

Family and Medical Leave Act Regulations

A Report on the Department of Labor's Request for Information

2007 Update

Employment Standards Administration Victoria A. Lipnic, Assistant Secretary

Wage and Hour Division Paul DeCamp, Administrator

June 2007



Family and Medical Leave Act Regulations

A Report on the Department of Labor's Request for Information

2007 Update

Employment Standards Administration Victoria A. Lipnic, Assistant Secretary

Wage and Hour Division Paul DeCamp, Administrator

June 2007

This report is also available on the following websites:

The U.S. Department of Labor at www.dol.gov The National Archives at www.archives.gov/federal-register

Editor's Note

This document may not exactly match the pagination of the Federal Register printing of this report.



Table of Contents

FORI	EWORD	i
EXEC	CUTIVE SUMMARY	ii
I.	EMPLOYEE PERSPECTIVE: EXPERIENCES IN THE VALUE OF	
	THE FMLA	1
II.	RAGSDALE/PENALTIES	8
	A. Background	
	B. Comments on Ragsdale: Notice and Designation Issues	
	C. Deeming Eligible Issues	
III.	SERIOUS HEALTH CONDITION	15
	A. History and Background	15
	B. Request for Information Comments and Recommendations	20
IV.	UNSCHEDULED INTERMITTENT LEAVE	29
	A. Background	31
	B. Workplace Consequences of Unscheduled Intermittent Leave	37
	C. The Importance of Unscheduled Intermittent Leave to Employees	48
V.	NOTICE: EMPLOYEE RIGHTS AND RESPONSIBILITIES	50
	A. Background	50
	B. Awareness of Rights	52
	C. Employee Notice	55
	D. Employer Notification That Leave is FMLA-Qualifying	58
	E. Timing Issues	60
VI.	THE MEDICAL CERTIFICATION AND VERIFICATION PROCESS	
	A. Statutory and Regulatory Provisions Regarding Medical Certification and Verification	
	B. Comments Regarding the Medical Certification and Verification Process	66
VII.	INTERPLAY BETWEEN THE FAMILY AND MEDICAL LEAVE ACT	
	AND THE AMERICANS WITH DISABILITIES ACT	84
	A. The Interaction of the FMLA Employee Notice Provisions and the	
	ADA Medical Inquiry Prohibitions	
	B. Obtaining Medical Information under the FMLA and the ADA	86
	C. Confirming an Employee Is Fit To Return to Work After Medical Leave under the FMLA and the ADA	91
	D. Offering Light Duty, Modified Work, or Transfers/Reassignments	
	Under the FMLA and the ADA	
	E. Permitting "Reasonable Leave for Medical Reasons" under the FMLA and the ADA	98

VIII.	TRANSFER TO AN ALTERNATIVE POSITION	102
	A. Department's Regulations Only Permit Transfer Where Employee Needs	
	Intermittent Leave or Leave on a Reduced Leave Schedule that is	
	Foreseeable Based on Planned Medical Treatment	102
	B. Recommendations from the Regulated Community	104
IX.	SUBSTITUTION OF PAID LEAVE	107
	A. General Impact of the Substitution of Paid Leave Provisions	109
	B. Effect on Workplace Benefits and Policies	110
х.	JOINT EMPLOYMENT	116
	A. Statutory Background	116
	B. Department of Labor Regulations	116
	C. Wage and Hour Opinion Letter	117
	D. Harbert v. Healthcare Services Group, Inc.	118
	E. RFI Comments and Recommendations	119
XI.	DATA: FMLA COVERAGE, USAGE, AND ECONOMIC IMPACT	125
	A. Comments on the 2000 Westat Report and Further Data Collection	126
	B. Number of Covered and Eligible Workers	128
	C. Number of Workers with Medical Certifications for Chronic Conditions	129
	D. Number of FMLA Leave-Takers	129
	E. Number of Workers Taking Intermittent FMLA Leave	134
	F. Number of Workers Taking Unforeseen or Unscheduled Intermittent FMLA Leave	138
	G. The Economic Impact of FMLA Leave	140
	H. Comments on the 2000 Westat Report's Findings on the Impact	
	Intermittent FMLA Leave has on Productivity and Profitability	145
	I. Impact of Unscheduled Intermittent FMLA Leave	146
	J. Impact of Unscheduled Intermittent FMLA Leave on Productivity and Profitability	
	K. Specific Industries Report Difficulties with Unscheduled FMLA Leave	150
	L. The Impact of FMLA Leave Use in the Workplace	156
	M. Risk Management Analysis of Unscheduled Intermittent Leave	
ACKN	NOWLEDGEMENTS	162