(3) encourages ORWH to continue to focus on ensuring that NIH supports biomedical research that considers sex as a biological variable across the research spectrum; and
(4) encourages the Director of the NIH to continue to consult and involve ORWH on all matters related to the influence of sex and gender on health, especially those matters pertaining to the consideration of sex as a biological variable in research with vertebrate animals and humans.

SA 2664. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, celebrating the 25th anniversary of the Office of Research on Women’s Health at the National Institutes of Health; as follows:

In the eighteenth whereaus clause, strike “CDC” and insert “Centers for Disease Control and Prevention”.

SA 2665. Ms. MIKULSKI (for herself and Ms. COLLINS) proposed an amendment to the resolution S. Res. 242, celebrating the 25th anniversary of the Office of Research on Women’s Health at the National Institutes of Health; as follows:

Amend the title so as to read: “A resolution celebrating the 25th anniversary of the Office of Research on Women’s Health at the National Institutes of Health.”

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on September 16, 2015, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled “The Promise of Health Information Technology: Improving Care Through Patient Access to Their Records.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on September 16, 2015, at 2:15 p.m., in room SD–430 of the Dirksen Senate Office Building, to conduct a hearing entitled “EPA’s Gold King Mine Disaster: Examining the Harmful Impacts to Indian Country.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 16, 2015, at 10:15 a.m., in room SD–216 of the Dirksen Senate Office Building, to conduct a hearing entitled “Evaluating the Rights and Protections of Women in Armed Conflict.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 16, 2015, at 3:30 p.m., in room SR–206 of the Russell Senate Office Building, to conduct a hearing entitled “Evaluating the Rights and Protections of Women in Armed Conflict.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS’ AFFAIRS

Mr. COTTON. Mr. President, I ask unanimous consent that the Committee on Veterans’ Affairs be authorized to meet during the session of the Senate on September 16, 2015, at 2:30 p.m., in room SR–113 of the Dirksen Senate Office Building, to conduct a hearing entitled “Evaluating the Rights and Protections of Women in Armed Conflict.”

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE OF PROPOSED RULE-MAKING (NPRM OR NOTICE), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES

Mr. HATCH. Mr. President, I ask unanimous consent that the attached documentation from the Office of Compliance be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:


Hon. Orrin G. Hatch, President Pro Tempore, U.S. Senate, The Capital Building, Washington, DC.


Section 202(b)(1) of the CAA, 2 U.S.C. § 2614(b)(1), requires that the Board issue a general notice of proposed rulemaking by transmitting “such notice to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for publication in the Congressional Record on the first day of which both Houses are in session following such transmittal.”

On behalf of the Board, I am hereby transmitting the attached notice of proposed rulemaking to the President Pro Tempore of the Senate. I request that this notice be published in the Senate section of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. In compliance with Section 202(b)(2) of the CAA, a comment period of 60 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Questions regarding this notice should be addressed to Barbara J. Sapin, Executive Director of the Office of Compliance, Room LA–200, 110 2nd Street, S.E., Washington, DC 20546, 202-224-8250.

Sincerely,

BARBARA L. CAMINS,
Chair of the Board of Directors,
Office of Compliance.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

NOTICE OF PROPOSED RULEMAKING (NPRM OR NOTICE), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES

Modifications to the rights and protections under the Family and Medical Leave Act of 1993 (FMLA), Notice of Proposed Rulemaking, as required by 2 U.S.C. § 1311, Congressional Accountability Act of 1995, as amended (CAA).

Background:

The purpose of this Notice is to propose modifications to the existing legislative branch FMLA substantive regulations under section 202 of the CAA (2 U.S.C. § 1302 et seq.), which applies the rights and protections of sections 101 through 105 of the FMLA to covered employees. These modifications are necessary in order to bring existing legislative branch FMLA regulations (adopted April 16, 1996) in line with recent statutory changes to the FMLA, 29 U.S.C. § 2601 et seq.

What is the authority under the CAA for these proposed substantive regulations?

Section 202(a) of the CAA provides that the rights and protections established by sections 101 through 105 of the FMLA (29 U.S.C. §§ 2601–2651) shall apply to covered employees.

Section 202(d)(1) and (2) of the CAA require that the Office of Compliance (OOC) Board of Directors (the Board), pursuant to section 1381 of the CAA, issue regulations implementing the rights and protections of the FMLA and that those regulations shall be “the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) of section 202 of the CAA.”

The modifications to the regulations issued by the Board herein do not apply to any other matters for which section 202 of the CAA requires regulations to be issued.

Section 202(d)(1) and (2) of the CAA require that the Office of Compliance (OOC) Board of Directors (the Board), pursuant to section 1381 of the CAA, issue regulations implementing the rights and protections of the FMLA and that those regulations shall be “the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) of section 202 of the CAA.”

The modifications to the regulations issued by the Board herein do not apply to any other matters for which section 202 of the CAA requires regulations to be issued.

Section 202(d)(1) and (2) of the CAA require that the Office of Compliance (OOC) Board of Directors (the Board), pursuant to section 1381 of the CAA, issue regulations implementing the rights and protections of the FMLA and that those regulations shall be “the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) of section 202 of the CAA.”

The modifications to the regulations issued by the Board herein do not apply to any other matters for which section 202 of the CAA requires regulations to be issued.

Section 202(d)(1) and (2) of the CAA require that the Office of Compliance (OOC) Board of Directors (the Board), pursuant to section 1381 of the CAA, issue regulations implementing the rights and protections of the FMLA and that those regulations shall be “the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) of section 202 of the CAA.”

The modifications to the regulations issued by the Board herein do not apply to any other matters for which section 202 of the CAA requires regulations to be issued.
Are there currently FMLA regulations in effect?
Yes. On January 22, 1996, the OOC Board adopted and submitted for publication in the Congressional Record portions of the FMLA regulations implementing section 202 of the CAA, which applies certain rights and protections to covered service members and their families. On April 7, 2009, pursuant to section 304(c) of the CAA, the House and the Senate passed resolutions approving the final regulations. Specifically, the Senate resolution 292, providing for approval of the final regulations applicable to the Senate and the employees of the Senate; the House passed H. Res. 400 providing for approval of the final regulations applicable to the House and the employees of the House; and the House and the Senate passed S. Con. Res. 51, providing for approval of the final regulations applicable to employees other than those offices and employees of the House and the Senate. After the Senate and the House passed these resolutions, the OOC Board formally issued the FMLA regulations on April 19, 1996.

What does the FMLA provide?
The FMLA entitles eligible employees of covered employers to job-protected, unpaid leave, or to substitute appropriate accrued paid leave, for up to a total of 12 workweeks in a 12-month period; for the birth of a child; for the care of a son or daughter if the employee is the spouse, parent, or son or daughter of a seriously ill family member; and for the care of a spouse, parent, or son or daughter who is in military service and is receiving medical treatment for a serious injury or illness. Under the FMLA, establishments with 50 or more employees are required to provide employees with up to 12 weeks of unpaid leave in a 12-month period to care for a child; to care for a spouse, parent, or son or daughter who is a covered servicemember; to care for an immediate family member, a family or household member, or a service member of the Armed Forces who is a covered servicemember; for the birth of a child; and for the placement of a child for adoption or foster care. FMLA-protected leave may be taken for any reason related to the serious health condition of the employee or a covered family member. The FMLA provides employees with the right to take FMLA leave for serious health conditions, for the birth of a child, for the adoption of a child or placement of a child for foster care, to care for a spouse, parent, or son or daughter who is seriously ill, for military family leave, and for the death of a spouse, parent, or son or daughter.

What are the changes to the FMLA regulations necessary?
The CAA requires that the FMLA regulations applicable to the legislative branch and the executive branch be consistent with the substantive regulations issued by the Secretary of Labor, unless good cause is shown for deviation therefrom. On March 8, 2013, the DOL issued a Notice of Proposed Rulemaking (NPRM) on the OOC's proposed FMLA regulations (77 FR 9862), which provide for military caregiver leave for a veteran, qualifying exigency leave for certain family members of a covered servicemember, and leave for flight crew employees. The OOC Board is required pursuant to the CAA to amend its regulations to achieve parity unless there is good cause shown to deviate from the DOL's regulations.

In addition, the FMLA amendments providing additional protections for servicemembers and their families were enacted into law by the NDAA for Fiscal Years 2008 and 2010. The congressional committee reports accompanying the bills containing these provisions do not comply with Section 102(b)(3) of the CAA in that, while the bills do contain sections relating to terms and conditions of employment, the accompanying reports do not describe the manner in which the provision of the bill relating to terms and conditions of employment includes or includes a statement of the reasons the provision does not apply (to the legislative branch) (in the case of a provision not applicable to the legislative branch, the House Committee on Armed Services, H.Rpt. 110–146 (May 11, 2007), H.Rpt. 111–166 (June 18, 2009). Consequently, when the FMLA was amended, these proposed amendments to the regulations are necessary to resolve any ambiguity regarding the applicability of the 2008 and 2010 FMLA amendments to the legislative branch by ensuring that provisions under the FMLA are in line with existing public and private sector protections under the FMLA.

What changes do the proposed amendments make?
First, these proposed amendments add the military leave provisions of the FMLA enacted under the National Defense Authorization Act (NDAA) for Fiscal Years 2008 and 2010 (Pub.L. 110–181, Div. A, Title V §§856(a)(1)(B) & (4)), which: extend the availability of FMLA leave to family members of the Regular Armed Forces for qualifying exigencies arising out of a serious injury or illness of a covered service member; extend FMLA military caregiver leave for family members of current servicemembers to include a seriously ill family member prior to formal leave; extend FMLA military caregiver leave to family members caring for family members with serious injuries or illnesses. This NPRM also sets forth a proposed revision to the regulation defining the term "covered service member." The entitlement to qualifying exigency leave and military caregiver leave is expanded by substituting the term "covered active duty" for "active duty" and defining covered active duty for a member of the Regular Armed Forces as "duty during the deployment of the member with the Armed Forces to a foreign country" and for a member of the Reserve Components armed forces as "duty on a call to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code." 29 U.S.C. §2611(14).

What is the effect of amending the definition of "spouse"?
First, these proposed amendments add the military leave provisions of the FMLA enacted under the National Defense Authorization Act (NDAA) for Fiscal Years 2008 and 2010 (Pub.L. 110–181, Div. A, Title V §§856(a)(1)(B) & (4)), which: extend the availability of FMLA leave to family members of the Regular Armed Forces for qualifying exigencies arising out of a serious injury or illness of a covered service member; extend FMLA military caregiver leave for family members of current servicemembers to include an illness or injury existed prior to service and was aggravated in the line of duty on active duty; and extend FMLA military caregiver leave to family members caring for family members with serious injuries or illnesses. This NPRM also sets forth a proposed revision to the regulation defining the term "covered service member." The entitlement to qualifying exigency leave and military caregiver leave is expanded by substituting the term "covered active duty" for "active duty" and defining covered active duty for a member of the Regular Armed Forces as "duty during the deployment of the member with the Armed Forces to a foreign country" and for a member of the Reserve Components armed forces as "duty on a call to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code." 29 U.S.C. §2611(14).

What do the military family leave provisions provide?
Section 585(a) of the NDAA for Fiscal Year 2008 amends the FMLA to provide leave to eligible employees of covered employers for an eligible family member in the event any qualifying exigency arising out of the fact that a covered family member is on active duty or has been notified of an impending call or order to active duty status for a contingency operation (collectively referred to herein as "military family leave"). The provisions of this amendment providing FMLA leave due to a qualifying exigency arising out of a covered family member's active duty (or call to active duty) status were effective on January 16, 2008.

Section 565(a) of the NDAA for Fiscal Year 2010, enacted on October 28, 2009, amends the military family leave provisions of the FMLA. Pub. Law 111–84. The Fiscal Year 2010 NDAA expands the availability of qualifying exigency leave and military caregiver leave. Qualifying exigency leave, which was made available to family members of the National Guard and Reserve components under the Fiscal Year 2008 NDAA, is expanded to include family members of the Regular Armed Forces. The entitlement to military caregiver leave is expanded by substituting the term "covered active duty" for "active duty" and defining covered active duty for a member of the Regular Armed Forces as "duty during the deployment of the member with the Armed Forces to a foreign country" and for a member of the Reserve Components armed forces as "duty on a call to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code." 29 U.S.C. §2611(14). Prior to the Fiscal Year 2010 NDAA amendments, there was no requirement that members of the National Guard and Reserves be deployed to a foreign country.

The Fiscal Year 2010 NDAA amendments expand the definition of a serious injury or illness to include the injury or illness of a covered service member. The current definition of a covered service member includes a member of the National Guard or Reserve components if that person is not on active duty and is on the叫 duty or has been notified of an impending call to active duty in support of a contingency operation under the provisions of section 101(a)(13) of title 10, United States Code. These amendments also expand the military caregiver leave provisions of the FMLA to allow family members to take military caregiver leave to care for certain veterans. The definition of a "covered service member," which is the term the Act uses to indicate the group of military members for whom military caregiver leave may be taken, is broadened to include a veteran with a serious injury or illness who is receiving medical treatment for a serious injury or illness who is a covered service member of the Armed Forces at any time during the period of five years preceding the date of the medical treatment, regardless of whether the veteran was a member of the Armed Forces during the five-year period. The definition of a "covered service member," which is the term the Act uses to indicate the group of military members for whom military caregiver leave may be taken, is broadened to include a veteran with a serious injury or illness who is receiving medical treatment for a serious injury or illness who is a covered service member of the Armed Forces at any time during the period of five years preceding the date of the medical treatment, regardless of whether the veteran was a member of the Armed Forces during the five-year period.
Amending the definition of ‘spouse’ brings the regulations in line with the DOL’s February 25, 2015 Final Rule and the United States Supreme Court’s decision in Obergefell v. Hodges.

On February 25, 2015, the DOL published its Final Rule for 29 CFR §25 in the Federal Register, Vol. 80, No. 37, 9989. This Final Rule changes the definitions of FMLA in light of the United States Supreme Court’s decision in United States v. Windsor, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional.

The DOL’s Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave for the care of their spouse, regardless of where they live.

Also, on June 26, 2015, the United States Supreme Court issued Obergefell et al. v. Hodges, which requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

To date, the DOL has not indicated whether it plans to further amend the definition of ‘spouse’ under the FMLA as a result of the Supreme Court’s decision in Obergefell et al. v. Hodges. Therefore, the Board invites comment regarding whether or not the DOL’s current definition of spouse or revise the definition of spouse as the Board has proposed in sections 253.102 and 253.122.

Minor editorial changes are proposed to sections 253.120, 825.121, 825.122, 825.127, 825.201 and 825.202 to make gender neutral references to husbands and wives, and mothers and fathers. These editorial changes do not change the availability of FMLA leave but simply clarify its availability for all eligible employees who are legally married.

Procedural Summary:

How are substantive regulations proposed and approved under the CAA?

Pursuant to section 304 of the CAA, 2 U.S.C. §1384, the procedure for proposing and approving substantive regulations provides that:

(1) the Board of Directors proposes substantive regulations and publishes a general notice of proposed rulemaking in the Congressional Record;

(2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking;

(3) after consideration of comments by the Board of Directors, the Board adopts regulations and transmits notice of such action (together with the regulations and a recommendation regarding the method for Congressional approval of the regulations) to the Speaker of the House and President Pro Tempore of the Senate for publication in the Congressional Record;

(4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and

(5) there be final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication.

For more detail, please reference the text of 2 U.S.C. §1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

What is the approach taken by these proposed substantive regulations?

The Board follows the procedures as enumerated above and as required by statute. The Board will review and respond to any comments received under step (2) of the outline above, and make any changes necessary to ensure that the regulations fully implement section 210 of the CAA and reflect the policies particular to the legislative branch.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate and other employing offices?

No. The Board of Directors has identified no “good cause” for varying the text of these regulations. Therefore, if approved, regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees. See 2 U.S.C. §1331(e)(2).

Are these proposed regulations also recommended by the Office of Compliance’s Executive Director, the Deputy Executive Director for the Security Executive Director for the House of Representatives?

As required by section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), the substance of these regulations is available on the OOC’s web site, www.compliance.gov, which is compliant with section 508 of the Rehabilitation Act of 1973, 29 U.S.C. §794. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Amie Levine, Executive Assistant, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20040; 202-724-9250; TDD: 202-426-1912; FAX: 202-426-1913.

60-DAY COMMENT PERIOD REGARDING THE PROPOSED REGULATIONS

How long do I have to submit comments regarding the proposed regulations?

Comments regarding the OOC’s proposed regulations are due within 60 days following the date of the appearance of this Notice in the Congressional Record.

How do I submit comments?

Comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999, on Monday through Friday (non-federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Am I allowed to view copies of comments submitted by others?

Yes. Copies of submitted comments will be available for review on the OOC’s web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Summary:

The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA, as amended, applies to the rights and protections of thirteen federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. The CAA applies to employees covered by the CAA, the rights and protections established by sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. §§2601–2615.


The Board of Directors of the Office of Compliance (OOC) is now publishing the proposed amended regulations in Implementation section 202 of the CAA, 2 U.S.C. §§1301–1438, as applied to covered employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The purpose of these amended regulations is to implement section 202 of the CAA. In this Notice of Proposed Rulemaking (NPRM or Notice) the Board proposes that virtually identical regulations for the House of Representatives, the Senate, the House of Representatives, and the six Congressional instrumentalities listed below.

The purpose of these amended regulations is to implement section 202 of the CAA. In this Notice of Proposed Rulemaking (NPRM or Notice) the Board proposes that virtually identical regulations be included in the body of regulations that shall apply to entities within the House of Representatives, and the Senate, the House of Representatives entities is recommended by the OOC’s Deputy Executive Director for the House of Representatives.

(2) House of Representatives. It is further proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and the Senate, the House of Representatives entities is recommended by the OOC’s Deputy Executive Director for the House of Representatives.

(3) Certain Congressional instrumentalities, It is further proposed that the regulations as described in this Notice be included in the body of regulations that shall apply to the Office of Congressional Accessibility Services, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol (including the Botanic Garden), the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding the Senate entities is recommended by the OOC’s Deputy Executive Director for the House of Representatives.

Section-by-Section Discussion of Proposed Changes to the FMLA Regulations

The following is a section-by-section discussion of the proposed revisions. Where a change is proposed to a regulatory section, that section is discussed below. However, as the DOL has significantly reorganized its FMLA regulations, which the OOC’s proposed regulations are based on, the sections are moved into other areas of the subpart. The OOC as a result will use the proposed section and numbers to provide explanation and analysis of changes. In addition, even if a section is included, there may be minor editorial changes or corrections that do not warrant discussion. The titles to each section of the existing regulations are in italics. Thus, a specific proposal would reword each question into the more common format of a descriptive title, and the OOC invites comments on whether this change is helpful. In some sections, the subsections have been restructured and reorganized to improve the accessibility of the information (e.g., guidance on leave for pregnancy and birth of a child is addressed in one consolidated section; an employing office’s notice obligations are combined in one section).
Section 825.109 Successor in interest coverage; Public agency coverage; Federal agency coverage.

These sections do not apply to the CAA and will remain reserved in the OOC’s regulations. However, the Board finds good cause to exclude from the definition of “employee” that is consistent with the definition in the DOL regulations, which is not applicable to the CAA:

(3) Employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. (See §825.105(b) regarding employees who work outside the U.S.

Similarly, the Board sees good cause to exclude from the OOC regulations the following paragraph:

(e) Whether 50 employees are employed within 75 miles to ascertain an employee’s eligibility for FMLA benefits is determined when the employee gives notice of the need for leave. Once an employee is determined eligible in response to that notice, the employee’s eligibility is not affected by any subsequent change the number of employees employed at or within 75 miles of the employee’s worksite, for that specific notice of the need for leave. Similarly, an employer may not terminate employee leave that has already started if the employee-count drops below 50 for employer employs 60 employees in August, but expects that the number of employees will drop to 40 in December, the employer must grant FMLA benefits to any eligible employee who gives notice of the need for leave in August.”

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

This section does not apply to the CAA and will remain reserved in the OOC regulations.

Section 825.120 Leave for pregnancy or birth.

References in the DOL’s regulations to state law in this section and other sections throughout the DOL’s regulations have not been adopted by the Board because state law does not apply to the legislative branch.

Further, in this section and other sections throughout the DOL regulations, any references to spouses who are employed at two different worksites of an employer located more than 75 miles from each other have not been adopted by the Board because such scenarios are not applicable to the legislative branch.

Section 825.140 Interaction with the FLSA.

Although the DOL amended its FMLA regulations to add computer employees to the list of exempt employees who do not lose their FLSA exempt status despite being provided unpaid FMLA leave, the Board finds good cause not to include “computer employee” in its definitions language relating to Professional Employer Organizations (PEOs) as joint employers. As the DOL has noted, PEOs often contract with businesses to provide services that large businesses can afford, but small businesses cannot, such as compliance with government standards, employment management, and payroll benefits, and other employment benefits. Congress already provides these services for its employees.

Section 825.207 Substitution of paid leave.

The DOL regulations under section 825.207 do not permit an employer to substitute an employee’s use of paid compensatory time for a FMLA reason to be used against the employee’s FMLA leave entitlement. The Board does not have authority whether or under what circumstances, employing offices currently allow or require that paid compensatory time be used for a FMLA reason and be counted against the employee’s FMLA leave entitlement, the Board proposes that the comparable OOC FMLA regulation read as follows:

Under the FLSA, an employing office always has the right to cash out an employee’s compensatory time or to require the employee to use the time for employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employing office requires such use pursuant to the FLSA, the time taken may be counted against the employee’s FMLA leave entitlement.

The Board seeks comments from interested parties as to whether such a provision is appropriate for the legislative branch.

Section 825.209 Maintenance of employee eligibility.

The Board has changed what it believes to be a typographical error in the DOL regulations and cross references this section with section 825.102 and not section 825.800 when referring to the definition of “group health plan.”

Section 825.215 Equivalent position.

Any references from the DOL regulations in this section and other sections to the Employee Retirement Income Security Act (ERISA) have not been adopted by the Board because ERISA does not apply to the legislative branch.

Section 825.216 Limitations on employee’s right to reinstatement.

The Board questions whether the following language in section 825.216(a)(3) of the DOL regulations applies to the legislative branch: “whether, 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.”

The Board proposes that the OOC regulations retain the following text and requests comments from interested parties, especially with respect to caucus or committee
employees; “On the other hand, if an employee was hired to perform work for one employing office for a project for a specific time period, and after that time period has ended, the same employee was assigned to work at another employing office on the same project, the successor employing office may be required to restore the employee if it is a successor office.”

Section 825.217 Key employee, general rule.

For the reasons stated above, the Board finds good cause to follow the DOL changes to section 825.217(b) which exempts certain provisions from the work and wage and overtime requirements of the FLSA. As the language in the FLSA is inconsistent with the OOC FLSA regulations, the Board believes that this provision should not be included. The Board requests comments from interested parties on this deletion.

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

Except for the paragraph related to settlement agreements covered by 1414 and/or 1415 of the CAA govern awards and settlements made as a result of parties proceeding through an OOC process, the Board proposes to adopt the DOL amendments with respect to this section. Section 825.220 provides protection for employees who request leave or otherwise assert FMLA rights and includes new language clarifying that the Board believes the notice requirements in current sections 825.110 and 825.301 to one section, section 825.300(b), which provides for section 825.300(c): the designation notice (825.300(d)); and the consequences of failing to provide notice (825.300(e)).

(c) Eligibility notice. The Board proposes to adopt the FMLA amendments with respect to this section. The Board also proposes to adopt the DOL regulations consolidating existing eligibility notice requirements in current sections 825.110 and 825.301 into one section, section 825.300(b). The Board finds good cause not to adopt the DOL amendments with respect to 825.300(c) of the DOL regulations in section 825.300(a) General rule.

The Board proposes to follow the DOL regulations in section 825.300(a) General rule. In this section, employing offices are required to provide employees with written notice of any changes in the rights and responsibilities from the notice of eligibility. The designation notice an employing office must provide to an employee as to eligibility status. The Board also proposes to adopt the DOL regulations extending the time frame for an employer to respond to an employee's request for FMLA leave. The Board also proposes in its regulations that an employing office must provide reasons to an employee if he or she is not eligible for FMLA leave. Further, the Board also proposes in its regulations that an employing office must provide reasons to an employee if the leave is taken as a continuous block of leave or on an intermittent or reduced leave schedule.

Section 825.300(b) also requires that an employing office must provide to an employee written notice of any changes in the rights and responsibilities from the notice of eligibility.

(b) Eligibility notice. The Board proposes to adopt the FMLA amendments with respect to this section. The Board also proposes to adopt the DOL regulations consolidating existing eligibility notice requirements in current sections 825.110 and 825.301 into one section, section 825.300(b), which provides for section 825.300(c): the designation notice (825.300(d)); and the consequences of failing to provide notice (825.300(e)).
other written documents clearly provides that a fitness-for-duty certificate will be required, written notice is not required, but oral notice must be provided.

Final, the employing office is required to notify the employee if the information provided in the designation notice changes. For example, if an employee exhausts his or her FMLA leave and then returns to work, the employing office no longer be designated as FMLA leave, the employing office must provide the employee with written notice of this change consistent with its leave system.

Consequences of failing to provide notice.

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.307(c) clarifies that failure to comply with the notice requirements set forth in this section could constitute interference with, restraint of, or denial of the employee's rights under the FMLA, as made applicable by the CAA, or even mention the FMLA but assert their rights under the FMLA or even mention the FMLA but assert their rights under the FMLA. This is a change from defining the language in this section defines "as soon as practicable" if leave is foreseeable at least 30 days in advance or "as soon as practicable" if leave is foreseeable but 30 days notice is not practicable. In such case, the employee seeking leave for previously certified FMLA leave must inform the employing office that the leave is for a condition, covered servicemember's serious injury or illness, or qualifying exigency that was previously certified or for which the employee has previously taken FMLA leave.

While an employee must still comply with the employment's leave and procedural requirements for calling in absences and requesting leave, under the new regulations, an employing office's operations applies only to the FMLA and replaces it with a provision allowing the employee to give notice within five business days after the leave starts. This change would allow the employee to give notice to her or his employing office for leave taken because of an employee's own serious health condition or a family member. In section 825.302, the employing office requests for medical certification to substantiate an employee's need for FMLA leave due to a serious health condition. Military family leave provisions have been added to permit employing offices to require employees to provide a certification in the case of leave taken for a qualifying exigency or to care for a covered servicemember with a serious injury or illness. Section 825.305 applies generally to all types of certification. In most cases, for example, former references to "medical certification" have been changed to "certification.

In section 825.303, the employing office should request that an employee furnish certification on an annual basis for conditions lasting beyond a single leave year. In section 825.305, the employing office may deny the request for FMLA leave. The Board proposes to adopt the DOL amendments with respect to this section. This section requires that employees provide a certification from a health care provider at the time the employee gives notice of the need for FMLA leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. This time frame has been increased from two to five business days after notice of the need for FMLA leave is provided. The Board proposes to amend the DOL regulations with respect to this section. The Board proposes to adopt the DOL amendments with respect to this section. The Board proposes to adopt the DOL amendments with respect to this section.
care provider may provide a diagnosis, and whether intermittent or reduced schedule leave is medically necessary. Section 825.306 clarifies that where a serious health condition makes work incapacity infeasible, employing offices are not prevented from following the procedures under the Americans with Disabilities Act (ADA) or the Rehabilitation Act or the CAA, for requesting medical information. Section 825.306 also contains new language that employing offices may not require employees to sign waivers of their medical information as a condition of taking FMLA leave. This section does not apply to the military family leave provisions. The Board’s proposed regulations have revised the current optional certification form into two separate options: a covered servicemember’s serious health condition and one for the serious health condition of a covered family member.

Section 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. The Board proposes to adopt the DOL’s amendments covered under this section. Section 825.307 addresses the employing office’s ability to authenticate a timely and sufficient FMLA certification. Section 825.307 defines the terms “authentication” and “clarification.” “Authentication” involves contacting the health care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the provider. The regulations add that no additional medical information may be requested and the employee’s permission is not required to conduct this verification, in order to understand the handwriting on the medical certification or to understand the meaning of a response. As is the case with authentication, no additional information beyond that included in the certification form may be requested. Any contact with the employee’s health care provider must comply with the requirements of the HIPAA Privacy Rule.

The Board proposes to adopt the DOL’s proposed regulations to make the contact with the employee’s health care provider, but the regulations do clarify who may be contacted by the employee’s health care provider and ensure that the employee’s direct supervisor is not the point of contact. Employee consent to the contact is no longer required. The employee’s health care provider contacts the employee’s health care provider for clarification or authentication of the FMLA certification, the employee must first be given an opportunity to cure any deficiencies in the certification. Section 825.307 also provides requirements for an employing office’s request for a second opinion, and adds language to request that the employee or the employee’s family member to authorize his or her health care provider to release relevant medical information pertaining to the serious health condition at issue if such information is requested by the second opinion health care provider. Section 825.307 also increases the time an employing office has to provide an employee with a requested copy of a second or third opinion from two to five business days. This section of the regulations also do not apply to the military family leave provisions.

Section 825.308 Recertifications for leave taken because of an employee’s own serious health condition or the serious health condition of a family member. The Board proposes to adopt the DOL amendments covered in this section. Section 825.308 of the regulations addresses the employing office’s ability to seek recertification of an employee’s medical condition. This section has been reorganized to clarify how employees may request recertification in situations where the minimum duration of the condition, as opposed to the duration of the period of incapacity, exceeds 30 days. An employing office may request recertification no more often than every 30 days and in connection with an absence by the employee, unless the medical certification had the same obligation to cooperate in providing recertification as he or she does in providing the initial certification.

Section 825.309 Certification for leave taken because of a qualifying exigency. The Board proposes to adopt the DOL’s regulations under this section. Under the military family leave provisions of the FMLA regulations, an employing office may require that leave taken because of a qualifying exigency be supported by a certification and require that the employee provide a copy of the certification for leave taken due to a qualifying exigency leave period. An employing office may request that the employee provide a copy of the certification in support of a contingency operation, as well as the dates of the covered military member’s active duty service. While no additional information may be used by the employing office, no information may be required beyond that specified in this section in and in all instances that neither request nor relate only to the qualifying exigency for which the current need for leave exists. Section 825.307 also establishes the verification process for certifications.

This section also provides that the information required in a certification need only be used by the requesting office. The first time an employee requests leave because of a qualifying exigency arising out of a particular active duty or call to active duty of a covered military member. While additional information may be needed to provide certification for subsequent requests for exigency leave, an employee is only required to provide the information related to the employing office once. A copy of new active duty orders or other documentation issued by the military only needs to be provided to the employing office if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty order of the same or a different covered military member. See DOL Form WH-584 and OOC regulations proposed Form E.

An employing office may contact an appropriate unit of the Department of Defense to verify the member’s status. The military member has been called to active duty status (or notified of an impending call to active duty status) in support of a contingency operation. In such situations, the member’s status may be requested by the employing office and the employee’s permission is not required. This verification process will protect employees from unnecessary intrusion while still providing a useful tool for employing offices to verify the certification information given by the employee. Consistent with the amendments to section 825.126(b)(6), with respect to Rest and Recuperation qualifying exigency leave, the Board proposes to adopt amendments to request a copy of the military member’s rest and recuperation orders, or other documentation issued by the military indicating that the military member is on active duty or call to active duty status. In all cases, the employing office may also contact the appropriate unit of the DOD to verify that the military member is on active duty or call to active duty status. The employee’s permission is not required to conduct such verifications. The employing office may not, however, request any additional information.

Section 825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave). The Board proposes to adopt the amendments covered in the DOL regulations under this section. While the FMLA’s existing certification requirements focus on providing information related to a serious health condition—a term that is not necessarily relevant to leave taken to care for a covered servicemember. At the same time, the military family leave provisions of the NDAA amended the FMLA’s certification requirements to permit an employing office to request any relevant information regarding the covered servicemember’s serious health condition. Section 825.310 of the DOL’s regulations provide that when leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to support his or her request for leave with a sufficient certification. An employer may require that certain necessary information regarding the request be supported by a certification from one of the following authorized health care providers: (1) A DOD health care provider; (2) a VA health care provider; (3) a DOD non-network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider. Sections 825.310(c) of the DOL regulations states forth that the information an employing office may request from an employee (or the authorized health care provider) in order to support the request for leave. The Board developed a new optional form, Form WH-385, which the Board adopted for proposed OOC Form F. The Board agrees that OOC Form F for requests for leave to care for a covered servicemember with a serious injury or illness. However, an employing office may use any form containing the following basic information: (1) whether the servicemember has incurred a serious injury or illness; (2) whether the injury or illness may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating; (3) whether the injury or illness was incurred by active duty; and (4) whether the servicemember is undergoing medical treatment, recuperation, or therapy, and is otherwise on outpatient status. An employing office may use any form containing any of the above information in any combination, and the Board believes any such form would be a useful tool for employing offices to verify the certification information given by the employee.
to care for a family member with a serious health condition, no information may be required beyond that specified above. In all instances, the information on any required certification is submitted only to the employer's human resources department.

Additionally, section 825.310 of the proposed regulations provides that an employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient a certification submitted by the health care provider in order for that person to return to duty under the FMLA. The regulations provide that an employing office may require further certification from the employee. Lastly, this section provides that in all instances in which certification is required, it is the employee’s responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave.

The regulations also permit an eligible employee who is a spouse, parent, son, daughter or next of kin to request a covered servicemember to be provided with a covered servicemember certification to return to duty under the FMLA. An employee’s certification must follow as long as it conforms with the definition of “fitness-for-duty certification” and is written in a form acceptable to the employing office. Section 825.312 also requires that the employing office uniformly apply its policies permitting fitness-for-duty certifications to intermittent and reduced schedule leave users when reasonable safety concerns are present, but limits the frequency of such certifications to once in a 30-day period in which intermittent or reduced schedule leave was taken.

The Board proposes to adopt the amendments proposed by the DOD to permit fitness-for-duty certification to address the employer’s reasonable safety concerns. An employee’s certification (or recertification) is not untimely until that period has passed. Employing offices may deny FMLA protection when an employee fails to provide a timely certification or recertification, but it does not require additional offices to do so. Employing offices always have the option of accepting an untimely certification and not denying FMLA protection to the employee as long as the required certification or request for additional certification is returned from the employing office within the required time period in which the certification was delayed.

Section 825.400 Enforcement, general rules.

The Board finds the need to adopt the modification to section 825.400 because the enforcement of FMLA violations is different in the legislative branch as opposed to the workplaces regulated by the DOL. The OOC section 825.500 remains the same.

Section 825.401–825.404 Filing a complaint with the Federal Government; Violations of the posting requirement; Appealing the amendment of a payment or benefit; Violation of the posting requirement; Consequences for an employer when not paying the penalty assessment after a final order is issued.

These sections do not apply to the CAA and will remain reserved in the OOC regulations.

Subpart E—Recordkeeping Requirements Section 825.600–825.604 Special rules for school employees, limitations on leave.

These sections do not apply to the CAA and will remain reserved in the OOC regulations.

Subpart F—Special Rules Applicable to Employees of Schools Section 825.700–825.704 Special rules for school employees, definitions; Special rules for school employees, limitations on intermittent leave; Special rules for school employees, limitations on leave near the end of an academic term; Special rules for school employees, duration of FMLA leave; Special rules for school employees, restoration to an equivalent position.

The Board proposes to adopt the amendments that would cover the special rules applicable to instructional employees. When an eligible instructional employee needs intermittent leave or leave on a reduced schedule to care for a covered servicemember, the employee may choose to either (1) take leave for a period or periods of particular duration; or (2) transfer temporarily to an available alternative position with equivalent pay and benefits that better accommodates recurring periods of leave.

Some of these sections also extend some of the limitations on leave near the end of an academic term to leave requested during this period to care for a covered servicemember. If an industrial employee seeks leave that is different from the employee’s own serious health condition during the five-week period before the end of the term, the employing office may require the employee to continue taking leave until the end of the term if the leave will last more than two weeks and the employee would return to work during the five-week period before the end of the term. Further, an employing office may require an instructional employee to continue taking leave until the end of the term if the employee is expected to be absent for more than five working days for a purpose other than the employee’s own serious health condition.
during the three-week period before the end of the term. The types of leave that are subject to the limitations are: (1) leave because of the birth of a son or daughter, (2) leave because of placement of a son or daughter for adoption or foster care, (3) leave taken to care for a spouse, parent, or child with a serious health condition, and (4) leave taken to care for a family member.


Section 825.700 Interaction with employing office’s policies.

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.700 provides that an employing office may not limit the rights established by the FMLA through an employment benefit program or plan, but an employing office may provide greater leave rights than the FMLA requires. This section also provides that an employing office may amend existing leave programs, so long as they comply with the FMLA, and that nothing in the FMLA is intended to discourage employing offices from adopting or retaining more generous leave policies. The Board proposes to delete from the current OOC section 825.700(a) the following: “If an employee takes paid or unpaid leave and the employing office does not designate the leave as FMLA leave, the leave taken does not count against an employee’s FMLA entitlement.” As explained by the DOL, this last sentence of section 825.700(a) was deleted in order to conform to the U.S. Supreme Court’s decision in Ragsdale v. Wolverine World Wide, 535 U.S. 61 (2002), which specifically invalidated this provision.

Section 825.701 Interaction with State laws.

This DOL section does not apply to the CAA and will remain reserved in the OOC regulations.

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

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.702 addresses the interaction between the FMLA and other Federal anti-discrimination laws. Section 825.702 discusses the interaction between the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the FMLA. Under USERRA, a returning servicemember would be entitled to FMLA leave if, after including the hours that he or she would have worked for the civilian employing office during the period of military service, the employee would have met the FMLA eligibility threshold. This is not the application of FMLA rights through regulation: this is a requirement of USERRA.

With respect to the interaction of the FMLA and Title VII, the Board believes both laws may apply. While the applicability of each statute needs to be evaluated individually.

Further, the reference to employers who receive Federal assistance and employers who contract with the Federal government in this section has not been adopted by the Board because federal contractor employees are covered by the CAA.

In its final regulations, the DOL removed the following optional-use forms and notices from the Appendix of the regulations, but continuing to make them available to the public on the WHD Web site: Forms WH-380-E (Certification of Health Care Provider for Employee’s Serious Health Condition); WH-380-F (Certification of Health Care Provider for Family Member’s Serious Health Condition); WH-381 (Notice of Eligibility and Rights & Responsibilities); WH-382 (Designation Notice); and WH-384 (Certification of Qualifying Exigency for Military Family Leave); WH-385 (Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave). The Board proposes to revisit its forms and to make the following OOC forms available on its website: Form A: Certification of Health Care Provider for Employee’s Serious Health Condition; Form B: Certification of Health Care Provider for Family Member’s Serious Health Condition; Form C: Notice of Eligibility and Rights & Responsibilities; Form D: Designation Notice to Employee of FMLA Leave; Form E: Certification of Qualifying Exigency for Military Family Leave; Form F: Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave; and Form G: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave. The Board’s proposed forms now include references to the Genetic Information Nondiscrimination Act of 2008, which is made applicable to employees covered under the CAA. The Board invites comment on whether these forms should be included in the regulations, or whether covered employers’ current forms should be directed to the DOL website for the appropriate forms. In any event, the use of a specific form is optional and one form requiring the same information may be used instead. In proposing these revised forms, the Board recognizes that the use of specific forms plays a key role in employing offices’ ability to ensure compliance with the FMLA and employees’ ability to take FMLA protected leave when needed.


FELT REGULATIONS

Part 825—Family and Medical Leave

825.1 Purpose and Scope.

Subpart A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT

825.100 The Family and Medical Leave Act.

825.101 Purpose of the FMLA.

825.102 Definitions.

825.103 [Reserved].

825.104 Covered employing offices.

825.105 Counting employees for determining eligibility.

825.106 Joint employer coverage.

825.107 Successor in interest coverage.

825.108–825.109 [Reserved]

825.110 Eligible employee.

825.111 [Reserved].

825.112 Qualifying reasons for leave, general rules.

825.113 Serious health condition.

825.114 Inpatient care.

825.115 Continuing treatment.

825.116–825.118 [Reserved]

825.119 Leave for treatment of substance abuse.

825.120 Leave for pregnancy or birth.

825.121 Leave for adoption or foster care.

825.122 Leave for serious health condition of a family member, spouse, parent, or son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on covered active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember.

825.123 Unable to perform the functions of the position.

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

825.125 Unavailable to perform as a health care provider.

825.126 Leave because of a qualifying exigency.
825.601 Special rules for school employees, limitations on intermittent leave.
825.602 Special rules for school employees, limitations on leave near the end of an academic term.
825.603 Special rules for school employees, duration of FMLA leave.
825.604 Special rules for school employees, restoration to an equivalent position.

Subpart G—EFFECT OF OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS ON EMPLOYEE RIGHTS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA

825.700 Interaction with employing office’s policies.
825.701 Interaction with anti-discrimination laws as applied by section 201 of the CAA.

Subpart H—Reserved

FORMS

Form A: Certification of Health Care Provider for Employee's Serious Health Condition;
Form B: Certification of Health Care Provider for Family Member's Serious Health Condition;
Form C: Notice of Eligibility and Rights & Remedies;
Form D: Certification Notice to Employee of FMLA Leave;
Form E: Certification of Qualifying Exigency for Military Family Leave;
Form F: Certification of Qualifying Exigency for Serious Injury or Illness of Covered Servicemember for Military Family Leave;
Form G: Certification for Serious Injury or Illness as of a Veteran for Military Caregiver Leave.

825.1 Purpose and scope.

(a) Section 202 of the Congressional Accountability Act (CAA) (2 U.S.C. 1312) applies the rights and protections of sections 101 through 106 of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2611–2651) to covered employees. (The term “covered employee” is defined in section 101(3) of the CAA (2 U.S.C. 1301(3)). See 825.102 of these regulations for that definition.) The purpose of this part is to set forth the regulations to carry out the provisions of section 202 of the CAA.

(b) These regulations are issued by the Board of Directors (Board) of the Office of Compliance of the CAA (2 U.S.C. 304) of the CAA, which direct the Board to promulgate regulations implementing section 202 that are “the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) of section 202 of the CAA.” The regulations also include definitions and procedures to carry out the requirements of the CAA.

825.2 General requirements.

(a) The FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for serious reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, to care for a covered servicemember with a serious injury or illness, or because of a qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family health and in minimizing the potential for employment discrimination on the basis of sex, and to promote employment opportunity for men and women.

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

(c) The FMLA is both intended and expected to benefit employing offices as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to focus on their own roles and on their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships. The consequences of guaranteeing that those relationships will not be dissolving while workers attend to preserving family health obligations or their own serious illness.

825.102 Definitions.

For purposes of this part:

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 et seq., as amended).
DOL means the Department of Labor.
Contingency operation means a military operation that:

(1) 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;

(2) Requires the authorization of the President to use military force; or

(3) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a),
Continuing treatment by a health care provider means any one of the following:

(i) Treatment two or more times, within 30 days of the first day of incapacity, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist, occupational therapist, or on referral by a health care provider;

(ii) 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.

(iii) The requirement in paragraphs (i) and (ii) of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

(iv) An initial treatment visit or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(v) A continuing treatment under the circumstances in paragraph (i) means circumstances beyond the employee’s control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. See also 825.111(a)(6).

(b) Pregnancy or prenatal care. Any period of incapacity for pregnancy or for prenatal care. See also 825.120.

(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 (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(2) Is an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic or continuous periods of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(d) Permanent or long-term conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, and need not be receiving active treatment by, a health care provider. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

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

(i) Restorative surgery after an accident or other injury; or

(ii) A condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis), etc.

(f) Disabilities attributable to incapacity under paragraphs (2) or (3) of this definition qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the incapacity does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack. A member’s health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to work because of severe morning sickness.

Covered active duty or call to covered active duty status means:

(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(2) In the case of a member of the Reserve Components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 686 of Title 10 of the United States Code, which authorizes ordering active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired with at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members of the National Guard upon a national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Regular Armed Forces for active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Reserves and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military and federal reserve forces, in support of a contingency operation. See 10 U.S.C. 101(a)(13)(B).

Eligible employee means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Compliance; or (9) the Office of the Architect of the Capitol.

Covered servicemember means:

(1) A current member of the Armed Forces, including the National Guard or the Reserves, who is undergoing medical treatment, recuperation, or treatment, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) A covered veteran who is undergoing medical treatment, recuperation, or treatment for a serious injury or illness.

Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the employee's filing of the FMLA leave request to care for the covered veteran. See 825.127(b)(2).
Employing Office, as defined in the CAA, means:
1. The personal office of a Member of the House of Representatives or of a Senator;
2. The personal office of any other House of Representatives or Senate or a joint committee;
3. Any other office headed by a person with the final authority to appoint, hire, discharge, terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate;
4. The Office of 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.

Employer benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employer benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage, retirement savings plan contributions, or union dues.

FMLA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.);

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, or the families of such employees or former employees. For purposes of FMLA, as made applicable by the CAA, 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 employing office;
2. Participation in the program is completely voluntary for employees;
3. The sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to send claims and to remit them to the insurer;
4. The employing office 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 deductions; and
5. The premium charged with respect to such coverage does not increase in the event the employing office terminates.

Health care provider means:
1. The FMLA, as made applicable by the CAA, as defined in section 3 of the Equal Employment Opportunity Act of 1963 (42 U.S.C. 2000e-2(f));
2. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor's worksite is located;
3. Any other person determined by the Department of Labor to be capable of providing health care services.

Health care services include:
1. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to the diagnosis and treatment of manual malposition of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and
2. Nurse practitioners, nurse-midwives and other non-physician practitioners or assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
3. The First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee family member undergo examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.
4. Any health care provider from whom an employing office or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate leave.

Medical leave includes:
1. Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs). ADLs include dressing, eating, bathing, toileting, and ambulation.
2. 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 employee when the employee was a minor child, has legal custody of the covered servicemember, either at the time the employee entered military service or at the time that the covered servicemember's next of kin is called upon to support a contingency operation.
3. Next of kin of a covered servicemember means the independent office established in the legislative branch under section 301 of the CAA (2 U.S.C. 1381). Outpatient status means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to either a thesis 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.

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 minor child, has legal custody of the covered servicemember, either at the time the employee entered military service or at the time that the covered servicemember's next of kin is called upon to support a contingency operation.

Serious health condition means a medical condition that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 825, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., as amended, provide guidance.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Reserve components of the Armed Forces, for purposes of qualifying exigency leave, in-"
National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the members active duty in the Armed Forces and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unable to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

(a) A continuity of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and renders the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(b) A physical or mental condition that substantially impairs the covered veteran's capacity, and was aggravated by service in the line of duty on active duty in the Armed Forces or that existed before active duty in the Armed Forces (or existed before the member became a covered veteran) and manifested itself before or after the member became a veteran.

(ii) A term rendered inapplicable by the CAA, means a term included to define a class of employees covered by, or otherwise applicable to, the CAA, that the term includes such as:

(iii) A term that includes a defined term as made applicable by the CAA, means a term that includes such as:

(iv) A term that is included to define a class of employees covered by, or otherwise applicable to, the CAA, means a term that includes such as:

(v) A term that is defined by the CAA, means a term that is defined by the CAA, and includes such as:

(vi) A term that is defined by the CAA, means a term that is defined by the CAA, and includes such as:

(vii) A term that is defined by the CAA, means a term that is defined by the CAA, and includes such as:

(1) If entered into within any State, is a State law or a State statute.

(2) If entered into outside of any State, is a State law or a State statute.

Spouse means the biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

Son or daughter means a biological or adoptive child of the covered person, or a foster child, a stepchild, legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.

Son or daughter of a covered servicemember means a biological or adoptive child of the covered person, or a foster child, a stepchild, legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

The FMLA, as made applicable by the CAA, covers all employees. As used in the CAA, the term employed office 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 other public office that 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;

(4) The Office of 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;

(b) [Reserved]

(c) Separate entities will be deemed to be parts of a single employing office for purposes of the CAA, if they are under the same control with the other employing office.

(1) If the employees of both offices are under the same control with the other employing office, the following persons and organizations shall be considered to be parts of a single employing office: (a) the personal office of a Member of the House of Representatives; (b) the personal office of a Senator; (c) a committee of the House of Representatives or the Senate or a joint committee; (d) the personal office of the Vice President; (e) the personal office or principal office of the Speaker of the House of Representatives or of a Senator; or (f) any 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.

(2) If the employer or employee include in a single employing office employees of all entities making up the integrated employing office, such employer or employee shall be counted in determining whether the employee has been employed for at least 12 months, and

(3) If the employer or employee include in a single employing office employees of all entities making up the integrated employing office, the following persons and organizations shall be considered to be parts of a single employing office for purposes of the CAA:

(a) The personal office of a Member of the House of Representatives or of a Senator;

(b) A committee of the House of Representatives or the Senate or a joint committee;

(c) Any 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;

(d) The Office of 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;

(e) [Reserved]

(f) Separate entities will be deemed to be parts of a single employing office for purposes of the CAA, if they are under the same control with the other employing office.

The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, the term employing office 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 other public office that 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;

(4) The Office of 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;

(b) [Reserved]

(c) Separate entities will be deemed to be parts of a single employing office for purposes of the CAA, if they are under the same control with the other employing office.

(i) The employee's break in service is occasioned by the employee's own pregnancy;

(ii) The employee is absent for the birth of a child of the employee;

(iii) The employee is absent for adoption or foster care placement expenditures;

(iv) The employee is absent for the care of a covered servicemember;

(v) The employee is absent for the care of a family member;

(vi) The employee is absent for the care of a spouse;

(vii) The employee is absent for the care of a child;

(viii) The employee is absent for the care of a parent;

(ix) The employee is absent for the care of a grandparent;

(x) The employee is absent for the care of a sibling;

(xi) The employee is absent for the care of a child for whom the employee stands in loco parentis;

(xii) The employee is absent for the care of a son or daughter of a covered servicemember;

(xiii) The employee is absent for the care of a grandchild;

(xiv) The employee is absent for the care of a relative for whom the employee stands in loco parentis;

(xv) The employee is absent for the care of a relative for whom the employee stands in loco parentis; or

(xvi) The employee is absent for the care of a relative for whom the employee stands in loco parentis.

The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, the term employing office 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 other public office that 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;

(4) The Office of 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;

(b) [Reserved]

(c) Separate entities will be deemed to be parts of a single employing office for purposes of the CAA, if they are under the same control with the other employing office. Where the employee performs work which simultaneously benefits two or more employing offices, that employing office shall be primarily responsible for accepting the employee returning from FMLA leave.

(e) If the employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of the employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. An employee may give notice of FMLA leave as described in §282.302 and §282.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing offices may, subject to the limitations in §282.216, be responsible for accepting the employee returning from FMLA leave.

(f) If the employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of the employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. An employee may give notice of FMLA leave as described in §282.302 and §282.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing offices may, subject to the limitations in §282.216, be responsible for accepting the employee returning from FMLA leave.

(g) If the employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of the employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. An employee may give notice of FMLA leave as described in §282.302 and §282.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing offices may, subject to the limitations in §282.216, be responsible for accepting the employee returning from FMLA leave.
seq., covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service must also be counted in determining whether the employee has been employed for at least 12 months by the employing office. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA.

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employing office’s intent to rehire the employee after the break in service (e.g., for purposes of the employee further tilling his or her education or for child rearing purposes).

(iii) In situations where an employee has worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether a total of 12 months.

(iv) 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 employing office (e.g., Federal Employees’ Compensation, group health plan benefits, etc.), the week counts as a week of employment.

In determining whether an employee has worked for any employing office for at least 1,250 hours in the past 12 months and has been employed by any employing office for a total of at least 12 months must be made as of the date the FMLA leave is to start. An employee may be on non-FMLA leave at the time he or she meets the 12-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would count toward the FMLA leave. See 825.300(b) for rules governing the content of the eligibility notice given to employees.

285.111 (Reserved)

285.112 Qualifying reasons for leave, general rule.

(a) Circumstances qualifying for leave. Employing offices covered by FMLA as made applicable by the CAA are required to grant leave to eligible employees:

(1) For the birth of a child, and to care for the newborn child (see 825.120);

(2) For placement with the employee of a son or daughter for adoption or foster care (see 825.121);

(3) To care for the employee’s spouse, son, daughter, or parent with a serious health condition (see 825.113 and 825.122); and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee’s job (see 825.113 and 825.122).

(b) Equal Application. The right to take leave under FMLA, as made applicable by the CAA, 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 employment relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise re-employed before being eligible for leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

285.113 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 in a hospital, an extended care facility, or a medical care facility, including any period of incapacity that includes continuous treatment by a health care provider as defined in 285.114.

(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 therefrom.

(c) The term treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations that collectively involve routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen consisting of treatment for a serious health condition includes 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 purposes of FMLA leave.

(d) Conditions for which cosmetic treatments are administered (such as most treat- ments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, upset stomach, minor ulcers, headaches other than migraine, routine dental or oral health problems, periodontal disease, etc., are not conditions for which FMLA should be granted. FDA regulations concerning the content of the eligibility notice given to employees.

285.114 Inpatient care.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in 285.113(b), or any subsequent treatment in connection with such inpatient care.


Inpatient care involves 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 3 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 (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

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

The requirements 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 or provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

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

The term continuing treatment in paragraph (a)(1) of this section means circumstances beyond the employee’s control.
that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances might include if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have available appointments during that time period.

(b) Pregnancy or prenatal care. Any period of incapacity due to pregnancy, or for prenatal care, is eligible.

(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 (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; and

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy), etc.

(d) Prolonged or long-term conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment is ongoing. The employee or the covered family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

(e) Conditions requiring multiple treatments. Any condition that requires a series of treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

(f) Absences attributable to incapacity under paragraphs (a) and (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee’s health care provider has advised the employee to stay home when the pollen count exceeds a certain level. The employee who is pregnant may be unable to report to work because of severe morning sickness.

28202 Leave for adoption or foster care.

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

(1) Employees may take FMLA leave for adoption or foster care leave for up to 12 weeks of leave during any 12-month period; (2) The FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouse, or the employee's son or daughter, is unlimited to the difference between the amount the employee would have been paid by the same employing office. It would apply, for example, to the employee’s need for intermittent leave if needed to care for a child with special health care needs.

(b) Intermittent or 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 employing office agrees. For example, an employing office and the employee may agree to a part-time work schedule after the birth. If the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced schedule is in effect, to an alternative position for which the employee is qualified and which accommodates recurring periods of leave than does the employee’s regular position. The employee’s need for intermittent or reduced leave is not required to meet the same eligibility requirements as an alternative position may require compliance with other administrative agreements and federal law. The employing office may also require that the employee provide agreement and federal law (such as the Americans with Disabilities Act) if the employee is unable to perform the job functions of the position. See 28205 for general rules governing the use of intermittent and reduced schedule leave. See 28212 for rules governing leave for adoption or foster care. See 28235 for special rules applicable to instructional employees of schools.

28212 Leave for adoption or foster care.

(a) General rules. Eligible employees are entitled to FMLA leave for placement with the employee’s son or daughter for adoption or foster care as follows:

(1) Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement or adoption of foster care to proceed. For example, the employee may be required to attend the birth parent’s appearance in court, consult with his or her attorney or the doctor (or the agency representing the birth parent, submit to a physical examination, or undergo another task related to the adoption. The source of an adopt child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(2) An employee’s entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date that the employee or the covered family member last qualifies for FMLA leave for a serious health condition.

28217 Leave for treatment of substance abuse.

(a) Substance abuse may be a serious health condition. Conditions under paragraphs 28217 through 28215 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. On the other hand, absence because of the employee’s use of the substance, rather than for treatment, does not qualify for FMLA leave.

(b) Treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may take action against the employee because the employee has exercised his or her right to take FMLA leave. The employing office has an established policy, applied in a non-discriminatory manner, that substance abuse by a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have available appointments during that time period.

(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).

(3) Absences attributable to incapacity under paragraphs (a) and (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee’s health care provider has advised the employee to stay home when the pollen count exceeds a certain level. The employee who is pregnant may be unable to report to work because of severe morning sickness.

(4) The expectant mother is entitled to FMLA leave for pregnancy or birth during her prenatal care, or if needed to care for the expectant mother or newborn child. The expectant mother or newborn child is entitled to FMLA leave for pregnancy or birth during her prenatal care, or if needed to care for the expectant mother or newborn child. Thus, spouses 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 employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(5) A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or injured by pregnancy during her prenatal care, or if needed to care for the following the birth of a child if she has a serious health condition. See 28212.

(b) Leave for pregnancy or birth.

(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).

(3) Absences attributable to incapacity under paragraphs (a) and (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee’s health care provider has advised the employee to stay home when the pollen count exceeds a certain level. The employee who is pregnant may be unable to report to work because of severe morning sickness.

(4) The expectant mother is entitled to FMLA leave for pregnancy or birth during her prenatal care, or if needed to care for the expectant mother or newborn child. The expectant mother or newborn child is entitled to FMLA leave for pregnancy or birth during her prenatal care, or if needed to care for the expectant mother or newborn child. Thus, spouses 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 employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(5) A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or injured by pregnancy during her prenatal care, or if needed to care for the following the birth of a child if she has a serious health condition. See 28212.
(3) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the placement of the employee’s son or daughter or to care for the child after placement, for the birth of the employee’s son or daughter or to care for the child after birth, or to care for the employee’s parent with a serious health condition that is the limiting factor for the total weeks of leave applicable to the employee. It would apply, for example, even though an employee is part-time and works at different worksites of an employing office. 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 spouses 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 spouses 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. For example, if each spouse took six weeks of leave to care for a newly placed child, the remaining spouse would use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(4) An eligible employee is entitled to FMLA leave in order to care for an adopted or foster child with a serious health condition if the requirements of 825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for an adopted or foster child with a serious health condition. The leaves are employed by the same employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) Use of intermittent and reduced schedule leave. An eligible employee may use intermittent or reduced schedule leave after the placement of a healthy child for adoption or foster care only if the employing office agrees. Thus, for example, the employing office may not require an employee to take all of the 12 weeks of FMLA leave applicable to adoption or foster care at once. Instead, the employing office may begin the employee on a part-time or reduced schedule or at a modified work schedule after the placement for bond- ing purposes. If the employing office agrees to permit intermittent or reduced schedule leave for adoption or foster care, the employing office 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 the applicable collective bargaining agreement and federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position for which the employee is qualified alters an existing job to better accommodate the employee’s need for intermittent or reduced leave. The employing office’s agreement is not required for intermittent leave required by the condition of the newly placed child or foster child. See 825.202-825.205 for general rules governing the use of intermittent and reduced schedule leave. See 825.120 for general rules governing leave for pregnancy and birth. See 29 CFR 561 for FMLA rules applicable to instructional employees of schools.

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

(a) Covered servicemember means:

1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

2) A veteran, who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during leave taken for the reasons specified as long as the reasonable person would consider the serious injury or illness to be a serious injury or illness that is related to the covered servicemember’s military service. This definition includes an individual in a same-sex relationship, who is not married to a covered servicemember. This definition also includes an individual in a common law marriage that either:

1) was entered into in a State that recognizes such marriages or,

2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

(b) Parent means:

1) Parent of a covered servicemember

2) Son or daughter of a covered servicemember

(c) Son or daughter. For purposes of FMLA leave taken for birth or adoption, or to care for a parent with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the individual is loco parentis to the employee when the employee was a parent or does (including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during leave taken for the reasons specified as long as the reasonable person would consider the serious injury or illness to be a serious injury or illness that is related to the covered servicemember’s military service). For purposes of military caregiver leave under the FMLA, placement of the employee’s son or daughter in substitute for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State and involves 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 is not the same as adoption, foster care may be with the agreement of the State action is involved in the removal of the child from parental custody. See 825.121 for rules governing leave for foster care.

(d) Son or daughter on covered active duty status means the covered servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty status or call to covered active duty status, and who is of any age. See 825.128(a)(5).

(e) Next of kin of a covered servicemember means the covered servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, and who is of any age. See 825.127(d)(1).

(f) Parent of a covered servicemember means a covered servicemember’s biological, adoptive, step or foster father or mother, or any individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”

(g) Son or daughter of a covered servicemember means the covered servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, and who is of any age. See 825.128(a)(5).

(h) Parent of a covered servicemember means the covered servicemember’s biological, adopted, 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 825.127(d)(1).

(k) Documenting relationships. For purposes of confirming family relationship, the employing office may require the employee to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, a birth certificate, a court document, etc. The employing office is entitled to examine documentation such as a birth certificate, etc., but the employee need not submit to the employing office the official document 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 when 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 Americans with Disabilities Act (ADA), as amended and made applicable by Section 501 of the CAA (2 U.S.C. 1311(a)(3)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform one or more essential functions of the employee's position during the absence for treatment.

(b) Statement of functions. An employing office has the option, in requiring certification from any 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 that functions of the employee's position the employee is unable to perform so that the employing office 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 825.306.

825.124 Needed for care to 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 where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological counseling which would be significant 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 or covered servicemember.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member or covered servicemember includes the situation where the substitution of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently because other care is normally available, or care responsibilities are shared with another member of the family or a third party. See 825.202–825.306 for rules governing the use of intermittent or reduced schedule leave.

825.125 Definition of health care provider

(a) The FMLA, as made applicable by the CAA, defines health care provider as:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;

2. Any other person determined by the Office of Compliance to be capable of providing health care services;

3. In making a determination referred to in subparagraph (a)(2), and absent good cause shown to do otherwise, the Office of Compliance will follow any determination made by the Department of Labor (under section 101(b)(5) of FMLA (29 U.S.C. 2611(5)(B))) that a person is capable of providing health care services, provided the determination by the Department of Labor is not made at the request of a person who was then a covered employee.

(b) Others capable of providing health care services include only:

1. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limiting manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

2. Nurse practitioners, nurse-midwives, clinical social workers and physician assistants, and other health care providers authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

3. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable local law or collective bargaining agreement;

4. Any health care provider from whom an employing office determines that an employee is needed to care for a family member or covered servicemember. The group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits under the plan;

5. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law;

6. The phrase authorized to practice in the State as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

825.126 Leave because of a qualifying exigency

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty status or has been notified of an impending deployment to covered active duty status (or has been notified of an impending call or order to covered active duty status).

1. Covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty status) (1) Eligible employees may take FMLA leave for the purpose of caring for a family member or covered servicemember who is on covered active duty status, and who is of any age. Leave taken for this purpose can be for a period of 30 days during a war or national emergency; Section 12305 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in response to the relevant section of Title 10 of the United States Code, which authorizes calling the National Guard and state military forces to Federal service in the case of insurrection or war declared by Congress, and 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. See 10 U.S.C. 101(a)(13)(B).

(i) For purposes of covered active duty or call to covered active duty status, the Reserve components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and reserved members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to other provisions of law identified in paragraph (a)(2).

(ii) The active duty orders of a member of the Regular Armed Forces who is notified of an impending deployment to a foreign country, the specific name of the contingency operation and will specify that the deployment is to a foreign country.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment. (1) To address any issue that arises from the fact that the military member is serving in support of a contingency operation, to address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment; or

2. Deployment of the member with the Armed Forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

4. A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls 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 (a)(2) of this section.

5. Son or daughter on covered active duty or call to covered 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 covered active duty status or call to covered active duty status, and who is of any age.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment. (1) To address any issue that arises from the fact that the military member is serving in support of a contingency operation, to address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment; or

2. Deployment of the member with the Armed Forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

4. A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls 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 (a)(2) of this section.

5. Son or daughter on covered active duty or call to covered 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 covered active duty status or call to covered active duty status, and who is of any age.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment. (1) To address any issue that arises from the fact that the military member is serving in support of a contingency operation, to address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment; or

2. Deployment of the member with the Armed Forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

4. A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls 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 (a)(2) of this section.

5. Son or daughter on covered active duty or call to covered 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 covered active duty status or call to covered active duty status, and who is of any age.
(3) Childcare and school activities. For the purposes of leave for childcare and school activities listed in (i) through (iv) of this paragraph, a child of the military member must be the member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under 18 years of age, 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. As with all instances of qualification for leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave:

(i) To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the 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 due to the member's active duty status.

(ii) To make or update financial or legal arrangements to address the military member's absences while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signatures, or preparing or updating a will or living trust.

(iii) To attend meetings with staff at a care facility, such as meetings with school counselors, for a child of the military member, when the need to provide such care arises from the covered active duty status or call to covered active duty status of the military member.

(iv) To attend meetings with staff at a care facility, such as meetings with school counselors, for a child of the military member, when the need to provide such care arises from the covered active duty status or call to covered active duty status of the military member.

(4) Financial and legal arrangements. (i) To make or update financial or legal arrangements to address the military member's absences while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signatures, or preparing or updating a will or living trust.

(ii) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or applying for the receipt of any service benefit to which the military member is entitled due to the military member's covered active duty status or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.

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

(6) Rest and Recuperation. (1) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment.

(2) Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member becomes on short-term, temporary, Rest and Recuperation leave;
(1) Son or daughter of a covered servicemember means the covered servicemember’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) Parent of a covered servicemember means a covered servicemember’s blood relative, stepparent, 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) Next of kin of a covered servicemember means the nearest blood relative, other than the covered servicemember’s spouse, parent, son, or daughter, of the covered servicemember who is of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, 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 relativity to the covered servicemember, all such family members shall be considered the covered servicemember’s next of kin. FMLA leave taken to care for 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 designated 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 designated 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 employing office is permitted to provide confirmation of covered family relationship to the covered servicemember pursuant to 285.122(k).

(e) 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 12-month period described in paragraph (e) of this section begins on the first day the employee takes FMLA leave to care for the closest covered servicemember and ends 12 months after that date, regardless of the method used by the employing office 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 or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) An eligible employee, described in paragraph (e) of this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to up to 26 workweeks of leave to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness. An eligible employee may be entitled to 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 leave to care for the same covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. An eligible employee who takes leave to care for more than one covered servicemember or for a subsequent serious injury or 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 single 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 in paragraph (e) of this section, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following reasons: son, or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee’s own serious health condition; or because of a qualifying exigency. Thus, for example, an eligible employee may, during the single 12-month period, take 16 workweeks of FMLA leave to care for a covered servicemember and 10 workweeks of FMLA leave to care for a child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee has more than 11 workweeks of FMLA leave to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employing office is responsible for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in 825.300. 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 described in paragraph (e) of this section, the employing office 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 described in paragraph (e) of this section must not be designated and counted as FMLA leave for both purposes. An employee may designate leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, a written designation of leave as FMLA leave must take place within the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(3)(i) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on March 1, 2008. Under the method in paragraph (b)(3)(ii) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on June 1, 2008, and four weeks beginning December 1, 2008, the employee would not be entitled to any FMLA leave as described in paragraph (a). 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 (e) of this section, the employing office must designate such leave as leave to care for a covered servicemember pursuant to 825.301(d).

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 26 workweeks of leave during the single 12-month period described in paragraph (e) of this section if the leave is taken for the birth of the employee’s son or daughter and to care for such son or daughter 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 own 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 same reason as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites. On the other hand, if one spouse takes leave to care for a covered servicemember, the other spouse would be entitled to a full 26 workweeks of FMLA leave.

Subpart B—EMPLOYEE LEAVE ENTITLEMENTS UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCREDITABILITY ACT

§ 825.200 Amount of Leave.

(a) Except in the case of leave for care of 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, daughter, or parent with a serious health condition;

(4) Because of a serious health condition that makes the employee unable to perform 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, parent, or other eligible family or household member on covered active duty status (or has been notified of an impending call or order to active duty).

An employing office 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 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 is taken;

(4) A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave as described in paragraph (a).

(c) Under methods in paragraphs (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 of leave at the beginning of the following year. Under the method in paragraph (b)(3)(i) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on March 1, 2008, and four weeks beginning December 1, 2008. A “rolling” 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 workweeks which has been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the last 12 months, an additional four weeks may 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, regarding 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 take) any additional 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 December 1, 2009. Accordingly, employing offices 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 qualification based on how much 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 from January 1 through February 1, and then needs another six weeks in the first four weeks of the leave would be FMLA-protected.

(d) Employing offices will be allowed to choose one of the alternatives in paragraph (b) of this section for the leave entitlements described in paragraph (a) of this section. The employing office may apply consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days written notice to all employees and the transition must take 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 CAA’s FMLA leave requirements.

(2) General rule.

(e) If an employing office 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 employing office may subsequently select and provide written notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employing office may choose an alternative FMLA leave option providing the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the 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 servicemember with a serious injury or illness. An employing office shall determine the single 12-month period in which the 26 weeks of leave entitlement described in this paragraph occurs using the 12-month period measured forward from the date an employee’s first FMLA leave begins. See 825.127(c)(1). The same employing office must provide the maximum weeks of FMLA leave for any qualifying reason. See 825.127(c)(3).

(g) 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 employer’s FMLA entitlement under the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employing office’s business activity has temporarily ceased and employees generally are not expected to report for work on one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office’s activities have not count against the employee’s FMLA leave entitlement. Methods for determining an employee’s 12-week leave entitlement are also described in 825.202.

(k) If employing offices jointly employ an employee, and if they designate a primary employing office pursuant to 825.106(c), the primary employing office may choose any one of the alternatives in paragraph (b) of this section for measuring the 12-month period. If the primary employing office becomes the employing office for purposes of the application of paragraphs (d) and (e) of this section.

825.201 Leave to care for a parent.

(a) General rule. A 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 the FMLA. See 825.122(c) for definition of parent.

(b) Same employing office limitation. Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 12 workweeks of FMLA leave during the FMLA leave period. A pregnant employee may take leave intermittently or on a reduced leave schedule. An employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not suffering enough to work. FMLA leave may be taken for absences where the employee is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition or a serious injury or illness of a covered servicemember, even if he or she is not employed by a health care provider. See 825.113 and 825.127.

(c) Birth or placement. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care by the employee or the employee’s spouse, the employee is entitled only if the employing office agrees. Such a standard leave must occur for at least six weeks from the date the child is placed with the employee. The employing office’s agreement is required to be in writing. A leave of absence for the birth of a child or, in the case of adoption or foster care, a leave taken in connection with the placement of a child occurs for the first four weeks of the leave authorized by the FMLA. See 825.202.

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 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, to less than the employee’s schedule for a period of time, normally from full-time to part-time.

(b) Medical necessity. For intermittent leave or leave on a reduced leave schedule, taken because of one’s own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated by a reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition and in the case of the employee or the employee’s family member, of a serious injury or illness, if required by the employing office, addresses the medical necessity of intermittent

leave or leave on a reduced leave schedule. See 825.306, 825.310. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or urgent medical treatment of a serious health condition or of a covered servicemember’s serious injury or illness, or for recovery from treatment or recovery from a serious health condition or of a covered servicemember’s serious injury or illness. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition or a covered servicemember with a serious injury or illness.

(1) Intermittent leave may be taken for a serious health condition of a parent, son, or daughter, for the employee’s own serious health condition, or for a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. For care of a covered family member, leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of up to six weeks. FMLA leave for other purposes, for example, a pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe medical symptoms due to pregnancy, or for the placement of a child for adoption or foster care. An employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not suffering enough to work. FMLA leave may be taken for absences where the employee is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition or a serious injury or illness of a covered servicemember, even if he or she is not employed by a health care provider. See 825.113 and 825.127.

(c) Birth or placement. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care by the employee or the employee’s spouse, the employee is entitled only if the employing office agrees. Such a standard leave must occur for at least six weeks from the date the child is placed with the employee. The employing office’s agreement is required to be in writing. A leave of absence for the birth of a child or, in the case of adoption or foster care, a leave taken in connection with the placement of a child occurs for the first four weeks of the leave authorized by the FMLA. See 825.202.

825.203 Scheduling of intermittent or reduced leave schedule.

Eligible employees may take FMLA leave on an intermittent or reduced schedule when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. See 825.202. Eligible employees may take FMLA leave on an intermittent or reduced schedule when necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a request to the employing office to schedule the treatment so as not to disrupt the employing office’s operations.

S6723

September 16, 2015

Congressional Record — Senate
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 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 a serious health condition, then the employee's FMLA entitlement must be counted using an increment no greater than the shortest period of time that the employee uses to account for use of other forms of leave to account for the FMLA leave in one hour increments. An employing office must provide such leave in either one-half hour or one hour increments no greater than one hour. Employing offices must account for the leave using the smallest increment used on a reduced leave schedule, the employee takes FMLA leave on an 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 825.601 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 and FMLA regulations, as made applicable by the CAA. Transfer to an alternative position may include making the 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. See 825.601 for special rules applicable to instructional employees of schools.

Minimum increment. (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule, the employing office may account for FMLA leave in increments of one-half hour, then FMLA leave use must be accounted for using increments no larger than one-half hour. An employing office 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 equal the pay and benefits of the employee's regular position. The employing office may increase the pay and benefits of an existing alternative position, so long as to make them equivalent to the pay and benefits of the employee's regular position. The employing office may also transfer the leave 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 medicinally necessary. For example, an employee desiring to take leave in increments of one hour per day could be transferred to a half-time job, or could remain in the employee's same part-time schedule, provided the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which are specifically designed for part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office reduces the employee's leave schedule to base such benefits on the number of hours worked.

(f) Awarding of leave. An employing office 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 menial 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 have to work at a field work site; an employee assigned to perform laborer's work; an employee working the day shift may not work the night shift. An employing office may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for leave, provided the leave is counted using the shortest increment of leave used to account for any other type of leave. See also 825.205(a)(2) for the physical impossibility exception, and 825.600 and 825.601 for special rules applicable to employees of schools.

Minimum increment. (2) When an employee uses leave in increments of one-half hour, then FMLA leave use must be counted for using increments no larger than one-half hour.

Calculation of leave. (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule, the employing office may account for FMLA leave in increments of one-half hour, then FMLA leave use must be accounted for using increments no larger than one-half hour. An employing office 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 equal the pay and benefits of the employee's regular position. The employing office may increase the pay and benefits of an existing alternative position, so long as to make them equivalent to the pay and benefits of the employee's regular position. The employing office may also transfer the leave 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 medicinally necessary. For example, an employee desiring to take leave in increments of one hour per day could be transferred to a half-time job, or could remain in the employee's same part-time schedule, provided the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which are specifically designed for part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office reduces the employee's leave schedule to base such benefits on the number of hours worked.

(f) Awarding of leave. An employing office 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 menial 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 have to work at a field work site; an employee assigned to perform laborer's work; an employee working the day shift may not work the night shift. An employing office may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for leave, provided the leave is counted using the shortest increment of leave used to account for any other type of leave. See also 825.205(a)(2) for the physical impossibility exception, and 825.600 and 825.601 for special rules applicable to employees of schools.

Minimum increment. (2) When an employee uses leave in increments of one-half hour, then FMLA leave use must be counted for using increments no larger than one-half hour.
employee (under regulations issued by the Board, at part 541), providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exempt status that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount prescribed in regulations, complying office may make deductions from the employee’s salary for any hours taken as intermittent or reduced FMLA leave within a workweek affecting the employee’s exempt status. The fact that an employing office provides FMLA leave, whether or not it obtains the required record regarding FMLA leave, will not be relevant to the determination whether an employee is exempt within the meaning of the Board’s regulations at part 541.

(b) For an employee paid in accordance with a fluctuating workweek method of payment for overtime, where permitted by section 207 of the CAA (2 U.S.C. 1313), the employing office, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee’s regular rate for hours of overtime. The normal or average rate shall be determined by dividing the employee’s weekly salary by the employee’s normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee’s compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

(c) The exception to the salary basis requirements of the FLSA exemption or fluctuating workweek payment requirement applies only to employees of covered employers who are eligible for FMLA leave, and to leave which qualifies as FMLA leave. Hourly or other deductions which are not in accordance with the Board’s FLSA regulations, or with a provision of the fluctuating workweek method of payment for overtime may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave who is laid off or potentially affecting the employee’s eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee’s pay, in accordance with FLSA requirements, as made applicable by the CAA, or may take such deductions, as described in paragraph (b) of this section, for the employee’s own sick leave and pay overtime premium pay for hours worked over 40 in a workweek.

825.207 Substitution of paid leave.

(a) Generally, FMLA leave is unpaid. However, under the policies described in this section, FMLA, as made applicable by the CAA, as permitted by the employing office or may be substituted for FMLA leave. Employing offices may choose to substitute accrued paid leave for FMLA leave. If the employing office requires the substitution of accrued paid leave, the employing office may require the employee to substitute paid leave for FMLA leave. The requirement that the paid leave provided by the employing office, and accrued pursuant to established policies of the employing office, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employing office’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 employing office’s normal leave policy. When an employing office requires, substitution of accrued paid leave, the employer must ensure the employee is given any previously accrued sick leave and leave policy only in connection with the receipt of the receipt of such payment. See §235.300(c).

(b) If neither the employee nor the employing office 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 employing office’s plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the use of the paid leave will not count against the employee’s FMLA leave entitlement. For example, paid sick leave used for a medical condition or paid leave used for a medical 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 in §251.112 through §251.115. In such cases, the employing office may designate the leave as FMLA leave and count the leave against the employee’s FMLA leave entitlement. For example, paid sick leave used for a medical condition or serious injury or illness does not count against the employee’s FMLA leave entitlement.

(e) 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 in §251.112 through §251.115. In such cases, the employing office may designate the leave as FMLA leave and count the leave against the employee’s FMLA leave entitlement. For example, paid sick leave used for a medical condition or serious injury or illness does not count against the employee’s FMLA leave entitlement.

(f) Under the FMLA, as made applicable by the CAA, an employing office always has the right to require the employee to take paid or compensate the employee on an hourly basis and pay overtime premium pay for hours worked over 40 in a workweek.

825.208 [Removed and reserved]

825.209 Maintenance of employee benefits.

(a) During any FMLA leave, an employing office must maintain the employee’s coverage under the Federal Employee Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986) for the employee during the period of otherwise unpaid FMLA leave. An employee’s ability to substitute FMLA leave under circumstances which do not qualify as FMLA leave, the use of the paid leave will not count against the employee’s FMLA leave entitlement. For example, paid sick leave used for a medical condition or paid leave used for a medical condition or serious injury or illness does not count against the employee’s FMLA leave entitlement.

(b) If neither the employee nor the employing office 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 employing office’s plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the use of the paid leave will not count against the employee’s FMLA leave entitlement. For example, paid sick leave used for a medical condition or paid leave used for a medical 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 in §251.112 through §251.115. In such cases, the employing office may designate the leave as FMLA leave and count the leave against the employee’s FMLA leave entitlement. For example, paid sick leave used for a medical condition or serious injury or illness does not count against the employee’s FMLA leave entitlement.

(e) 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 in §251.112 through §251.115. In such cases, the employing office may designate the leave as FMLA leave and count the leave against the employee’s FMLA leave entitlement. For example, paid sick leave used for a medical condition or serious injury or illness does not count against the employee’s FMLA leave entitlement.

(f) Under the FMLA, as made applicable by the CAA, an employing office always has the right to require the employee to take paid or compensate the employee on an hourly basis and pay overtime premium pay for hours worked over 40 in a workweek.
285.210 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.

(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 a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment for group health plan premiums. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee for administrative expenses. The employing office may require employees to pay their share of premium payments in any 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 of payments made under COBRA or 5 U.S.C. 8905a, whichever is applicable;

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

(4) The employing office’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 the employee would have been required to pay if the leave had continued to work instead of taking leave; or

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

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. See 285.308(e).

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

(f) An employee who is receiving payments as a result of a workers’ compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking FMLA leave. See 285.207(e).

285.211 Maintenance of benefits under multi-employer health plans.

(a) A multi-employer health plan is a plan to which more than one employing office is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between the employing office or organization(s) and the employing offices.

(b) An employing office under a multi-employer plan must continue to make contributions for employees who are on FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employing offices party to the plan.

(c) During the duration of an employee’s FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of continued employment provided to the employee at the time FMLA leave commenced.

(d) The employee using FMLA leave cannot be required to use banked hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed during the FMLA leave period. If the employee’s FMLA leave entitlement is exhausted:

(1) The employing office may require written notice to the employee that the FMLA leave has been exhausted;

(2) The employing office may require that the employee retroactively within the 15-day period. See 285.206(a).

(3) The employee may be required to return to work.

285.212 Premiums paid by employees on FMLA leave.

(a) If an employee fails to return from leave or continues to work instead of taking leave; or

(3) Premises provided by the employing office that substantial or grievous economic injury will result from his or her absence from work during the FMLA leave period. If the leave has been taken and the employees have been transferred to another position; an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues in leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a key employee (see 285.218) does not return to work, notified by the employing office 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 employing office that the employee does not desire restoration to employment at the end of the leave period. FMLA leave 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 (e.g., holiday pay) is to be determined by the employing office’s established policies, providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).
terminates an employee’s insurance in accordance with this section and fails to re- 
store the employee’s health insurance as re- 
quired by this section upon the employee’s 
return from FMLA leave.

825.213 Employing office recovery of benefit costs.

(a) In addition to the circumstances dis- 
cussed in paragraphs (b) and (c) of this section, is within 30 days from the date of
an employee’s FMLA leave, the employing office may initiate legal action aga 


(b) Conditions to qualify. If an employee is no longer qualified for the position because of
the employee’s inability to attend a neces-
sary course, renew a license, etc., as a re-


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(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office shall be required to follow the established policies or practices for continuing such benefits for other instances of leave without pay. If the applying office has established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

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

(5) An employee on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are eligible for any benefits except where the plan allows only receipt of benefits from the employee's own earnings. For example, if the benefit plan was predicated on a pre-established number of hours worked each year and the employee had not provided sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, 825.209 addresses health benefits.)

(6) Equivalent terms and conditions of employment. An equivalent position must have substantially similar duties, conditions, responses, responsibilities, privileges, and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance) from where the employee had been employed if the employee's original worksite had been closed. For example, if an employee works from a closed worksite to a new worksite in a different city, the employee on leave is entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request for a different worksite schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. An employee cannot be unreasonably denied by the employing office to accept a different position against the employee's wishes.

(5) De minimis exception. The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, titles and conditions of employment does not extend to de minimis, intangible, or unmeasurable aspects of the job.

825.216 Limitation 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 employing office must be able to show that an employee eventually worked 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 employing office's responsibility to continue FMLA leave. An employee who is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement, which is the case here, may be reinstated to the employee's previous position. An employee who is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement, which is the case here, may be reinstated to the employee's previous position. A lesser injury which would constitute substantial and grievous economic injury to the operations of the employing office, not whether the absence of the employee will cause substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without the employee) on FMLA leave. If permanent replacement of the employee is necessary, the reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in such cases, the time during which the employment office of reinstating the employee in an equivalent position.

A precise test based on the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a key employee threatens the economic viability of the employing office, that would constitute substantial and grievous economic injury. A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course 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 825.217.

825.217 Key employee, general rule.

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

(b) The term salaried means paid on a salary basis, within the meaning of the Board’s regulations published in section 203 of the CAA (2 U.S.C. 1313), regarding employees who may qualify as exempt from the minimum wage and overtime requirements under the CAA, as executive, administrative, and professional employees.

(c) A key employee must be among the highest paid 10 percent of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employing office within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, 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.

(2) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to the employee's original position will cause substantial and grievous economic injury to the employing office. For example, if an employee were among the highest paid 10 percent and was required to return to work, the employer would be required to replace the employee on the same basis as if he or she had been continuously employed.

(3) If an employee was hired for a specific project, the employing office has an obligation to restore the employee to the employee's original position.

(4) FMLA does not prohibit an employing office from requiring an employee to provide a fitness-for-duty certificate to return to work. An employing office may deny restoration to an employee who fails to provide a fitness-for-duty certificate.

(5) If a shift has been eliminated, or overtime hours have been reduced, the employing office is required to follow established policies for returning employees to their original position. The requirement that the employing office return an employee to the same or a substantially similar position because of essential function of the position because of substantial and grievous economic injury standard is different from and more stringent than the undue hardship test under the ADA. See 825.217.

(6) When an employee is restored to the employee's original position, an employing office shall not allow the employee to work for one employing office for a specific time period, and after that time period has ended, the work was assigned to another employing office, the successor employing office may be required to restore the employee if it is a successor employing office. See 825.210.

(b) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees if any employee (current or former) who is hired or employed during the time the employee gives notice of the need for leave. No more than one percent of the employees employed by the employing office within 75 miles of the worksite may be key employees.

825.218 Substantial and grievous economic injury.

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause substantial and grievous economic injury to the employing office. In such cases, the time during which the employment office would experience in the normal course would certainly not constitute substantial and grievous economic injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without the employee) on FMLA leave. If permanent replacement of the employee is necessary, the reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in such cases, the time during which the employment office would experience in the normal course would certainly not constitute substantial and grievous economic injury.

(c) A key employee must be among the highest paid 10 percent of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employing office within 75 miles of the worksite.

(d) FMLA's substantial and grievous economic injury standard is different from and more stringent than the undue hardship test under the ADA. See 825.219.

825.219 Rights of a key employee.

(a) An employing office that believes that reinstatement may be denied to a key employee, an employee must give written notice to the employing office 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 employee must also fully inform the employer of the potential consequences with respect to reinstatement and
maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office’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 need for a right to delay reinstatement after FMLA leave and, therefore, there would be no need to provide such notice. The employing office may not fail 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 employing office 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 employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to the employee after the conclusion of the leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employee must serve the employee either in person or by certified mail. This notice must explain the basis for the employing office’s finding that substantial and grievous economic injury to the office will result. And, if leave has commenced, must provide the employee a reasonable time in which to return, taking into account the circumstances, such as the employee’s absences and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work upon the receipt of the employing office’s notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office must determine if the employee is still entitled to receive reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office’s notice. The employing office must notice the employee whether it will be able to provide reinstatement or if the employing office 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 receive reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office’s notice. The employing office must provide the employee notice of whether it will be able to provide reinstatement or if the employing office actually denies reinstatement by the employee in writing (in person or by certified mail) of the denial of restoration.

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

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee’s rights under the FMLA, and with legal proceedings relating to an employee’s rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA, as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA, as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information to the FMLA ombudsman concerning the employee’s rights under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights guaranteed under the FMLA, as made applicable by the CAA; prohibitions of the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights guaranteed under the FMLA, as made applicable by the CAA; prohibitions of the CAA.

(c) The FMLA’s prohibition against interfering with an employee’s rights under the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights guaranteed under the FMLA, as made applicable by the CAA; prohibitions of the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights guaranteed under the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights guaranteed under the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights guaranteed under the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights guaranteed under the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, 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CAA, or of these regulations constit...
any situation in which it is obligated to do so in 825.300(a)(4).

(3) If, at the time an employee provides notice of a subsequent need for FMLA leave during the 12-month period following a different FMLA-qualifying reason, and the employee’s eligibility status has not changed, no additional eligibility notice is required, but the employee’s eligibility status may have changed (e.g., if the employee has not met the hours of service requirement in the 12 months preceding the commencement of FMLA leave for the subsequent qualifying reason), the employing office must notify the employee of the change in eligibility status within five business days, absent extraordinary circumstances.

(c) Rights and responsibilities notice. (1) Employing offices shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The employing office is obligated to translate this notice in any situation in which it is obligated to do so in 825.300(a)(4).

This notice shall be provided to the employee each time the eligibility notice is provided (see paragraph (b) of this section). If leave has already begun, the notice should be mailed to the employee’s address of record. Such specific notice must include:

(i) That the leave may be designated and counted against the employee’s annual FMLA leave entitlement if qualifying (see 825.300), and the amount of leave taken within the 12-month period for FMLA entitlement (see 825.127(c), 825.200(b), (f), and (g));

(ii) Any requirements for the employee to furnish the employing agency with evidence of the employee’s ability to perform and the employee’s status as a key employee (see 825.210), and the employee’s potential liability for any of the information in the notice of rights and responsibilities (see 825.400).

(iii) The employee’s right to substitute paid leave, whether the employing office 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 (see 825.207);

(iv) Any requirement for the employee to make any premium payments to maintain health coverage while on leave, and the arrangements for making such payments (see 825.210), 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 consequences that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see 825.218);

(vi) The employee’s right to maintain medical coverage during FMLA leave which may restor
tion to the same or an equivalent job upon return from FMLA leave (see 825.214 and 825.604); and

(vii) The employee’s potential liability for payment of health insurance premiums paid by the employing office during the employ
eee’s unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see 825.213).

(2) The notice of rights and responsibilities may be furnished in any manner—e.g., whether the employing office 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 any specific information provided by the notice of rights and responsibilities changes, the employing office 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 the new 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 office may need to give notice of the arrangements for making premium payments.

(5) Employing offices may also be expected to respond to inquiries from employees concerning their rights and responsibilities under the FMLA, as made applicable under the CAA.

(6) A prototype notice of rights and responsibilities may be obtained in Form C, or from the Office of Compliance. Employing offices 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 of this section.

(d) Designation notice. (1) The employing office is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employing office has information to determine whether the leave is being taken for a FMLA-qualifying reason (e.g., after receiving a certification), the employing office must determine whether the leave will be designated and be counted as FMLA leave within five business days absent extenuating circumstances.

(i) The notice of designation 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 continuing or intermittent or reduced schedule leave. If the employing office determines that the leave will not be designated as FMLA-qualifying (e.g., if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the employing office must notify the employee of that determination. If the employing office requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employing office must notify the employee of this designation at the time of designating the FMLA leave.

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

(2) The employing office must require the employee to present a fitness-for-duty cer
tification to be readied to employment, the employing office must provide notice of such requirement with the designation notice. If the employing office will require that the employee’s fitness-for-duty certification address the employee’s ability to perform the essential functions of the employee’s position, the employing office must so indicate in the designation notice and must include in the list of the essential functions of the employee’s position. See 825.312. If the employing office’s handbook or other written documents (if any) that describe the employee’s leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances (e.g., by stating that fitness-for-duty certification is required in all cases of back injuries for employees in a certain occupation), the employing office is not required to provide written notice of the requirement of 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 con
tained in Form D or may be obtained from the Office of Compliance. If the leave is not designated as FMLA-qualifying, the employing office may notify the employee whether the leave does not meet the requirements of the FMLA, as made applicable by the CAA, the notice to the employee that the leave is not designated as FMLA-qualifying, and the consequences of any action the employing office shall provide, within five business days of receipt of the employee’s designation notice that the leave is not designated as FMLA-qualifying because it does not meet the requirements of the FMLA, as made applicable by the CAA, the notice to the employee that the leave is not designated as FMLA-qualifying in the form of a simple written statement.

(5) If the information provided by the employing office to the employee in the designation notice changes (e.g., to indicate the employee exhausts the FMLA leave entitlement), the employing office shall provide, within five business days of receipt of the employee’s designation notice, any action required by the employing office to the employee in the designation notice to any change, written notice of the change.

(6) The employing office must notify the employee of the amount of leave counted against the employee’s FMLA leave entitlement. If the amount of leave needed is known at the time the employing office designates the leave as FMLA-qualifying, the employing office must notify the employee of the number of hours, days, or weeks that will be counted against the employee’s FMLA leave entitlement. If it is not known at the time the amount of leave counted against the employee’s FMLA leave entitlement is determined, the employing office must provide notice of the amount of leave counted against the employee’s FMLA leave entitlement within five business days of the request by the employee, but no more 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 leave entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing no later than the following payday or pay period (e.g., the next payday 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 set forth in this section may constitute an inter
erference with, restraint, or denial of the exer
cise of an employee’s FMLA rights. An employ
ing office may be liable for compensa
tion for reasonable attorney’s fees and costs, and for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, in
ccluding reinstatement and/or promotion, or any other relief tailored to the harm suffered. See 825.400(c).
An employee may require an employee to comply with the employee’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employee may require that written notice be given sooner than set forth in paragraph (a) of this section and the anticipated start of the leave. An employee also may be required by an employee’s policy to contact 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 employee’s usual notice and procedural requirements, or 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 if an employee fails to provide notice to be given sooner than set forth in paragraph (a) of this section and the employee provides timely notice as set forth in paragraph (a) of this section. An employee shall provide at least verbal notice sufficient to meet the requirements of this section or, if in writing, the leave request may result in denial of FMLA-qualifying leave. Failure to respond to reasonable employee inquiries regarding the leave request may result in denial of FMLA protection if the employing office is unable to determine whether the leave is FMLA-qualifying.

(f) Scheduling planned medical treatment. When planning medical treatment, the employee must consult with the employee’s employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employee’s operations, subject to the approval of the health care provider. Employers are ordinarily required to consult with their employees prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of the employee and the needs of the employer. For example, if an employee who provides notice of the need to take FMLA

**Note:** The text appears to be a mixture of paragraphs and sections from a legal document, possibly related to the Family and Medical Leave Act (FMLA). The text is fragmented and lacks clear structure, making it challenging to provide a coherent narrative. The sections and paragraphs seem to be cut off or missing context, which hinders the ability to provide a natural reading of the document. The content includes discussions on employee rights, obligations, and the procedures for requesting and taking FMLA leave.
leave on an intermittent basis for medical treatment

employee must specifically reference either the

- employee's needs without unduly disrupting the

- the employing office shall attempt to work out a

- the employing office, upon request, of the

- when the FMLA leave is unforeseeable and an em-

- employees to call a designated number or a spe-

- timing the FMLA-protected leave by two

- 30 days after the date the leave

- the need for FMLA leave is foreseeable at least

- employees to call a designated number or a spe-

- the employee would be expected to call

- a serious injury or illness, or to care for a covered serv-

- the employee or the employee's family mem-

- the employee provides notice. The need for

- the employee's FMLA leave is unforeseeable within the
time prescribed by the employing office's usual and

certification to the employing office if

- the employee or the employee's family member is under the continuing care

- the employee's own serious health condition

- the employee must provide notice to the

- the employee's child has severe asthma

- the employee would be expected to call

- the employee provides notice. The need for

- both the employee and the em-

- the employee provides notice. The need for

- the employee's FMLA leave is foreseeable

- the employee would receive a telephone call about

- an employee's FMLA leave

- the employee's FMLA leave

- the employee would receive a telephone call about

- the employee's FMLA leave

- the employee would receive a telephone call about

- the employee provides notice. The need for

- the employee provides notice. The need for

- an employee's FMLA leave

- the employee provides notice. The need for
shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employee has not certificated for any leave or the information provided is vague, ambiguous, or non-responsive. The employing office must provide the employee with seven calendar days to complete and submit the additional information, and the information provided is insufficient if the deficiencies specified by the employee have not been cured or addressed in the submitted certification, the employing office may deny the taking of FMLA leave, in accordance with 29 CFR 825.113. A certification that is not returned to the employing office is not considered incomplete or insufficient, but constitutes a failure to provide certification.

(c) Consequences. At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of the employee’s failure to provide adequate certification. If the employee fails to provide the employing office with a complete and sufficient medical certification despite the opportunity to cure the certification as provided in paragraph (c) of this section, or to provide any additional information or certifications, the employing office may deny the taking of FMLA leave, in accordance with 29 CFR 825.113. It is the employee’s responsibility either to furnish a complete and sufficient certification or to furnish the health care provider information necessary to provide 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 employing office to support the employment of FMLA leave. This provision will apply in any case where an employing office 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, 29 CFR 825.306 and 825.308.

(e) 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 (as defined in 29 CFR 825.200), the employing office may 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 29 CFR 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 of the employee’s covered family member, the health care provider must include the following information in the certification:

(1) The medical condition, 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, 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, mental, or other forms of medical therapy), and any other regimen of continuing treatment;

(4) If the employee is the patient, information sufficient to establish that the employee performed 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 29 CFR 825.124), and an estimate of the frequency and duration of the leave required to care for the family member;

(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, as described in 29 CFR 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 periods of such treatments and any periods of recovery;

(7) If an employee requests leave on an intermittent or reduced schedule basis for the employee’s serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity;

(8) If an employee requests leave on an intermittent or reduced schedule basis for care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, as described in 29 CFR 825.124 and 825.203(b), which can include assisting in the family member’s recovery, and an estimate of the frequency and duration of the required leave.

(b) The Office of Compliance has developed two optional forms (Form A and Form B) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA’s certification requirements and may be completed and/or authorized by the health care provider. These forms are modeled closely on Form WH–380E and WH–380F. The Office of Compliance has developed an additional form (Form C) to provide assistance in requesting medical certification for leave taken due to the employee’s serious health condition or the serious health condition of a covered family member for use in obtaining medical certification, including second and third opinions.

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 covered family member; second and third opinions.

(a) Clarification and authentication. If an employee submits a complete and sufficient certification signed by the health care provider, the employing office may not request additional information from the health care provider. However, the employing office may contact the health care provider for purposes of authentication and clarification of the medical certification (whether initial certification or recertification) after the employing office has given the employee an opportunity to cure any deficiencies as set forth in 29 CFR 825.200. To make sure the employing office must use a health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the employee’s direct supervisor contact the employee’s health care provider.

For purposes of these regulations, authentication means providing the health care provider with a copy of the document and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document. Additional medical information may be requested. Clarification means contacting the health care provider to understand the hand-written notes or any medical terminology and to understand the meaning of a response. Employing offices may not ask health care providers...
for additional information beyond that re-
quired by the certification form. The re-
quainted Health Insurance Port-
ability and Accountability Act (HIPAA) Pri-
vacy Rule, 45 CFR parts 160 and 164, which
provides for the appointment of a family
member of specialists in the appropriate field pro-
vided by the employee and whom the em-
ployee has not previously consulted may be fail-
ing to act in good faith. In addition, the con-
sequences set forth in 825.305(d) will apply if
the employee or the family member fails to authorize his or her health care
care provider to release all relevant medical
information pertaining to the serious health
condition at issue if requested by the healthy care provider des-
ignated to provide a second opinion in order to render a sufficient and complete second opinion.

(2) The employing office is permitted to designate the health care provider to furnish the family member fails to authorize his or her health care provider to release all relevant information pertaining to the serious health condition at issue if requested by the health care provider des-
ignated to provide a second opinion in order to render a sufficient and complete second opinion.

(a) 30-day rule. An employing office may re-
quest certification no more than three times, every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.

(b) More than 30 days. If the medical certifi-
cation indicates that the period of time for which the employee must wait until that maximum duration expires before requesting a recer-
tification, unless paragraph (c) of this sec-
tion applies, the employing office shall accept a medical cer-
tification by a foreign health care provider in a lan-
guage other than English, the employee must provide the employing office with a written translation of the certification upon request. 825.308 Recertifications for leave taken be-
cause of an employee's own serious health condition or the serious health condition of a family member.

(b) The employee requests extension of
leaves. If the medical certification stated that an employee would
need leave for one to two days when the em-
ployee suffered a migraine headache and the employee's absences for his or her last two migraines lasted four days each, then the in-
crease in the employee's absences would constitute a significant change in circumstances allowing
the employing office to request a recer-
tification in less than 30 days. Likewise, if the employee had a previously scheduled paid FMLA leave for migraines in conjunc-
tion with his or her scheduled days off, then the timing of the absences also might con-
stitute a significant change in circumstances allowing the employing office to request a recertification more frequently than every 30 days.

(d) Copies of opinions. The employing office is permitted to request a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be pro-
vided within 15 days, unless an emergency exists causing the delay.

(e) Travel expenses. If the employing office requires the employee to obtain either a sec-
ond or third opinion the employing office must reimburse an employee or family mem-
ber for any reasonable ‘‘out of pocket’’ travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting circumstances in order to request a second or third medical opinions except in very un-
usual circumstances.

(f) Medical condition abroad. In cir-
stances in which the employee or a fam-
ily member is visiting in another country, or a family member resides in another country, and has a serious health condition, the
employing office shall provide a medical cer-
tification as well as second and third op-
inions from a health care provider who prac-
tices in the same area of specialty in the
language the employee must provide the health care provider with a written translation of the certification upon request.
duty) of the same or a different military member;
(b) Required information. An employing office may require that leave for any qualifying exigency be supported by a certificate from the authorized health care provider of the servicemember. For purposes of leave taken to care for a covered servicemember, a statement or description of appropriate medical facts regarding the covered servicemember’s health condition for which FMLA leave is requested.

285.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).
(a) Required information from health care provider. When leave is taken to care for a covered servicemember with a serious injury or illness, an employing office may require an employee to support leave requests with the appropriate health care provider. For purposes of leave taken to care for a covered servicemember, the appropriateness of the health care provider’s certification must be sufficient to support the need for leave.

(b) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or more, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
(c) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran’s ability to secure or retain substantially gainful occupation by reason of a disability or disabilities related to military service, or would do absent treatment.

(D) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(5) Information sufficient to establish that the covered servicemember is in need of care, as described in §25.124, and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time.

(E) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments.

(7) If an employee requests leave on an intermittent or reduced schedule basis for care for a covered servicemember other than for planned medical treatment (e.g., episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember’s recovery, and an estimate of the frequency and duration of the periodic care.

(c) Required information from employee and/or covered servicemember. In addition to the information that may be requested under §25.310(b), an employing office may also request that such certification set forth the following information provided by an employing office:

(1) The name and address of the employing office.
(2) The relationship of the employee to the covered servicemember.
(3) The covered servicemember’s military branch, rank, and current duty status.
(4) Whether the covered servicemember is a current member of the Armed Forces, the National Guard or Reserves, and the covered servicemember’s military branch, rank, and current unit assignment.
(5) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit.
(6) Whether the covered servicemember is on the temporary disability retired list; and whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employing office may also require that the employer provide documentation issued by the military which indicates that the covered servicemember is
a veteran, the date of separation, and that the separation is other than dishonorable. Where an employing office requires such documentation, an employee may provide a copy of the Certificate of Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status. See 825.127(c)(2).

(7) A description of the care to be provided to the covered servicemember and an estimate of the time to provide such care.

(d) The Office of Compliance has developed an optional form (Form F) for employees’ use in obtaining certification that meets FMLA certification requirements (see Form F). This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support a request for leave to care for a covered servicemember with a serious injury or illness. Form F, or Form WH-385 (developed by the Department of Labor), or another form containing the same basic information, may be used by the employing office; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for FMLA leave arises. Certification and/or clarification of the certification under 825.307. However, second and third opinions under 825.307 are not permitted for leave to care for a covered servicemember. Additionally, recertifications under 825.308 are not permitted for leave to care for a covered servicemember. An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation. An employing office may also require an employee to provide documentation, such as a veteran’s Form DD-214, showing that the discharge was other than dishonorable and the date of the veteran’s discharge.

(3) The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(4) An employing office may request an employee to provide medical certification that makes the employee unable to perform the essential functions of the employee’s job. In order to require such a certification, the employing office must provide the employee with a list of the essential functions for which FMLA leave was taken. The employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the employee with the notification required by 825.300(d) of this section. If an employing office provides the notice required, an employee who does
not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. See 825.313(d).

(4) A disability or health condition is not a serious health condition if it prevents the employee from performing one or more of the essential functions of the employee's regular position. These special rules do not apply to, teacher assistants or aides who do not have as their principal job functions of counselors, psychologists, or curriculum specialists. It also does not include cafeteria work, maintenance work, custodian or driver work, or other work not related to the core functions of education. Educational institutions are covered by FMLA, as made applicable by the CAA (and these special rules). The usual requirements for employees to be eligible do apply.

(2) These rules apply only to a leave in- in the daily coverage for reduced schedule leave. The remaining requirements for intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (ten weeks), by instructional employees. Instructional employees are those whose principal function is to teach and instruct students in a class, a small group, or an individual. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. These special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor do they include auxiliary personnel such as counselors, psychologists, or curriculum specialists. See also 825.400 Enforcement of FMLA rights, as made applicable by the CAA.

(a) To commence a proceeding, a covered employee alleging a violation of the rights and protections of the FMLA, made applicable by the CAA, must request counseling by the Office of Compliance not later than 180 days after the date of the alleged violation. If a covered employee fails to make this deadline, the covered employee will be unable to obtain a remedy under the CAA.

(b) The following procedures are available under the CAA to covered em- ployees who believe that their rights under FMLA, as made applicable by the CAA, have been violated:

(1) counseling;
(2) mediation; and
(3) election of either—
(A) a formal complaint, filed with the Office of Compliance and subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or
(B) a civil action in a district court of the United States.

(c) Regulations of the Office of Compliance describing and governing these procedures are found at www.compliance.gov.
The entire period of leave taken will count as leave taken for purposes of leave entitlement. The employing office has the option not to require the employee to stop work during the term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave. The employee shall be required to maintain the employee’s group health insurance and restore the employee to the same or equivalent job including other employment benefit programs. The employee’s “serious health condition”...
(2) A qualified individual with a disability who is also an eligible employee entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count toward FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee will be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA’s provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided to the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office’s FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time, by assigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. See 29 C.F.R. 226(h).

(2) An employee may be on a workers’ compensation absence due to an on-the-job injury or illness, which also qualifies as a serious health condition under FMLA. The workers’ compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers’ compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to work in a light duty position. If the employing office offers such a position, the employee is permitted but not required to accept the position. See 29 C.F.R. 220(h). As a result, the employee may no longer qualify for payments from the workers’ compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. See 29 C.F.R. 220(e).

(e) If the employee returning from the workers’ compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(f) If an employing office requires certifications of an employee’s fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employers to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employing office (and, therefore, not an “eligible” employee under FMLA, as made applicable by the CAA) may not be denied maternity leave if the employing office normally provides short-term disability benefits to employees who are also serving in the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301, et seq., veterans are entitled to 30 days of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employing office during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. See 29 C.F.R. 210(b)(2)(i) and (c)(2) and 29 C.F.R. 210(c).

(h) For further information on Federal antdiscrimination laws applied by section 203 of the CAA (2 U.S.C. 1311), including Title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Compliance.

Endnotes

1. In contrast, the committee report accompanying the bill containing the ADA Amendments Act of 2008 complied with section 102(b)(3) of the CAA and contained a provision that indicated an intent to apply the ADA Amendments to the legislative branch. Committee on Education and Labor, H.Rpt. 110-730 (2008).

2. By regulation, the Board can require employing offices to provide the additional rights and protections for servicemembers and their families added to the FMLA since 1996. This is because, unlike executive branch agencies, the rulemaking power of the Board (after Congressional approval) is “an exercise of the rulemaking power of the House of Representatives and the Senate” under the Constitution. 2 U.S.C. §1431(1). The rulemaking power of Congress under the Constitution, U.S. Const. Art. 1, §5, cl. 2, is a “broad grant of authority” that allows each house of Congress to determine its own internal rules bounded only by “constitutional restraints and fundamental rights.” Consumers Union of U.S., Inc. v. Periodical Correspondents’ Ass’n, 515 F.2d 1341, 1343 (D.C. Cir. 1975); United States v. Ballin, 144 U.S. 1, 5 (1892).
Certification of Health Care Provider for Employee's Serious Health Condition
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.306-825.308. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

Employing office name and contact: __________________________

Employee's job title: __________________________ Regular work schedule: __________________________

Employee's essential job functions: __________________________

Check if job description is attached: ☐

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employing office, your response is required to obtain or retain the benefit of FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. OOC regulations at 825.313. Your employing office must give you at least 15 calendar days to return this form. OOC regulations at 825.305(b).

Your Name: __________________________

First Middle Last

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA, as made applicable by the CAA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests
as defined in 29 C.F.R §1635.3(f), genetic services, as defined in 29 C.F.R. §1635.3(e), or the manifestation of
disease or disorder in the employee's family members, 29 C.F.R. §1635.3(b). Please be sure to sign the form on the
last page.

Provider's name and business address: __________________________________________________________

Type of practice / Medical specialty: _____________________________________________________________

Telephone: (_____) _______ - ______________ Fax: (_____) _______ - ______________

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____________________________________________________

   Probable duration of condition: ____________________________________________________________

   Mark below as applicable:

   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
   ☐ No  ☐ Yes   If so, dates of admission:

   __________________________________________________________

   Date(s) you treated the patient for condition:

   __________________________________________________________

   Will the patient need to have treatment visits at least twice per year due to the condition?  ☐ No  ☐ Yes

   Was medication, other than over-the-counter medication, prescribed?  ☐ No  ☐ Yes

   Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
   ☐ No  ☐ Yes   If so, state the nature of such treatments and expected duration of treatment:

   __________________________________________________________

2. Is the medical condition pregnancy?  ☐ No  ☐ Yes   If so, expected delivery date:_______________________

3. Use the information provided by the employing office in Section I to answer this question. If the employing
office fails to provide a list of the employee's essential functions or a job description, answer these questions
based upon the employee's own description of his/her job functions.

   Is the employee unable to perform any of his/her job functions due to the condition:  ☐ No  ☐ Yes

   If so, identify the job functions the employee is unable to perform:

   __________________________________________________________

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such
medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of
specialized equipment):

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________
PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? □ No □ Yes

If so, estimate the beginning and ending dates for the period of incapacity: ____________________________

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? □ No □ Yes

If so, are the treatments or the reduced number of hours of work medically necessary? □ No □ Yes

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

____ hour(s) per day; _____ days per week from _____________ through ___________________

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? □ No □ Yes

Is it medically necessary for the employee to be absent from work during the flare-ups? □ No □ Yes

If so, explain: ____________________________________________________________

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.
Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification of Health Care Provider
for Family Member's Serious Health Condition
(Family and Medical Leave Act, as made applicable
by the Congressional Accountability Act)

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.306-825.308. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

Employing office name and contact: __________________________________________

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employing office, your response is required to obtain or retain the benefit of FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. OOC regulations at 825.313. Your employing office must give you at least 15 calendar days to return this form to your employing office. OOC regulations at 825.305(b).

Your Name: ________________________________________________________________

First Middle Last

Name of family member for whom you will provide care: __________________________

First Middle Last

Relationship of family member to you: __________________________________________

If family member is your son or daughter, date of birth: __________________________

Describe care you will provide to your family member and estimate leave needed to provide care:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________
SECTION III: FOR COMPLETION BY THE HEALTH CARE PROVIDER

INSTRUCTIONS TO THE HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA, as made applicable by the CAA, to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests as defined in 29 C.F.R §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider’s name and business address: __________________________ __________________________

Type of practice / Medical specialty: __________________________ __________________________

Telephone: ( _______ ) _______ - __________ Fax: ( _______ ) _______ - __________

PART A: MEDICAL FACTS

1. Approximate date condition commenced: __________________________

Probable duration of condition: __________________________

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?  
☐ No ☐ Yes If so, dates of admission: __________________________

Date(s) you treated the patient for condition: __________________________

Was medication, other than over-the-counter medication, prescribed?  ☐ No ☐ Yes

Will the patient need to have treatment visits at least twice per year due to the condition?  ☐ No ☐ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?  
☐ No ☐ Yes If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy?  ☐ No ☐ Yes If so, expected delivery date: __________________________

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

________________________________________________________________________________________

________________________________________________________________________________________
PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient’s need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery?  □ No  □ Yes

Estimate the beginning and ending dates for the period of incapacity: ________________________________

During this time, will the patient need care?  □ No  □ Yes

Explain the care needed by the patient and why such care is medically necessary: ________________________________

5. Will the patient require follow-up treatments, including any time for recovery?  □ No  □ Yes

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Explain the care needed by the patient, and why such care is medically necessary: ________________________________

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery?  □ No  □ Yes

Estimate the hours the patient needs care on an intermittent basis, if any:

________ hour(s) per day; ________ days per week from ___________ through ___________

Explain the care needed by the patient, and why such care is medically necessary: ________________________________
7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? □ No □ Yes

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s)
Duration: _____ hours or _____ day(s) per episode
Does the patient need care during these flare-ups? □ No □ Yes

Explain the care needed by the patient, and why such care is medically necessary:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Notice of Eligibility Rights and Responsibilities
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

In general, to be eligible a covered employee must have worked for an employing office for at least 12 months and have worked at least 1,250 hours in the 12 months preceding the leave. While use of this form by employing offices is optional, a fully completed form provides employees with the information required by the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.300(b), which must be provided within five business days of the employee notifying the employing office of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by the Board’s FMLA regulations at 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____________________________________________

Employee

FROM: _____________________________________________

Employing Office Representative

DATE: ___________________________________________________________________

On ______________________, you informed us that you needed leave beginning on ______________________ for:

☐ The birth of a child, or placement of a child with you for adoption or foster care;

☐ Your own serious health condition;

☐ Because you are needed to care for your ☐ spouse; ☐ child; ☐ parent due to his/her serious health condition.

☐ Because of a qualifying exigency arising out of the fact that your ☐ spouse; ☐ son or daughter; ☐ parent is on covered active duty or call to covered active duty status with the Armed Forces.

☐ Because you are the ☐ spouse; ☐ son or daughter; ☐ parent; ☐ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

☐ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)

☐ Are not eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
  ☐ You have not met the FMLA’s 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _______ months towards this requirement.
  ☐ You have not met the FMLA’s 1,250-hours-worked requirement.

If you have any questions, contact: ________________________________ or view the FMLA poster located in ________________________________.
PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by __________. (If a certification is requested, employing offices must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

☐ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request ___ is/____ is not enclosed.

☐ Sufficient documentation to establish the required relationship between you and your family member.

☐ Other information needed (such as documentation for military family leave): __________________________

☐ No additional information requested

If your leave does qualify as FMLA leave, you will have the following responsibilities while on FMLA leave (only checked blanks apply):

☐ Contact _____________________ at _____________________ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

☐ You will be required to use your available paid ___ sick, ___ vacation, and/or ___ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

☐ Due to your status within the company, you are considered a “key employee” as defined in the FMLA. As a “key employee,” restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We ___ have/____ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

☐ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____________________. (Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

• You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
☐ the calendar year (January – December).

☐ a fixed leave year based on ____________________________.

☐ the 12-month period measured forward from the date of your first FMLA leave usage.

☐ a “rolling” 12-month period measured backward from the date of any FMLA leave usage.

• You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on ____________________________.

• Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.

• You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)

• If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember’s serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

• If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have ___ sick, ___ vacation, and/or ___ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

☐ For a copy of conditions applicable to sick/vacation/other leave usage please refer to ____________________________ available at: ____________________________.

☐ Applicable conditions for use of paid leave: ____________________________

                                     ____________________________
                                     ____________________________
                                     ____________________________
                                     ____________________________

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact: ____________________________ at ____________________________.
Leave covered under the Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), must be designated as FMLA-protected and the employing office must inform the employee of the amount of leave that will be counted against the employee’s FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employing office may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employing office must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employing offices is optional, a fully completed form provides an easy method of providing employees with the written information required by the regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.300(d), 825.301, and 825.305(c).

To: ______________________________________

Date: _____________________________________

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on ____________________________ and decided:

___ Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

___ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: ____________________________.

___ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

___ You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will count against your FMLA leave entitlement.

___ We are requiring you to substitute or use paid leave during your FMLA leave.

___ You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position ___ is ___ is not attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

___ Additional information is needed to determine if your FMLA leave request can be approved:

___ The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than ______________________.

   (Provide at least seven calendar days) unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

   (Specify information needed to make certification complete and sufficient)
We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

Your FMLA Leave request is Not Approved.

The FMLA does not apply to your leave request.

You have exhausted your FMLA leave entitlement in the applicable 12-month period.
Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification of Qualifying Exigency for
Military Family Leave
(Family and Medical Leave Act, as made applicable by the
Congressional Accountability Act)

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA leave due to a qualifying exigency to submit a certification. Please complete Section I before giving this form to your employee. Your response is voluntary, and while you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.309.

Employing office name: ________________________________

Contact Information: ________________________________

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II fully and completely. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. OOC regulations at 825.310. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. Your employing office must give you at least 15 calendar days to return this form to your employing office.

Your Name: ____________________________________________

First Middle Last

Name of military member on covered active duty or call to covered active duty status:

___________________________ ____________________________

First Middle Last

Relationship of military member to you: ________________________________

Period of military member’s covered active duty:

__________________________________________________________

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a military member’s covered active duty or call to covered active duty status. Please check one of the following and attach the indicated document to support that the military member is on covered active duty or call to covered active duty status.

___ A copy of the military member’s covered active duty orders is attached.

___ Other documentation from the military certifying that the military member is on covered active duty (or has been notified of an impending call to covered active duty) is attached.

___ I have previously provided my employing office with sufficient written documentation confirming the military member’s covered active duty or call to covered active duty status.
PART A: QUALIFYING REASON FOR LEAVE

1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming the military member’s Rest and Recuperation leave; a document confirming an appointment with a third party, such as a counselor or school official, or staff at a care facility; or a copy of a bill for services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached.

Yes ☐ No ☐ None Available ☐

PART B: AMOUNT OF LEAVE NEEDED:

1. Approximate date exigency commenced: ____________________________

Probable duration of exigency: ____________________________

2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency? ☐ Yes ☐ No

If so, estimate the beginning and ending dates for the period of absence:

________________________________________________________________________

3. Will you need to be absent from work periodically to address this qualifying exigency? ☐ Yes ☐ No

Estimate schedule of leave, including the dates of any scheduled meetings or appointments:

________________________________________________________________________
________________________________________________________________________

Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (i.e., 1 deployment-related meeting every month lasting 4 hours):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours _____ day(s) per event.

PART C:

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school, childcare or parental care providers, to make financial or legal arrangements, to act as the military member’s representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact...
information of the individual or entity with whom you are meeting (i.e., either the telephone or fax number or email address of the individual or entity). This information may be used by your employing office to verify that the information contained on this form is accurate.

Name of Individual: ___________________________ Title: ___________________________

Organization: __________________________________________

Address: ____________________________________________

Telephone: (____) ___________________________ Fax: (____) ___________________________

Email: ____________________________________________

Describe nature of meeting: ____________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

PART D:

I certify that the information I provided above is true and correct.

Signature of Employee ___________________________ Date: ___________________________
Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification for Serious Injury or Illness of a Current Servicemember — for Military Family Leave
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA leave due to a serious injury or illness of a current servicemember to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.310. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

SECTION I: For Completion by the EMPLOYEE or CURRENT SERVICEMEMBER for whom the Employee is Requesting Leave

INSTRUCTIONS to the EMPLOYEE or CURRENT SERVICEMEMBER: Please complete Section I before having Section II completed. The FMLA, as made applicable by the CAA, permits an employing office to require that an employee submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a serious injury or illness of a servicemember. If requested by the employing office, your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee's FMLA request. Board's regulations at 825.310(f). The employing office must give an employee at least 15 calendar days to return this form to the employing office.

SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in the OOC regulations at 825.125.

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed on Page 2 has requested leave under the FMLA, as made applicable by the CAA, to care for a family member who is a current member of the Regular Armed Forces, the National Guard, or the Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember’s serious injury or illness includes written documentation confirming that the servicemember’s injury or illness was incurred in the line of duty on active duty or if not, that the current servicemember’s injury or illness existed before the beginning of the servicemember’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that the current servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as
to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the servicemember's condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e).

SECTION I: For Completion by the EMPLOYEE and/or the CURRENT SERVICEMEMBER for whom the Employee Is Requesting Leave:

(This section must be completed first before any of the below sections can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and Address of Employing Office (this is the employing office of the employee requesting leave to care for the current servicemember):

Name of Employee Requesting Leave to Care for Current Servicemember:

Name of the Current Servicemember (for whom employee is requesting leave to care):

Relationship of Employee to the Current Servicemember:

☐ Spouse  ☐ Parent  ☐ Son  ☐ Daughter  ☐ Next of Kin

Part B: SERVICEMEMBER INFORMATION

(1) Is the Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves?  
☐ Yes  ☐ No

If yes, please provide the servicemember's military branch, rank and unit currently assigned to:

Is the servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)?

☐ Yes  ☐ No

If yes, please provide the name of the medical treatment facility or unit:

(2) Is the Servicemember on the Temporary Disability Retired List (TDRL)?

☐ Yes  ☐ No
PART C: CARE TO BE PROVIDED TO THE SERVICEMEMBER

Describe the Care to Be Provided to the Current Servicemember and an Estimate of the Leave Needed to Provide the Care:

________________________________________________________

SECTION II: For Completion by a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in the OOC regulations at 825.125.

If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator).

(Please ensure that Section I above has been completed before completing this section. Please be sure to sign the form on the last page.)

**Part A: HEALTH CARE PROVIDER INFORMATION**

Health Care Provider’s Name and Business Address:

________________________________________________________

Type of Practice/Medical Specialty:

________________________________________________________

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private health care provider; or (5) a health care provider as defined in the OOC regulations at 825.125:

________________________________________________________

Telephone: (______) _______ - ________________  Fax: (______) _______ - ________________

Email: ________________________________

**PART B: MEDICAL STATUS**

(1) The current Servicemember’s medical condition is classified as (Check One of the Appropriate Boxes):

☐ **(VSI) Very Seriously Ill/Injured** – Illness/injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **(SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.

☐ **NONE OF THE ABOVE** (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a “serious health condition” under 825.113 of the FMLA,
as made applicable by the CAA. If such leave is requested, you may be required to complete the OOC’s optional certification form (Form B) or an employing office-provided form seeking the same information.)

(2) Is the current Servicemember being treated for a condition which was incurred or gravitated by service in the line of duty on active duty in the Armed Forces? □ Yes □ No

(3) Approximate date condition commenced: ____________________________________________________________

(4) Probable duration of condition and/or need for care: __________________________________________________

(5) Is the servicemember undergoing medical treatment, recuperation, or therapy for this condition? □ Yes □ No

If yes, please describe medical treatment, recuperation or therapy:

_______________________________________________________________________________________________

PART C: Servicemember’s Need for Care by Family Member

(1) Will the servicemember need care for a single continuous period of time, including any time for treatment and recovery? □ Yes □ No

If yes, estimate the beginning and ending dates for this period of time:

_______________________________________________________________________________________________

(2) Will the servicemember require periodic follow-up treatment appointments? □ Yes □ No

If yes, estimate the treatment schedule: ________________________________________________________________

(3) Is there a medical necessity for the servicemember to have periodic care for these follow-up treatment appointments? □ Yes □ No.

(4) Is there a medical necessity for the servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g., episodic flare-ups of medical condition)? □ Yes □ No.

If yes, please estimate the frequency and duration of the periodic care:

_______________________________________________________________________________________________

_______________________________________________________________________________________________

Signature of Health Care Provider: ___________________________ Date: ___________________________
Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Notice to the EMPLOYING OFFICE

The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.310. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees’ family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

SECTION I: For Completion by the EMPLOYEE and/or the VETERAN for whom the employee is requesting leave

INSTRUCTIONS to the EMPLOYEE and/or VETERAN: Please complete Section I before having Section II completed. The FMLA, as made applicable by the CAA, permits an employing office to require that an employee submit a timely, complete, and sufficient certification to support a request for military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran. If requested by the employing office, your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee’s FMLA request. OOC regulations at 825.310(g). The employing office must give an employee at least 15 calendar days to return this form to the employing office.

(This section must be completed before Section II can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and address of employing office (this is the employing office of the employee requesting leave to care for a veteran):

Name of employee requesting leave to care for a veteran:

First Middle Last

Name of veteran (for whom employee is requesting leave):

First Middle Last

Relationship of employee to veteran:

☐ Spouse ☐ Parent ☐ Son ☐ Daughter ☐ Next of Kin ☐ ________________ (please specify relationship):
Part B: VETERAN INFORMATION

(1) Date of the veteran’s discharge: ____________________________________________

(2) Was the veteran dishonorably discharged or released from the Armed Forces (including the National Guard or Reserves)? □ Yes □ No

(3) Please provide the veteran’s military branch, rank and unit at the time of discharge:

(4) Is the veteran receiving medical treatment, recuperation, or therapy for an injury or illness? □ Yes □ No

Part C: CARE TO BE PROVIDED TO THE VETERAN

Describe the care to be provided to the veteran and an estimate of the leave needed to provide the care:

SECTION II: For completion by: (1) a United States Department of Defense ("DOD") health care provider; (2) a United States Department of Veterans Affairs ("VA") health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private health care provider; or (5) a health care provider as defined in the OOC regulations at 825.125.

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee named in Section I has requested leave under the military caregiver leave provision of the FMLA, as made applicable by the CAA, to care for a family member who is a veteran. For purposes of FMLA military caregiver leave, a serious injury or illness means an injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the servicemember’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the servicemember became a veteran, and is:

(i) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or

(ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) a physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans’ Affairs Program of Comprehensive Assistance for Family Caregivers.

A complete and sufficient certification to support a request for FMLA military caregiver leave due to a covered veteran’s serious injury or illness includes written documentation confirming that the veteran’s injury or illness was incurred in the line of duty on active duty or existed before the beginning of the veteran’s active duty and was aggravated by service in the line of duty on active duty, and that the veteran is undergoing treatment, recuperation, or therapy for such injury or illness by a health care provider listed above. Answer fully and completely all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA military caregiver leave coverage. Limit your responses to the veteran’s condition for which the
employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e).

(Please ensure that Section I has been completed before completing this section. Please be sure to sign the form on the last page and return this form to the employee requesting leave (See Section I, Part A above). DO NOT SEND THE COMPLETED FORM TO THE OFFICE OF COMPLIANCE.)

**Part A: HEALTH CARE PROVIDER INFORMATION**

Health care provider's name and business address: ____________________________________________________________

Telephone: (_____) _______ - _______________ Fax: (_____) _______ - _______________________

Email: ______________________________________________________________________________________________

Type of Practice/Medical Specialty: ____________________________________________________________

Please indicate if you are:

☐ a DOD health care provider
☐ a VA health care provider
☐ a DOD TRICARE network authorized private health care provider
☐ a DOD non-network TRICARE authorized private health care provider
☐ other health care provider

**PART B: MEDICAL STATUS**

Note: If you are unable to make certain of the military-related determinations contained in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as, DOD Recovery Care Coordinator) or an authorized VA representative.

(1) The Veteran’s medical condition is:

☐ A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating.

☐ A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50% or higher, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave.

☐ A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment.

☐ An injury, including a psychological injury, on the basis of which the covered veteran is enrolled in the Department of Veterans’ Affairs Program of Comprehensive Assistance for Family Caregivers.

☐ None of the above.

(2) Is the veteran being treated for a condition which was incurred or aggravated by service in the line of duty on active duty in the Armed Forces?  ☐ Yes  ☐ No
PART C: VETERAN’S NEED FOR CARE BY FAMILY MEMBER

“Need for care” encompasses both physical and psychological care. It includes situations where, for example, due to his or her serious injury or illness, the veteran is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport him or herself to the doctor. It also includes providing psychological comfort and reassurance which would be beneficial to the veteran who is receiving inpatient or home care.

1. Will the veteran need care for a single continuous period of time, including any time for treatment and recovery? □ Yes □ No
   If yes, estimate the beginning and ending dates for this period of time: __________________________

2. Will the veteran require periodic follow-up treatment appointments? □ Yes □ No
   If yes, estimate the treatment schedule: __________________________

3. Is there a medical necessity for the veteran to have periodic care for these follow-up treatment appointments? □ Yes □ No

4. Is there a medical necessity for the veteran to have periodic care for other than scheduled follow-up treatment appointments (e.g., episodic flare-ups of medical condition)? □ Yes □ No
   If yes, please estimate the frequency and duration of the periodic care: __________________________

______________________________
Signature of Health Care Provider: __________________________ Date: __________________________
September 16, 2015

CONGRESSIONAL RECORD — SENATE

S6765

AFFIRMING THE USE OF THE CAPITOL GROUNDS FOR THE DISTRICT OF COLUMBIA SPECIAL OLYMPICS LAW ENFORCEMENT TORCH RUN

AFFIRMING THE USE OF THE CAPITOL GROUNDS FOR THE 2ND ANNUAL FALLEN FIREFIGHTERS CONGRESSIONAL FLAG PRESENTATION CEREMONY

AFFIRMING THE USE OF THE CAPITOL GROUNDS FOR AN EVENT TO COMMEMORATE THE 20TH ANNIVERSARY OF THE MILLION MAN MARCH

The PRESIDING OFFICER. Without objection, the Senate proceeded to consider the concurrent resolutions en bloc.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the en bloc consideration of the following House concurrent resolutions, which are at the desk: H. Con. Res. 70, H. Con. Res. 73, and H. Con. Res. 74.

The Senate continues with the remarks of Senator DAINES.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the resolutions be agreed to and the motions to reconsider be laid upon the table en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolutions were agreed to.

ORDERS FOR THURSDAY,

SEPTEMBER 17, 2015

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Thursday, September 17, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; that following leader remarks, the Senate resumes at H. J. Res. 61, with the time until 11 a.m. equally divided between the two leaders or their designees; finally, that the filing deadline for all second-degree amendments be at 10:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned, following the remarks of Senator DAINES.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana.

CYBER SECURITY

Mr. DAINES. Mr. President, this generation is at the forefront of technological advances. In fact, it is making the United States and this generation that lives here one of the best networked in history, in fact, not only here but around the world.

The need for new and better technology to accommodate such a generation has left a gaping hole in the security of our country. For recent years, cyber security attacks and breaches have multiplied and left American citizens incredibly vulnerable. Make no mistake, the cyber security of the United States is in great danger. But, unfortunately, proper precautions and reforms needed to set a better course have yet to be taken.

Just look at last week’s headlines. USA Today recently reported hackers have attempted to compromise the Department of Energy over 1,100 times between 2010 and 2014, and these attackers have been successful over 150 times.

In 2013 breach these attackers gained access to the information of over 144,000 Department employees. After these attacks, the auditors noted “unclear lines of responsibility” and “lack of awareness by responsible officials.” Yet nothing was done to mitigate the potential for future attacks.

Our government needs to stop being content with simply being reactive to serious cyber threats. There are no deterrents or consequences to these foreign attackers. Not one person at the Department of Energy has faced consequences. The CIO of the Office of Personnel Management, or OPM, remains in charge after one of the largest hacks on Federal employees.

In an age ruled by technology, it is our responsibility to make sure we take the necessary steps to protect the information of the American people.

This past Monday I held the first bi-annual Montana High Tech Jobs Summit in my hometown of Bozeman at my alma mater the University of Montana. We had over 600 Montanans attending.

We need to be more disruptive of the status quo in the technology sector, rather than passively sitting by as other nations innovate and leave us behind. We need to encourage STEM education in our classrooms and bring more people into the science and technology sector.

In my home State of Montana, high-tech jobs are growing 10 times faster than the statewide job growth rate. Last year alone, 40 percent of the wage growth in our entire State took place in Gallatin County, the county where Bozeman is located, and it has become a hub of technology. Yet too often Montanans lack the opportunity to come here and find work. We need more high-paying technology jobs in Montana.

During my time at the cloud computing company RightNow Technologies, which was founded, started up, and operated by my executive chairman, we were acquired by Oracle for $1.8 billion, over the 12 years I was there, I saw firsthand how Montana is becoming a leading hub for innovation and high-tech job growth. Montana has a qualified workforce and unparalleled quality of life that makes our State a wise investment for tech companies. In fact, where the campus of our software company is located in Bozeman is just most famous river, the Gallatin River. The Gallatin River is where the movie “A River Runs Through It” was filmed, where Brad Pitt made his debut, and directed by Robert Redford.

This tech summit showcased the great work done in our State, a State where we can combine quality of life with family outdoors with technology and create a world-class high-tech company, because millennials want to have that quality of life, but they also want to have a world-class career in building global companies.

This tech summit allowed our Nation’s tech leaders to share their views and experiences and encouraged our future tech leaders to lead. It provided a unique opportunity for our State’s tech and business leaders to learn from one another.

We had a great slate of speakers and panelists from across the technology industry: Laef Olson, the senior VP for cloud operations at Oracle; Dr. Dave Newman, a Montaner native and the new Deputy Administrator at NASA. We had two of the five FCC Commissioners, Ajit Pai and Michael O’Rielly. We had Doug Burgum, the former CEO and chairman of Great Plains Software. Great Plains Software was started up in North Dakota. He grew the company. It was acquired by Microsoft in 2001 for $1.1 billion, the largest acquisition at that time for Microsoft. Now Doug is co-founder and partner of Arthur Ventures and chairman of the Killbourn Group. We had Craig Barrett. Dr. Craig Barrett received his undergraduate, master’s, and Ph.D. at Stanford and was a professor at Stanford for 10 years in metallurgical engineering and then went to this company in the Intel. There, he rose all the way to CEO, and in fact, worked with Gordon Moore, who became CEO of Intel and who is famous for Moore’s law.

Mike Goguen, the managing director of Sequoia Capital, a company that was an early stage investor in companies such as Google, YouTube, Apple, PayPal. We had Will Lansing, a former board member of RightNow Technologies who is now the CEO of PICO. We had Matt Rose, the BNSF Railway executive chairman.

We had panelists as well who explored issues of critical importance to our technology sector, cyber security infrastructure, and our economy. All convened in Bozeman on Monday. One doesn’t think of the Gallatin Valley as being a hub of technology, maybe the Swiss Alps, but with the world changing, as technology removes geography as a constraint, you have a quality of life that is exceptional, where