§ 825.700 Interaction with employer's policies.

(a) An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the Act may not be diminished by any employment benefit program or plan. For example, a provision of a CBA which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA. If an employer provides greater unpaid family leave rights than are afforded by FMLA, the employer is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA), to the additional leave period not covered by FMLA.

(b) Nothing in this Act prevents an employer from amending existing leave and employee benefit programs, provided they comply with FMLA. However, nothing in the Act is intended to discourage employers from adopting or retaining more generous leave policies.

§ 825.701 Interaction with State laws.

(a) Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA. The Department of Labor will not, however, enforce State family or medical leave laws, and States may not enforce the FMLA. Employees are not required to designate whether the leave they are taking is FMLA leave or leave under State law, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee’s entitlement under both laws. Examples of the interaction between FMLA and State laws include:

1. If State law provides 16 weeks of leave entitlement over two years, an employee needing leave due to his or her own serious health condition would be entitled to take 16 weeks one year under State law and 12 weeks the next year under FMLA. Health benefits maintenance under FMLA would be applicable only to the first 12 weeks of leave entitlement each year. If the employee took 12 weeks the first year, the employee would be entitled to a maximum of 12 weeks the second year under FMLA (not 16 weeks). An employee would not be entitled to 28 weeks in one year.

2. If State law provides half-pay for employees temporarily disabled because of pregnancy for six weeks, the employee would be entitled to an additional six weeks of unpaid FMLA leave (or accrued paid leave).

3. If State law provides six weeks of leave, which may include leave to care for a seriously-ill grandparent or a “spouse equivalent,” and leave was used for that purpose, the employee is still entitled to his or her full FMLA leave entitlement, as the leave used was provided for a purpose not covered by FMLA. If FMLA leave is used first for a purpose also provided under State law, and State leave has thereby been exhausted, the employer would not be required to provide additional leave to care for the grandparent or “spouse equivalent.”

4. If State law prohibits mandatory leave beyond the actual period of pregnancy disability, an instructional employee of an educational agency subject to special FMLA rules may not be required to remain on leave until the end of the academic term, as permitted by FMLA under certain circumstances. (See subpart F of this part.)

(b) [Reserved]

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

(a) Nothing in FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., Title VII of...
the Civil Rights Act of 1964, as amend-
ed by the Pregnancy Discrimination Act). FMLA’s legislative history ex-
plains that FMLA is “not intended to modify or affect the Rehabilitation Act
of 1973, as amended, the regulations concerning employment which have
been promulgated pursuant to that statute, or the Americans with Disabil-
ities Act of 1990 [as amended] or the regulations issued under that act.
Thus, the leave provisions of the
[FMLA] are wholly distinct from the reasonable accommodation obligations
of employers covered under the [ADA], employers who receive Federal finan-
cial assistance, employers who con-
thwart with the Federal government, or
the Federal government itself. The pur-
purpose of the FMLA is to make leave available to eligible employees and em-
ployers within its coverage, and not to
limit already existing rights and pro-
An employer must therefore provide
leave under whichever statutory provi-
sion provides the greater rights to em-
ployees. When an employer violates
both FMLA and a discrimination law,
an employee may be able to recover
under either or both statutes (double
relief may not be awarded for the same
loss; when remedies coincide a claim-
ant may be allowed to utilize which-
ever avenue of relief is desired (Laffey
v. Northwest Airlines, Inc., 567 F.2d 429,
445 (D.C. Cir. 1976), cert. denied, 434 U.S.
1086 (1978)).
(b) If an employee is a qualified indi-
vidual with a disability within the
meaning of the ADA, the employer
must make reasonable accommoda-
tions, etc., barring undue hardship, in
accordance with the ADA. At the same
time, the employer must afford an em-
ployee his or her FMLA rights. ADA’s
“disability” and FMLA’s “serious
health condition” are different con-
cepts, and must be analyzed separately.
FMLA entitles eligible employees to 12
weeks of leave in any 12-month period
due to their own serious health condi-
tion, whereas the ADA allows an inde-
terminate amount of leave, barring
undue hardship, as a reasonable accom-
modation. FMLA requires employers to
maintain employees’ group health plan
coverage during FMLA leave on the
same conditions as coverage would
have been provided if the employee had
been continuously employed during the
leave period, whereas ADA does not re-
quire maintenance of health insurance
unless other employees receive health
insurance during leave under the same
circumstances.
(c)(1) A reasonable accommodation
under the ADA might be accomplished
by providing an individual with a dis-
ability with a part-time job with no
health benefits, assuming the employer
did not ordinarily provide health insur-
ance for part-time employees. How-
ever, FMLA would permit an employee
to work a reduced leave schedule until
the equivalent of 12 workweeks of leave
were used, with group health benefits
maintained during this period. FMLA
permits an employer to temporarily
transfer an employee who is taking
leave intermittently or on a reduced
leave schedule for planned medical
treatment to an alternative position,
whereas the ADA allows an accommo-
dation of reassignment to an equiva-
 lent, vacant position only if the em-
ployee cannot perform the essential
functions of the employee’s present po-
sition and an accommodation is not
possible in the employee’s present posi-
tion, or an accommodation in the em-
ployee’s present position would cause
an undue hardship. The examples in
the following paragraphs of this sec-
tion demonstrate how the two laws
would interact with respect to a qual-
ified individual with a disability.
(2) A qualified individual with a dis-
ability who is also an “eligible em-
ployee” entitled to FMLA leave re-
quests 10 weeks of medical leave as a
reasonable accommodation, which the
employer grants because it is not an
undue hardship. The employer advises
the employee that the 10 weeks of leave
is also being designated as FMLA leave
and will count towards the employee’s
FMLA leave entitlement. This designa-
tion 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 em-
ployee. At the same time, the employee
would be entitled under FMLA to have
the employer maintain group health

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(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 employer 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 by the employer to part-time employees.

(4) At the end of the FMLA leave entitlement, an employer 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 employer’s FMLA obligations would be satisfied if the employer 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 employer to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d) If FMLA entitles an employee to leave, an employer 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 employer offer an employee the opportunity to take such a position. An employer may not change the essential functions of the job in order to deny FMLA leave. See §825.220(b).

(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 employer). At some point the health care provider providing medical care pursuant to the workers’ compensation injury may certify the employee is able to return to work in a “light duty” position. If the employer offers such a position, the employee is permitted but not required to accept the position (see §825.220(d)). 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 either 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 §825.207(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.

(e) If an employer 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, an employer should provide the same benefits for women who are pregnant as the employer 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
employer (and, therefore, not an “eligible” employee under FMLA) may not be denied maternity leave if the employer normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301–4333 (USERRA), veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning service member would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employer during the period of military service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months and 1,250 hours of employment. See §825.110(b)(2)(i) and (c)(2).

(h) For further information on Federal antidiscrimination laws, including Title VII and the ADA, individuals are encouraged to contact the nearest office of the U.S. Equal Employment Opportunity Commission.

Subpart H—Definitions

§825.800 Definitions.

For purposes of this part:


Active duty or call to active duty status means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve 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 into federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. See also §825.126(b)(2).

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 et seq., as amended).

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.


Commerce and industry or activity affecting commerce mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce” as defined in sections 501(1) and 501(3) of the Labor Management Relations Act of 1947, 29 U.S.C. 142(1) and (3).

Contingency operation means a military operation that: