



Office of Compliance

Office of the General Counsel

DOL FMLA Regulations v. OOC FMLA Regulations

Section 202 of the Congressional Accountability Act (“CAA”) requires the Board of Directors of the Office of Compliance to issue regulations to implement the rights and protections of sections 101 through 105 of the Family and Medical Leave Act (29 U.S.C. §§ 2611-2615). 2 U.S.C. § 1312(d)(1). The OOC FMLA regulations mirror the FMLA regulations promulgated by the Department of Labor (DOL), except where good cause has been shown that a modification of the regulation would be more effective. 2 U.S.C. § 1312(d)(2). If good cause is shown, the OOC FMLA regulations may deviate from the DOL FMLA regulations. The substantive differences between the DOL FMLA regulations and the OOC FMLA regulations, as published in the Congressional Record on June 22, 2016, are provided below.

Section	DOL FMLA Regulations	OOO FMLA Regulations
825.102	Defines “Airline flight crew employee,” a term that is not defined by the OOC FMLA Regulations.	Defines the following terms which are not defined by the DOL FMLA regulations: (1) CAA; (2) Covered employee; (3) Employee of the Capitol Police; (4) Employee of the House of Representatives; (5) Employee of the Office of the Architect of the Capitol; (6) Employee of the Senate; and (7) Employing Office.
825.102 – Definition of “Employee”	“Employee” has the meaning given in section 3(e) of the FLSA, 29 U.S.C. 203(e).	“Employee” means an employee as defined by the CAA and includes an applicant for employment and a former employee.
825.102 – Definition of “Physical or mental disability”	Provides that the EEOC’s ADA regulations at 29 CFR part 1630 “define these terms.”	Provides that the EEOC’s ADA regulations at 29 CFR part 1630 “provides guidance for these terms.”
825.104	This section is titled “Covered employer” and includes a definition of an employer that is not applicable to the CAA. This section also includes the factors used to determine whether an entity is an integrated employer, a concept which is inapplicable to the	This section is titled “Covered employing office” and includes a definition for employing offices which means: (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any

	Legislative Branch.	other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Office of the Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.
825.105	This section is titled “Counting employees for determining coverage” and is not applicable to the CAA.	This section is reserved in the OOC FMLA regulations.
825.106(b)	Sub-section (b) provides a framework for determining whether a joint employment relationship exists in the private sector, which is not germane to the CAA.	Sub-section (b) provides a framework for determining whether a joint employment relationship exists in the context of the Legislative Branch. This OOC FMLA regulation is a modified version of the corresponding DOL regulation but altered to be made applicable to an employing office.
825.107	This section is titled “Successor in interest coverage” and is not applicable to the CAA.	This section is reserved in the OOC FMLA regulations.
825.108	This section is titled “Public agency coverage” and is not applicable to the CAA.	This section is reserved in the OOC FMLA regulations.
825.109	This section is titled “Federal agency coverage” and is not applicable to the CAA.	This section is reserved in the OOC FMLA regulations.
825.110(b)(3)	The DOL FMLA regulations do not allow for the aggregation of an employee’s length of service from a previous employer to count towards an employee’s eligibility for the FMLA. Accordingly, a new employee must work for at least twelve months for the new employer in order to be eligible for FMLA leave.	Sub-section (b)(3) provides the following language which allows for the aggregation of an employee’s length of service with a previous employing office: “If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months.”

825.110(c)(1)	The DOL FMLA regulations do not allow for the aggregation of an employee's hours of service from a previous employer to count towards an employee's eligibility for the FMLA. Accordingly, a new employee must work for at least 1,250 hours for the new employer in order to be eligible for FMLA leave.	Sub-section (c)(1) provides the following language which allows for the aggregation of an employee's hours worked with a previous employing office: "If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached."
825.110(e)	Sub-section (e) provides a test for determining whether an employer employs 50 persons within 75 miles, a concept which is not applicable to the CAA because employing offices are all covered employers regardless of how many persons are employed. This section therefore is not contained in the corresponding OOC FMLA regulation.	Sub-section (e) provides the following language which is unique to the OOC FMLA regulations: "If, before beginning employment with an employing office, an employee had been employed by another employing office, the subsequent employing office may count against the employee's FMLA leave entitlement FMLA leave taken from the prior employing office, so long as the prior employing office properly designated the leave as FMLA under these regulations or other applicable requirements."
825.111	This section is titled "Determining whether 50 employees are employed within 75 miles" and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.200(d)(2)	Sub-section (d)(2) provides an exception for measuring the 12-month period of leave for a multi-State employer who has eligible employees in a State which has a family and medical leave statute. This exception is not applicable to the CAA.	This sub-section is reserved in the OOC FMLA regulations.
825.200(i)	This sub-section is not found in the DOL FMLA regulations.	Sub-section (i) is only found in the OOC FMLA regulations and provides that in the case of a joint employment relationship, the primary employing office may choose any one of the four methods for measuring the 12-month period.
825.206	The DOL FMLA regulations expressly specify the FLSA exemptions	The OOC FMLA regulations generally refer to the FLSA exemptions in discussing

	(executive, administrative, professional, or computer employee) in discussing the interaction of the FMLA with the FLSA.	the interaction of the FMLA with the FLSA.
825.220(b)(1)	This sub-section provides protection for workers who are transferred from an employer's worksite for the purpose of keeping the employer below the 50-employee threshold for employee eligibility under the FMLA, a concept which is inapplicable under the CAA.	This sub-section is reserved in the OOC FMLA regulations.
825.220(e)	This sub-section provides: "Individuals, and not merely employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations."	This sub-section provides: "Covered employees, and not merely eligible employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the FMLA, as made applicable by the CAA, or regulations." The above language clarifies that the OOC FMLA regulations use the term "covered employee" instead of "individual" and that a covered employee need not be an "eligible employee" for purposes of the anti-retaliation provision.
825.300(a)	The DOL FMLA regulations require that employers post a general notice to employees, in a conspicuous place, explaining the FMLA's provisions and providing information concerning the procedures for filing complaints of violations.	The OOC FMLA regulations do not require that employing offices post a general notice to employees; rather, sub-section (a) provides that if an employing office has any written guidance on the FMLA, that it be included in the employee handbook. In the event an employing office does not have a handbook, or other such written manual, the employing office must provide written guidance to the employee concerning the employee's FMLA rights and obligations.
825.300(d)(4)	The DOL FMLA regulations do not allow for electronic distribution of the designation notice.	Sub-section (d)(4) provides the following language which allows for the distribution of the designation notice electronically: "The designation notice may be distributed electronically so long as it otherwise meets

		the requirements of this section and the employing office can demonstrate that the employee (who may already be on leave and who may not have access to employing office-provided computers) has access to the information electronically.
825.307	Sub-section (a) expressly prohibits an employee's direct supervisor, under any circumstances, from contacting an employee's health care provider for purposes of clarifying and authenticating a medical certification.	Sub-section (a) provides a procedure by which an employee's direct supervisor may contact an employee's health care provider for the limited purpose of clarifying and authenticating a medical certification. The direct supervisor must receive specific authorization from the employee and must be the only individual in the employing office designated to process FMLA requests.
825.400	This section is titled "Enforcement, general rules" and provides procedures for enforcing alleged violations of the FMLA, which include filing a complaint with the Secretary of Labor or filing a private lawsuit. These enforcement procedures are not available under the CAA; hence sub-sections (a) and (b) are not found in the OOC FMLA regulations.	This section titled "Administrative Process, general rules" provides the administrative process for commencing a proceeding alleging a violation of the FMLA with the Office of Compliance. Sub-section (d) also provides a citation to the Office of Compliance's procedural rules.
825.401	This section is titled "Filing a complaint with the Federal Government" and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.402	This section is titled "Violations of the posting requirement" and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.403	This section is titled "Appealing the assessment of a penalty for willful violations of the posting requirement" and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.404	This section is titled "Consequences for an employer when not paying the penalty assessment after a final order is issued" and is not applicable to the	The section is reserved in the OOC FMLA regulations.

	CAA.	
825.500	This section is titled “Recordkeeping requirements” and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.701	This section is titled “Interaction with State laws” and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.800	This section is titled “Special rules for airline flight crew employees, general” and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.801	This section is titled “Special rules for airline flight crew employees, hours of service requirement” and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.802	This section is titled “Special rules for airline flight crew employees, calculation of leave” and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.
825.803	This section is titled “Special rules for airline flight crew employees, recordkeeping requirements” and is not applicable to the CAA.	The section is reserved in the OOC FMLA regulations.