other forms of leave. For example, an employer that accounts for other forms of leave in one-hour increments may account for FMLA leave in a shorter increment when the employee arrives at work several minutes late, and the employer wants the employee to begin work immediately. Such accounting for FMLA leave will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of FMLA leave in other circumstances.

825.206 Interaction with the FLSA

825.207 Substitution of Paid Leave

(a) Generally, FMLA leave is unpaid leave. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term "Substitute" means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employer's applicable paid leave policy during the period of otherwise unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy. When an employee chooses, or an employer requires, substitution of accrued paid leave, the employer must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment 9see 825.300(c)). If an employee does not comply with the additional requirements of 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. Employers may not discriminate against employees on FMLA leave in the administration of their paid leave policy.

(b) If neither the employee nor the employer elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the employee's FMLA leave entitlement. For example, paid sick leave used for a medical condition, which is not, a serious health condition or serious injury or illness does not count against the employee's FMLA leave entitlement.

(d) Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under FMLA if it meets the criteria set forth above 825.112-115. In such cases, the employer may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement. Because leave pursuant to a disability benefit plan 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 benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee's salary.

(e) The Act provides that a serious health condition may result from injury to the employee "on or off" the job. If the employer designates the leave as FMLA leave in accordance with 825.300(d) the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, the

provision for substitution of the employee's accrued paid leave is not applicable, 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 workers' compensation benefits, such as in the case where workers' compensation only provides replacement income for two-thirds of an employee's salary. If the health care provider treating the employee for workers' compensation injury certifies the employee is able to return to a 'light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." As a result, the employee may lose worker's compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect, or the employer may require the use of accrued paid leave. (see also 825.210(f), 216(d0), 220(d), 307(a) 702(d)(1) and (2) regarding the relationship between workers' Compensation absences and FMLA Leave.

(f) Section 7(9) of the Fair Labor Standards Act (FLSA) permits public employers under prescribed circumstances . . ..

825.208 (Reserved)

825.209 Maintenance of Employee Benefits

(a) 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. All employers covered by FMLA, including public agencies, are subject to the Act's requirements to maintain health coverage. The term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employer;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(6) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., must be maintained during leave if provided in an employer's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) 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 were not on leave. Any other plan changes, i.e. in coverage, premiums, deductibles,) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employer.

(e) 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 or pre-existing conditions, etc. (see 825.212(c)).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and for "key" employees (as discussed below), an 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 (i.e. if the employee's position is eliminated apart of a non-discriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employer of his or her intent not to return from leave (including before starting the leave if the employer is so informed before the leave starts) ; 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.

(g) 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.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (i.e. holiday pay) 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

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, 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 raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance polices which are not a part of the employer's group health plan, as described in 825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) 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 payroll deduction.

(c) If FMLA leave is unpaid, the employer has a number of options for obtaining payment from the employee. The employer may require that payment be made to the employer or to the insurance carrier, but no additional charge maybe added to the employee's premium payment for administrative expenses. The employer may require employees to pay their share of premium payments in nay of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option.

(4) The employer's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment (i.e. prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or,

(5) Another system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums (i.e. through increased payroll deductions when the need for the FMLA leave is foreseeable.

(d) The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made.

(e) An employer may not require more of an employee using unpaid FMLA leave than the employer requires of other employees on "leave without pay."

(f) An employee who is receiving payments as a result of workers' compensation injury must make arrangements with the employer for payment of group health plan benefits when simultaneously taking FMLA leave (see 825.207(e)).

825.211 Maintenance of Benefits Under Multi-Employer Health Plans.

825.212 Employee Failure to Pay Health Plan Premium Payments

825.213 Employer Recover of Benefit Costs

825.214 Employee Right to Reinstatement. General rule. 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. An employee is entitled to such reinstatement even if the employee has been replaced or his/her position has been restructured to accommodate the employee's absence. (See 825.106(e) for the obligations of joint employers.)

825.215 Equivalent Position.

(a) 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 that must entail substantially equivalent skill, effort, responsibility, and authority.

(b) Conditions to qualify. If an employee is no longer qualified for the position because of the

employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) Equivalent pay.

(1) An employee is entitled to any unconditional pay increases that 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. 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 hour of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, 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. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

825.216 Limitations On An Employee's Right to Reinstatement

(a) 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. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employer's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee cease at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise. An employer would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration. Restoration to a job slated for lay-off when the employee's original position is not could not meet the requirements of an equivalent position.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position, for example, on a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employee before taking FMLA leave.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee. On the other hand, **if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer.** (See 825.107)

(b) In addition to the circumstances explained above, an employer may deny job restoration to salaried eligible

employees ("key employees,") if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer or may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work under the conditions described in 825.312.

(c) If the employee is unable to perform in an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or any injury or illness also covered by workers' compensation, the employee as no right to restoration to another position under the FMLA. The employer's obligations may, however, be governed by the ADA.

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

(e) 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. An employer which does not have such a policy may not deny benefits to which an employee is entitled under FMLA on this basis unless the FMLA leave was fraudulently obtained.

825.217 Key Employees, General Rule

(a-c) A "key employee" is a salaried ("paid on a salary basis," as defined in 29 CFR 541.602, the DOL definition of employees who may qualify as exempt from minimum wage and overtime requirements of the FSLA as executive, administrative, professional, and computer employees), FMLA-eligible employee who is among the highest paid 10% of all the employees, both salaried and non-salaried, eligible and ineligible, who are employed by the employer within 75 miles of the employee's worksite.

(c1) In determining which employees are among the highest paid 10%, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, i.e. stock options, or benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10% shall be made at the time the employee gives notice of the need for leave. No more than 10% of the employer's employees within 75 miles of the worksite may be "key employees".

825.218 Substantial & Grievous Economic Injury

(a) 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.

(b) An employer may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration: in other words, the effect on the operations of the company of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employer that must be sustained. If the reinstatement of a "key employee" threatens the economic viability of the firm, that would constitute "substantial and grievous economic injury." A lesser injury that causes substantial long-term economic injury would also be sufficient. Minor inconveniences and costs that the employer would experience in the

normal course of doing business would certainly not constitute "substantial and grievous economic injury."

(d) FMLA's "Substantial and grievous economic injury" standard is different from and more stringent than the "undue hardship" test under the ADA (see also 825.702.)

825.219 Rights of a Key Employee

(a) 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 (or when FMLA leave commences, if earlier) 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). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and therefore, there would be no need to provide such notice. However, an employer who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employer makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave 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. It is anticipated that an employer will ordinarily be able to give such notice prior to the employee starting leave. The employer must serve this notice either in person or by certified mail. This notice must explain the basis for 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, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employer's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employer may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employer actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment; 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 arrives at the same conclusion, then the employer shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

825.220 Protection for Employee Who Request Leave or Otherwise Assert FMLA Rights

Subpart C – Employee & Employer Rights and Obligations Under the Act

825.300 Employer Notice Requirements.

(a) General Notice.

(1) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. An employer that willfully violates the posting requirement may be assessed a civil money penalty by the Wages and Hour Division not to exceed $110 for each separate offense.

(2) Covered employers must post this general notice even if no employees are eligible for FMLA leave.

(3) If an FMLA-covered employer has any eligible employees, it shall also 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 d distributing a copy of the general notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

(4) To meet the requirements, employers may duplicate the text of the notice contained in Appendix C of this part or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice. Where an employer's workforce is comprised of significant portion of workers who are not literate in English, the employer shall provide the general notice in a language in which the employees are literate. Prototypes are available at http://www.wagehour.dol.gov. Employers furnishing FMLA notices to sensory impaired individuals must also comply with all applicable requirements under Federal or State law.

(b) Eligibility Notice.

(1) 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 business days, absent extenuating circumstances. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period (see 825.127(c) and 825.200(b)). 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.

\ (2) 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, including as applicable the number of months the employee has been employed by the employer, the number of hours of service worked for the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employees are employed by the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employee are employed by the employer within 75 miles of that worksite. Notification of eligibility may be oral or in writing; employers may use Appendix D of this part to provide such notification to employees. The employer is obligated to translate this notice in any situation in which it is obligated to do so.

(3) If, 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, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed (i.e. if the employee has worked less than 1,250 hours of service fore the employer in the 12

months preceding the commencement of leave for the subsequent qualifying reason or the size of the workforce at the worksite has dropped below 50 employees), the employer must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

(c) Rights and Responsibilities Notice.

(1) Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations to meet these obligations. The employer is obligated to translate this notice in any situation in which it is obligated to do so. This notice shall be provided to the employee each time the eligibility notice is provided. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

(i) That the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualifying and the applicable 12-month period for FMLA entitlement

(ii) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so.

(iii) The employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave

(iv) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis (i.e. the circumstances under which coverage may lapse);

(v) the employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial.

(vi) The employee's right to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave, and

(vii) The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

(2) The notice of rights and responsibilities may include other information, i.e. whether the employer will require periodic reports of the employee's status and intent to return to work–but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) If the specific information provided by the notice of rights and responsibilities change, the employer shall, within five 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. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employer may need to give notice of the arrangements for making premium payments.

(5) Employers are also expected to responsively answer questions from employees concerning their rights

and responsibilities under the FMLA.

(6) A prototype notice of rights and responsibilities is contained in Appendix B or at www.wagehour.dol.gov. Employers may adapt the prototype notice as appropriate to meet these notice requirements. The notice of rights and responsibilities may be distributed electronically so long as it otherwise meets the requirements.

(d) Designation Notice.

(1) The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee. When the employer has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (i.e. after receiving a certification), the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be designated as FMLA – qualifying (i.e. if the leave is not a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the employer must notify the employee of that determination if the employee requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employer must inform the employee of this designation at the time of designating the FMLA leave.

(2) If the employer has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time.

(3) If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. If the employer handbook or other written documents (if any) describing the employer's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances, the employer is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice is contained in Appendix E or at www.wagehour.dol.gov. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

(5) If the information provided by the employer to the employee in the designation notice changes (i.e. employee exhausts the FMLA leave entitlement) the employer shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employer must notify the employee of the amount of leave needed is known at the time the employer designates the leave as FMLA-qualifying, the employer must notify the employees of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the

designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement (such as in the case of unforeseeable intermittent leave), then the employer must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be in any form, including a notation on the employee's pay stub.

(e) Consequences of failing to Provide Notice. 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

(a) Employer Responsibility. 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 (i.e. if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc., may provide notice to the employer of the need to take FMLA leave). 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 of 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.

(b) Employee Responsibilities. An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements depending on whether the need for leave is foreseeable or not. 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 under the Act. If the employee fails to explain the reason, leave may be denied. In many cases, in explaining the reasons for request to use leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employer to designate the leave as FMLA leave. An employee using accrued paid leave may in some cases not spontaneously explain the reasons or their plans for using their accrued leave. However, if an employee requesting to use paid leave for a FMLA-qualifying reason does not explain the reason for the leave and the employer denies the employee's request, the employee will need to provide sufficient information to establish a FMLA-qualifying reason for the needed leave so that the employer is aware that the leave may not be denied and may designate that the paid leave be appropriately counted against (substituted for) the employee's FMLA leave entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for a FMLA-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employer may count the leave used after the FMLA-qualifying reason against the employee's FMLA leave entitlement.

(c) Disputes. 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.

(d) Retroactive designation. If an employer does not designate leave as required, the 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.

(e) Remedies. 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. For example, if an employer that was put on notice that an employee needed FMLA leave failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that the employee suffered harm as a result of the employer's actions. However, care for a son or daughter with a serious health condition believing it would not count toward his or her FMLA entitlement, and the employee planned later to use that FMLA leave to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employer's failure to designate properly. The employee might establish this by showing that he or she would have arranged for an alternative caregiver for the seriously ill son or daughter if the leave had been designated timely.

825.302 Employee Notice Requirements for Foreseeable FMLA Leave

(a) Timing of notice. An employee must provide the employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster are, planned medical treatment for a serious health condition of the employee or a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. 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. Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended or were initially unknown. In those cases where the employee is required to provide at least 30 days notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employer for such information.

(b) As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

(c) Content of notice. 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. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the

leave is due to a qualifying exigency, that a covered military number is on active duty or call to active duty status, and that the requested leave is for one of the reasons listed,; if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. 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. 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.

(d) Complying with Employer Policy. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absence 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. Unusual circumstances would include situations such as when an employee is unable to comply with the employer's policy that requests for leave should be made by contacting a specific number because on the day the employee needs to provide notice of his or her need for FMLA leave there is no one to answer the call-in number and the voice mail box is full. 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 when the employer's policy requires notice to be given sooner than set forth in this section and the employee provides timely notice as set forth herein.

(e) Scheduling Planned Medical Treatment. 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. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employees. For example, if an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employer to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate discussion with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

(f) Intermittent leave or leave on a reduced leave schedule must be medically necessary due to a serious health condition on a serious injury or illness. 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 shall 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.

(g) An employer may waive employees' FMAL notice requirement.

825.303 Employee Notice Requirements for Unforeseeable FMLA Leave

(a) Timing of Notice. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer's usual and customary notice requirements applicable to such leave. Notice may be given by the employee's spokesperson if the employee is unable to do so personally. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee takes the child to the emergency room, the employee would not be required to leave his or her child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee would be expected to call the employer promptly after ensuring the child has used the inhaler.

(b) Content of Notice. An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply for the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant of has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a covered military member is on active duty or call to active duty status, that the requested leave is for one of the reasons listed in 825.126(a), and the anticipated duration of the absence; or if the leave is for a family member that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. 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. 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. Call 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.

(c) Complying with Employer Policy. 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. For example, an employer may require employees to call a designated number or a specific individual to request leave. However, if an employee requires emergency medical treatment, he or she would not be required to follow the calling procedure until his or her condition is stabilized and he or she has access to, and is able to use, a phone. Similarly, in the case of an emergency requiring leave because of a FMLA-qualifying reason, written advance notice pursuant to an employer's internal rules and procedures may not be required when FMLA leave is involved. If 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.

825. 304 Employee Failure to Provide Notice

(a) Proper Notice Required. 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.

(b) Foreseeable Leave – 30 days. 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. The need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient to establish the leave was clearly foreseeable 30 days in advance.

(c) Foreseeable Leave – less than 30 days. When the need for FMLA leave is foreseeable fewer than 30 days in advance 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. For example, if an employee reasonably should have given the employer two weeks notice but instead only provided on week notice, then the employer may delay FMLA-protected leave for one week (thus, if the employer elects to delay FMLA coverage and the employee nonetheless take leave one week after providing the notice (i.e. a week before the two-week notice period has been met) the leave will not be FMLA-protected).

(d) Unforeseeable Leave. When the need for FMLA leave is unforeseeable and an employee fails to give notice, the extent to which an employer may delay FMLA coverage for leave depends on the facts of the particular case. For example, if it would have been practicable for an employee to have given the employer notice of the need for leave very soon after the need arises consistent with the employer's policy, but instead the employee provided notice two days after the leave began, then the employer may delay FMLA coverage of the leave by two days.

(e) Waiver of Notice. An employer may waive employee's FMLA notice obligations or the employer's own internal rules on leave notice requirements. If an employer does not waive the employee's obligations under the internal leave rules, 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 825.303(a).

825.305 Certification, General Rule.

(a) General. 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 that makes the employee unable to perform one or more of the essential functions of the employee's position, 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 (described in 825.309 and 825.310). An employer must give notice of a requirement for certification each time a certification is required; such notice must be written notice whenever required by 825.300(c). An employer's oral request to an employee to furnish any subsequent certification is sufficient.

(b) Timing. In most cases, the employer should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. The employer may request certification at some later

date if the employer later has reason to question the appropriateness of the leave or its duration. 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 despite the employee's diligent, good faith efforts – or the employer provides more than 15-calendar days to return the requested certification.

(c) Complete and Sufficient Certification. The employee must provide a complete and sufficient certification to the employer if required by the employer in accordance with 825.306, 825.309, and 825.310. 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 the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employer must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) 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, in accordance with 825.313. A certification that is not returned to the employer is not considered incomplete or insufficient but constitutes a failure to provide certification.

(d) Consequences. At the time the employer requests certification, the employer must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employer with a complete and sufficient certification, despite the opportunity to cure the certification as provided in paragraph (c) of this section, or fails to provide any certification, the employer may deny the taking of FMLA leave, in accordance with 825.313. It is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employer to support the employee's FMLA request. This provision will apply in any case where an employer requests a certification permitted by these regulations, whether it is the initial certification, a recertification, a second or third opinion, or a fitness for duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient.

(f) Annual Medical Certification. 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. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 825.307, including 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.

(a) Required Information. When leave is taken because of an employee's own serious health condition, or the serious health condition not a family member, an employer may require an employee to obtain a medical certification from a health care provider that sets forth the following information:

(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;

(2) The approximate date on which the serious health condition commenced, and its probable duration;

(3) A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regiment of continuing treatment;

(4) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability (see 825.123(b) and (c))

(5) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, as described in 825.124, and an estimate of the frequency and duration of the leave required to care for the family member;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery.

(7)
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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

825.308 Recertifications for Leave Taken Because of an Employee's Own Serious Health Condition or the Serious Health Condition of a Family Member.

825.309 Certification for Leave Taken Because of a Qualifying Exigency.

825.310 Certification for Leave Taken to Care for a Covered Servicemember (Military Caregiver Leave).

825.311 Intent to Return to Work.

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Subpart D – Enforcement Mechanisms

825.400 Enforcement, General Rules.

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825.600 Special Rules for School Employees, Definition.