

MISSISSIPPI STATE PERSONNEL BOARD
FMLA UPDATE
JANUARY 26, 2009

SECTION 825.110	Eligibility For FMLA	<ul style="list-style-type: none"> • Previous employment need not be continuous; • Employment must have been in previous 7 years, unless: <ol style="list-style-type: none"> 1. Break-in-service was due to National Guard or Reserve military obligation; OR 2. there was a written statement reflecting an employer's intention to rehire the employee after the break-in-service;
SECTION 825.110	Eligibility For FMLA (Clarification)	<ul style="list-style-type: none"> • An employee who is on non-FMLA leave may become eligible for FMLA leave while on leave (active pay status);
SECTION 825.114	Serious Health Condition	<ul style="list-style-type: none"> • Continuing Treatment: Treatment two or more times by health care provider within a 30-day period; • For chronic conditions requiring periodic visits for treatment, such visits must take place at least twice yearly;
SECTION 825.116	Caring for a Covered Family Member – “Needed to care”	<ul style="list-style-type: none"> • The employee need not be the only individual available to care for qualified family member or covered service member;
SECTION 825.203	Reduced/Inter-mittent Leave	<ul style="list-style-type: none"> • Employer must account for intermittent leave in increments no greater than the shortest period of time that the employer uses to account for other forms of leave, provided it is not greater than one hour; • Leave may be accounted for in increments (i.e. one hour increment during 1st hour of shift) in order to reduce chronic tardiness; • Entire shift may be counted as FMLA leave when it is physically impossible for the for an employee using intermittent leave to commence or end work mid-way through a shift (i.e. flight attendant);

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SECTION 825.220	Protection of Rights	<ul style="list-style-type: none"> Some courts have held that an employee may not waive FLMA rights without getting the approval from DOL or a court of law. The new rule allows employees to settle past FMLA claims without the approval of the DOL or a court;
825.300	Employer Notice Requirements	<ul style="list-style-type: none"> Employers now have 5 business days (previously two to three business days), if feasible, in order to provide employees with notice detailing the specific expectations and obligations after notice of the need for FMLA leave is given by an employee;
825.302	Foreseeable Leave-Notice by Employee	<ul style="list-style-type: none"> If practical, requires at least 30 days advance notice for foreseeable leave by the employee If the employee does not provide the 30 days notice, the employer may ask the employee to explain reasons why providing the 30 days notice was not practical; When foreseeable leave is due to exigency, notice must be provided as soon as practicable regardless of how far in advance leave was foreseeable; Defines "as soon as practical" as being within one to two business days; Adds language regarding content of notice to specifically include notice for exigency and military caregiver leave, and states that an employee must provide sufficient information to indicate need for FMLA leave and anticipated timing and duration of leave but need not mention FMLA by name; Failure of an employee to respond to an employer's questions in order to determine if the absence is FMLA-qualifying may result in denial of FMLA protection;
825.307	Certification - Questioning the Medical	<ul style="list-style-type: none"> The employer may request the employee to provide additional information in order to cure deficiencies in a medical certification; The employer, except the employee's direct supervisor and with the

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	Certification	<p>employee's consent, is permitted to directly contact an employee's Health Care Provider for clarification or verification purposes;</p> <ul style="list-style-type: none"> • If the employee fails to verify or clarify information in the certification and declines to give the agency permission to contact the HCP, then the agency may decline the FMLA request; • The employer must comply with all HIPAA regulations; • The employer has five business days (instead of 2) to provide the employee with a copy of second and third opinions; • This section does not apply to the military leave provisions;
825.308	Subsequent Recertification	<ul style="list-style-type: none"> • In all cases, the employer may request recertification every 6 months; • When the employee seeks an extension of his or her FMLA leave, the employer may request recertification in less than 30 days; • This section does not apply to the military leave provisions;
825.310	Fitness for Duty (FFD) Certification	<ul style="list-style-type: none"> • The employee must provide FFD certification or authorize the HCP to provide the information directly to the employer; • The employer must notify the employee in its designation notice whether an FFD is required in order to return to work and indicate whether it must address ability to perform essential job functions; • If the employee fails to provide this information, the employee loses his/her rights to reinstatement; • The employer may request FFD certification every 30 days if the employee has used intermittent leave during the period and reasonable safety concerns exist regarding the employee's ability to perform his or her duties;