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 (USERRA), 38 U.S.C. 4301, et seq., 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 servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked (or, for airline flight crew employees, would have worked or been paid) for the civilian employer during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked (or, for airline flight crew employees, actually worked or paid), meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. See §§825.110(b)(2)(i) and (c)(2) and 825.802(c).

(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—Special Rules Applicable to Airline Flight Crew Employees

§ 825.800 Special rules for airline flight crew employees, general.

(a) Certain special rules apply only to airline flight crew employees as defined in §825.102. These special rules affect the hours of service requirement for determining the eligibility of airline flight crew employees, the calculation of leave for those employees, and the recordkeeping requirements for employers of those employees, and are issued pursuant to the Airline Flight Crew Technical Corrections Act (AFCTCA), Public Law 111–119.

(b) Except as otherwise provided in this subpart, FMLA leave for airline flight crew employees is subject to the requirements of the FMLA as set forth in Part 825, Subparts A through E, and G.

§ 825.801 Special rules for airline flight crew employees, hours of service requirement.

(a) An airline flight crew employee’s eligibility for FMLA leave is to be determined in accordance with §825.110 except that whether an airline flight crew employee meets the hours of service requirement is to be determined as provided below.

(b) Except as provided in paragraph (c) of this section, whether an airline flight crew employee meets the hours of service requirement is determined by assessing the number of hours the employee has worked or been paid over the previous 12 months. An airline
§ 825.802 Special rules for airline flight crew employees, calculation of leave.

(a) Amount of leave. (1) An eligible airline flight crew employee is entitled to 72 days of FMLA leave during any 12-month period for one, or more, of the FMLA-qualifying reasons set forth in §§825.112(a)(1)–(5). This entitlement is based on a uniform six-day workweek for all airline flight crew employees, regardless of time actually worked or paid, multiplied by the statutory 12-workweek entitlement for FMLA leave. For example, if an employee took six weeks of leave for an FMLA-qualifying reason, the employee would use 36 days (6 days × 6 weeks) of the employee’s 72-day entitlement.

(2) An eligible airline flight crew employee is entitled to 156 days of military caregiver leave during a single 12-month period to care for a covered servicemember with a serious injury or illness under §825.112(a)(6). This entitlement is based on a uniform six-day workweek for all airline flight crew employees, regardless of time actually worked or paid, multiplied by the statutory 26-workweek entitlement for military caregiver leave.

(b) Increments of FMLA leave for intermittent or reduced schedule leave. When an airline flight crew employee takes FMLA leave on an intermittent or reduced schedule basis, the employer must account for the leave using an increment no greater than one day. For example, if an airline flight crew employee needs to take FMLA leave for a two-hour physical therapy appointment, the employer may require the employee to use a full day of FMLA leave. The entire amount of leave actually taken (in this example, one day) is designated as FMLA leave and counts...