ANOTATED
HIGHLIGHTS FROM THE NEW FMLA REGULATIONS
By: Leslie L. Van Houten
March 2, 2009

I. ELIGIBLE EMPLOYEE

825.110 Eligible Employee: A break in service of seven years or more "need not be counted" towards the 12 months of service requirement. In other words, this is discretionary with the employer and must be uniformly applied. See sections b(2) for exceptions to seven-year rule. The employer is required to keep records for three years. If the gap of employment is longer than three years, the burden is on the employee to prove employment.

The employees returning from National Guard or Reserve military obligations shall be credited with the time they would have worked but for their military service in determining whether an employee worked 1250 hours. Likewise, work they would have performed but for military service is counted towards the 12 months of service requirement.

Special university provision: An institution of higher learning has the burden of establishing that a full-time faculty member is not eligible for Family and Medical Leave ("FML") (as they often work outside the classroom or in their homes).

Note that an employee may take leave for a FMLA qualifying reason at a time when she is not yet eligible for FML but may become eligible during the leave period. The portion of the leave after becoming eligible is FML.

Leaves (other than military leaves) do not count towards fulfilling 1250 hour requirement but do count towards 12 months of employment requirement.

825.112 Qualifying Reasons for Leave, General - Active Employee:
Clarifies that an employee on layoff or furlough must be recalled to work to be able to use FML.

---

1 Please note that as a general rule this summary only references the new regulations and, of those, those which are likely of most interest to our community.

2 The CFRA regulations incorporate by reference the 1995 FMLA regulations. The Fair Employment and Housing Commission has issued a chart highlighting the differences between CFRA and FMLA, and FMLA requires that, where there is a difference between state and federal law, the more employee generous of the two prevails. Please note that the *italics* means that the FMLA regulation is less generous than the CFRA regulation, and therefore you need to follow the CFRA Regulation (or the 1995 FMLA regulation if CFRA is silent) until the FEHC issues its revised regulation and expressly incorporates the FMLA regulation in question into the revised CFRA Regulations.
825.122 **Definitions:** It is now clear that “son” or “daughter” includes biological, adopted, foster child or legal ward, as well as a person to whom the employee stood in loco parentis.

II. **CHANGES IN DEFINITION OF A SERIOUS HEALTH CONDITION**

825.113 **Serious Health Condition:** Taking over-the-counter medications and a regime of bed rest, etc., can be initiated without a visit to a health care provider (“HCP”) and as such do not count as “treatment” for FMLA purposes.

825.115: **Continuing Treatment:** Continuing Treatment includes any of the following:

- Treatment by a HCP two or more times within 30 days of the first day of incapacity (absent extenuating circumstances) or treatment on at least one occasion by a HCP followed by a regime of continuing treatment under the supervision of the HCP or provided by a provider of health care service under orders or referral by the HCP.

- *Treatment by a HCP means an in-person visit to a HCP; the first (or only) visit must take place within seven days of the first day of incapacity.*

- *Chronic conditions require periodic visits (at least two times a year).*

- Absences for chronic conditions or related to pregnancy count as FML even though the patient may receive no treatment from a HCP during the absence.

  *The employee/family member must be incapacitated for more than three consecutive full calendar days.*

III. **FML & SUBSTANCE ABUSE**

825.119 **Leave for Treatment of Substance Abuse:** Even if an employee is on FML for substance abuse treatment, the employer may terminate pursuant to a policy previously communicated to all employees if applied in non discriminatory manner.

IV. **LEAVE FOR PREGNANCY AND BIRTH, OR PLACEMENT OF CHILD IN ADOPTION OR FOSTER CARE**

(Note that all the regulations pertaining to these topics have been combined for easy reference in sections 825.120 and 825.121 respectively.)
825.120 **Leave for Pregnancy or Birth:**

- An expectant mother can take FML before the birth of a child for prenatal care or if she cannot work because of the pregnancy.

- A husband may take FML to care for his pregnant spouse who is incapacitated either before or after the birth.

- If the child has a serious health condition (SHC), both parents can have up to 12 workweeks of leave.\(^3\)

**825.122 Definition:** New definition of adoption: "...legally and permanently assuming the responsibility for raising a child as one’s own."

V. **INTERMITTENT LEAVE\(^4\)**

825.120 **Leave for Pregnancy or Birth:** Parents can use intermittent/reduced schedule leave to take care of a healthy baby only if the employer agrees; see also 825.121 — same standard for child placed through foster care or adoption.\(^5\)

825.124 **Need to Care for a Family Member or Covered Servicemember:** Intermittent/reduced schedule leave needed to care for a family member or for a covered servicemember can be used where either the need for the care is only intermittent or on a reduced-schedule basis or the condition itself is intermittent.

825.202 **Intermittent Leave/Reduced-Schedule Basis:** Intermittent/reduced-schedule leave may be taken when medically necessary for planned and/or unanticipated medical treatment of a serious health condition.

Intermittent or reduced-schedule leave of an employee/family member/covered servicemember may be taken when the person is incapacitated because of a SHC/serious injury or illness even if the person does not receive treatment by HCP.

---

3 University policy permits both parents (regardless of marital status) to each take up to 12 workweeks of leave for baby bonding.

4 Please note the DOL did not change the regulation so as to allow employees on intermittent/reduced-schedule leave to be transferred to an alternate position if they have chronic, episodic conditions. In order to qualify for such a transfer, the condition has to be foreseeable and based on planned medical treatment (825.204).

5 There is no requirement for an employer agreement under CFRA. Two weeks is the minimum deviation for baby bonding except that on two occasions an employer must grant leave of less than two weeks duration.
Leave for a qualifying exigency may be taken on an intermittent or reduced-schedule basis.

825.203 Scheduling of Intermittent or Reduced Schedule Leave: The employee is required to make “a reasonable effort” (as opposed to an “attempt”) to schedule intermittent leave so as not to disrupt unduly the employer operations.

However, under the California regulations, leave needed for foreseeable planned medical treatments requires the employee to use reasonable efforts to schedule the leave so as not to unduly disrupt the employer’s operations subject to approval by the HCP.

825.205 Increments of FMLA Leave for Intermittent or Reduced-Schedule Leave: Mandatory O/T which the employee is unable to work because of FML reasons is counted against FMLA entitlement. Also, if the employee on intermittent/reduced-schedule leave is unable to access the workplace because it is physically impossible, the entire period the employee is forced to be absent is designated as FML and counted against the FMLA entitlement. (Example: researcher on seagoing ship misses first day at sea because of intermittent leave.)

825.306 Content of Medical Certification: For intermittent leave for the employee’s SHC, an estimate of the frequency and duration of episodes of incapacity is required.

825.312 Fitness for Duty Certification: An employer cannot have a return-to-work certification for each intermittent/reduced-schedule leave absence. Exception: if reasonable safety concerns exist regarding the employee’s ability to perform her duties, based on the SHC for which the employee took FML, then an employer can have a fitness-for-duty certification every 30 days. In order to do this, the employer must let the employee know of this requirement in the designation notice.

Definition of reasonable safety concerns: a reasonable belief of significant risk of harm to individual employee or others taking into account the nature and severity of the potential harm and the likelihood that the harm will occur.

In situation where there is no end date or the duration is “indefinite,” the employer can require a certification on a different time schedule so long as it is in greater than 30-day intervals.

VI. PAID/UNPAID LEAVE

825.207 Substitution of Paid Leave: “Substitution of paid leave” means that the employee’s paid leave will run concurrently with unpaid FML. Please
note that workers’ comp leaves and leaves covered by disability plans are not unpaid leaves and, therefore, the substitution rules for use of accrued employer-provided leave do not apply. Therefore, neither the employee nor the employer may require the substitution of paid leave in these situations. However, both can agree to the substitution of paid leave.

Now, Compensatory Time Off (CTO) may be substituted for unpaid FML leave.

The employer can require an employee electing to use paid leave to meet the conditions of the paid leave policy.6

Note: There are no longer rules as to which kinds of paid leave can be used to cover unpaid FML. If the employee does not elect to substitute paid leave, the employer may require the employee to substitute paid leave. However, the regulations for California PDL permit the employee to elect to use accrued vacation/PTO but the employer cannot require the use of accrued vacation/PTO.

VII. SETTLEMENTS OF FML CLAIMS

825.220 Protection for employees who request leave .... Now, it is clear that agreements waiving past causes of actions related to FMLA are permitted.

VIII. LIGHT DUTY AND FML

825.220 Protection for employees who request leave .... If an employee voluntarily accepts a light duty assignment in lieu of taking FML while recovering from a SHC, it is not a waiver of the employee’s right to FML rights including job restoration, but the right to job restoration ends with the leave year.

IX. NEW EMPLOYER NOTICE REQUIREMENTS/RETROACTIVE DESIGNATION

NB: There are four different notice requirements: General notice (posters/handbook), notice of eligibility to take FML (Eligibility Notice), notice of FMLA rights and responsibilities (Rights and Responsibilities Notice) and notice that the leave has been designated as FML (Designation Notice); see sections 825.300 and 301 generally.

---

6 Note that under the 1995 FMLA regulations, the employee could be required to comply with the employer’s requirements for paid leave only if they were less stringent than those of FMLA.
825.300 Employer Notice Requirements:

General Notice: The new regulations require the posting of a notice which contains all of the information in the model notice including the information on how to file a complaint with the DOL. On-line posting is okay but only to the extent it is accessible by all employees and applicants. If a “significant portion” of the workforce is not literate in English, then translations must be posted. Notice to sensory impaired individuals must comply with federal and state laws.

Failure to Give Required Notices: Failure to give these notices may constitute interference with, restraint of, or denial of the exercise of the employee’s FMLA rights and the employer may be liable for monetary damages and equitable or other relief.

Eligibility Notice: When the employee requests FML or the employer learns that her leave may be for a FML-qualifying purpose, the employer must let the employee know within 5 days (absent extenuating circumstances) if she is eligible. If she is not eligible, the notice must explain why, including giving the numbers of hours worked and the months employed. This notice need be given only once, so long as the employee’s eligibility status does not change during the leave year. But, if there is a change, then another eligibility notice must be given.

All FML absences for the same qualifying reason are considered a single leave and the employee does not have to reestablish eligibility. (FMLA now conforms to California regulations.)

Rights and Responsibilities Notice: This notice is to be provided at the time the Eligibility Notice is given and will need to be mailed to the employee’s home if the leave has begun. It must state that, if qualifying, the leave will be designated as FMLA leave and count against the employee’s entitlement. If an employee wants to have paid leave run concurrently with FML, then she must satisfy the employer’s procedural requirements of the paid leave policy in connection with receipt of pay. If there are additional requirements in order to take paid leave, these requirements must go in the Rights and Responsibilities Notice. If a medical or other certification is required it must go in this notice. Information about bonuses, status updates and other employee requirements need to go in this notice. This notice may have to be translated when a “significant portion” of the workforce is not literate in English.

Designation Notice: This notice must be given within five days (absent extenuating circumstances) once the employer has sufficient information to know that leave is being taken for a qualifying reason. If the employee must have a release to return to work, the designation notice must include that
information as well as a list of essential job functions. Likewise, if paid leave substitution is required, this must also be in the designation notice. If known, the designation notice must provide the amount of leave counted against the employee’s entitlement. If the leave is not designated as FML, notice to the employee may be in the form of a simple written statement. Note: this section means employees no longer have to provisionally designate a leave as FML because there is no designation until the employer has sufficient information. The leave (from the beginning date) can be designated as FML once the employer receives the required information.

825.301 Designation of FMLA Leave: Leave may now be retroactively designated with appropriate notice to the employee provided that the employer’s failure to timely designate does not harm employee rights. In all cases, the leave may retroactively be designated where the employee and the employer agree.

Any dispute as to whether the leave qualifies as FML leave should be resolved through documented discussions.

An employer may require an employee to follow normal procedures for requesting leave absent unusual circumstances, (e.g., call a certain number, call an assigned supervisor, request leave in writing, etc.). Failure to follow the employer’s procedures can be a basis for delaying or denying leave.

When scheduling foreseeable medical procedures, the employee must consult with the employer and make reasonable effort to schedule the treatment so as not to unduly disrupt operations, subject to the approval of the HCP.

X. EMPLOYEE NOTICE OBLIGATIONS

825.302 Employee Notice Obligations for Foreseeable Leave: The employee must provide at least 30 days’ advance notice unless 30 days’ notice is not practicable. Then, the notice must be given as soon as practicable.

As soon as practicable means as soon as both possible and practicable. So if the employee learns of need for leave less than 30 days in advance, the employee should be able to give notice the same day or the next business day. However, each case is a fact-driven analysis.

What the employee’s notice should contain:

- verbal notice okay;

---

7 However, provisional designation is still a good idea because those old federal regulations are still in effect in California.
• may include reason – such as, the employee cannot perform functions of
the job or the employee or the family member is under continuing care of
a health care provider or the covered military member is called to active-
duty status or the family member is a covered servicemember with serious
injury or illness;

• anticipated duration of leave, if known.

The first time an employee requests leave, she need not mention FMLA. But, if she requests leave again for same qualifying reason, she must either mention the qualifying reason or FMLA.

Inquiring further: if the leave is for a medical condition, the employer may need to inquire further to see if the employee has a SHC.\textsuperscript{8} If the employee has previously been certified as having more than one FMLA-qualifying condition, the employer may need to inquire further to determine which qualifying reason the leave is for. Failure to respond to the employer’s reasonable inquiries may result in the denial of FML.

An employer may require the employees to follow its normal procedural requirements for requesting leave, such as making a written request (absent, of course, unusual circumstances).

When scheduling planned medical treatments, the employee must consult with the employer and make reasonable efforts to schedule the treatment so as to not unduly disrupt the employer’s operations, subject to the approval of the HCP. Ordinarily, the employees are to work out a treatment schedule which best suits the needs of the employer and the employee.

Because the need for intermittent/reduced-schedule leave must be medically necessary, the employee shall advise the employer, upon request, of the reasons why intermittent/reduced-schedule leave is necessary and attempt to work out a schedule that meets the employee’s needs without unduly disrupting the employer’s operations, subject to approval of the health care provider.\textsuperscript{9}

825.303 Notice for Unforeseeable Leave: Notice must be given in a timeframe which is practicable under all the facts and circumstances. If the

\textsuperscript{8} Under California law, it would be permissible to inquire further to learn if the leave is for a FMLA qualifying purpose, as opposed to inquiring into the specifics of the serious health condition.

\textsuperscript{9} Remember that under CFRA, for foreseeable planned medical treatment, the regulations say that the employee shall consult with the employer and make reasonable efforts to schedule the leave so as to minimize the disruption to operations, subject to approval of the HCP.
employer has a policy on notice for such leaves, that will be considered the appropriate notice.

Content of Notice:

- See above – 825.302.

The employees must comply with the employer’s usual and customary procedures for requesting unforeseeable leave absent unusual circumstances. Failure to comply with those procedures, absent unusual circumstances, may result in FML being delayed or denied.

825.304 Employee Failure to Provide Notice: The employer may waive the employee’s notice obligations. Otherwise, under certain limited circumstances, FMLA coverage may be delayed.

XI. NEW RULES ON CERTIFICATIONS

825.305 Medical Certifications\(^\text{10}\): The employer must give written notice of requirement for certification in the Rights and Responsibilities Notice. The employer in the same notice must advise the employee of the consequences of the failure to provide an adequate certification. Requests for subsequent certifications are not required to be in writing. The notice for certification should be given at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseeable leave, within five business days after the leave commences. (Note that this notice is supposed to be in the Rights and Responsibilities Notice which is to be given with the Eligibility Notice which likewise is to be given within five days of the request for the leave.) As before, the employee is supposed to provide the certification within 15 calendar days after the employer’s request, unless not practicable and despite the employee’s good faith and diligent efforts. If no certification is requested initially, it can be requested at a later date if the employer later has some reason to question the appropriateness of the leave or its duration.

If the certification is not complete and sufficient, the employer must advise the employee in writing what additional information is needed. The certification is not complete if one or more of the applicable entries has not been completed. The certification is not sufficient, even if it is complete, if it is vague, ambiguous or non-responsive. The employee gets seven calendar days, unless not practicable under the circumstances, to correct. Failure to correct is a failure to provide a certificate.

---

\(^\text{10}\) Remember in California an employer cannot require a diagnosis; a diagnosis can only be obtained at the employee’s option and with the employee’s permission.
Note that it is the employee’s responsibility to provide the necessary authorizations to her health care provider to enable the health care provider to furnish a complete and sufficient certification.

Where the need for leave for the employee’s own SHC or the SHC of a family member extends beyond the leave year, the employer may require the employee to provide a new medical certification in each subsequent leave year.

825. 306 Contents of Medical Certification: The employees may have to provide more information than allowed under FMLA to obtain benefits such as workers’ compensation benefits, paid leave or disability leave. This information may be considered by the employer in deciding FMLA eligibility. The employees must be advised that provision of this information is only needed for receipt of these benefits, and failure to provide does not affect FMLA entitlement so long as the employee has provided enough information to get FMLA.

Please note that while the employee may provide a release so that the employer can communicate directly with the health care provider, the employee does not have to. But, it is the employee’s responsibility to provide a complete and sufficient medical certification.

825.307 Authentication and Clarification of Medical Certificate: If the certification is not sufficient and/or complete, the employee must first be given an opportunity to correct (825.305(e)). If the employee does not, then the employer may contact the health care provider for authentication and clarification. The only employer representatives who can make the contract are: another health care provider, a human resources professional, a leave administrator or management representative. The employee’s direct supervisor may never make the contact. Please note that “authenticate” means providing the HCP with a copy of the certificate and requesting verification that the certificate was completed by or authorized by the HCP who signed it. “Clarification” means a contact to understand the handwriting or understand the meaning of a response. Note that the employer cannot ask for additional information. In the end, it is the employee’s decision about how much information the employer gets. If the certification remains unclear or not complete or sufficient, then the FML may be denied.

Basically, the employer must accept medical certifications from HCP abroad if the employee/family member becomes ill while outside the country or if the employee’s family member lives abroad. The employee must provide a translation upon written request from the employer.

825. 308 Recertification: Where the certification has no end date, a certification may be required only every 30 days only in connection with the
absence of the employee. If the end date is greater than 30 days, the employer must wait until the minimum duration expires before requesting a new certification.\textsuperscript{11}

\textit{Regardless of the end date of the need for leave, an employer may request a certification every six months for employees on intermittent or reduced-schedule leave.}

\textbf{Exceptions to the 30-day rule:} in connection with the absence of an employee, an employer may request an extension in less than 30 days if a) the employee requests an extension of the leave or b) circumstances described in the previous certification change significantly or c) if the employer learns of something which casts doubt on the validity of certification/employee’s stated reason for the leave. The employee has 15 days to provide the recertification unless it is not practicable despite the employee’s diligent and good faith efforts.

\textit{For recertifications, the employer may provide the HCP with a record of the employee’s absences and ask whether the SHC and need for leave is consistent with such a pattern.}

Note: there is no second/third opinion for recertifications.

825.313 \textbf{Failure to Provide Certification:} If the employee does not provide the recertification within 15 days (absent the usual exceptions), then FMLA protections may be denied until a sufficient recertification is provided. Failure to provide the recertification means that leave is not FML leave.

\textbf{Foreseeable leave} – Failure to provide the certification without sufficient reason for the delay can result in denial of FMLA coverage until the required certification is provided.

\textbf{Unforeseeable Leave} – Same as above; also note that the regulations say that, for unforeseeable leave, if the certification is never provided, the leave is not FML leave; but the same would arguably be true for foreseeable leave.

\textbf{XII. RETURN TO WORK}

825.311 \textbf{Intent to Return to Work:} An employer can require an employee on FML to periodically report on her status and her intent to return to work. If

\textsuperscript{11} CFRA permits a recertification “upon the expiration of the time period” which was originally designated by the HCP. CFRA has no regulations regarding certification where there is no end date to the leave or period is characterized as “indefinite.” For such designations, a recertification can be sought every 30 days in connection with the employee’s absence for a chronic (long-term) condition
an employee’s need for leave changes (either needs more or less), the employer can require reasonable notice (i.e., two business days) of the changed circumstance where foreseeable.

824.312 **Fitness-for-Duty Certification:** Pursuant to a uniformly-applied policy, an employer may require a release to return to work, and the employee has the obligation to provide a complete and sufficient certification. The certification need only address the particular condition for which the employee took FML. *The employer may require that the certification address the employee’s ability to do the essential job functions.*\(^{12}\) Remember, in order to do this, the employee had to receive the list of essential functions with the designation notice and be informed of the requirement at that time.

*Note that an employer can clarify and authenticate return-to-work certifications but cannot delay the employee’s return to work while this contact is made.* No second/third opinions allowed.

If the employer has provided notice of the need for the return-to-work certification and the employee does not provide the certification (or does not request an extension of FML), the employee is not entitled to reinstatement protection.

ADA allows a medical exam after return from FML at the employer’s expense that is job related and consistent with business necessity. If the SHC also is an ADA-qualified disability, it is okay to follow ADA procedures for requesting medical information under the disability laws.

825.313 **Failure to Provide Certification:** Assuming all of the prerequisites are met (uniformly applied policy/notice of need to be certified able to perform essential job functions given with designation notice), job restoration may be delayed. If at the end of the leave the employee provides neither the return to work certification or a new medical certification for additional FML, the employee may be terminated.

**XIII. QUALIFYING EXIGENCEY LEAVE**

825.122 **Definitions:** “Son or daughter on active duty status or called to active duty status” means the employee’s biological, adopted or foster child, legal ward or child for whom the employee stood in loco parentis regardless of age.

\(^{12}\) Under CFRA we believe that the Employer can only ask the HCP to certify that the employee can do the essential job functions which the employee could not do as a result of the SHC.
825.126 Leave Because of a Qualifying Exigency: This leave is for the employees who have a spouse, parent, son or daughter who is a “covered military member.” To be a covered military member, she must be on active duty or (federal) call to active duty in support of a contingency operation when they are members of the National Guard or the Reserves or are a retired member of the regular armed services or Reserves. A covered military member does not include a member of the regular armed forces. The following are the kinds of things for which this leave is available:

- short-notice deployment – limited to seven calendar days beginning with the date of the call/order to active duty;

- military events and related to call to active duty;

- childcare and school activities;

- financial and legal arrangements;

- counseling;

- rest and recuperation – the employees can have five days off (note that California law provides 10 days’ unpaid leave for spouses of military members (see California Military and Veterans Code, section 345.10; there are lesser notice and certification requirements for the California leave);

- post deployment activities (includes matters arising from the death of the military member while on active duty status);

- other matters which the employer and employee agree qualify as exigency and they agree on the time off;

- the employer’s standard leave year applies.

825.302 Employee Notice Obligations for Foreseeable Leave: Notice for foreseeable leave for a qualifying exigency must be given as soon as practicable regardless of how far in advance such leave is foreseeable.

825.309 Certification of a Leave Taken for Qualifying Exigency: See special forms for this leave. The employer may ask for copies of military member’s duty orders, facts regarding exigency, dates of service and date of commencement of exigency. The orders need only be provided once. There are also rules regarding certification for use of intermittent/reduced-schedule leave and meetings with third parties.

825.313 Failure to Provide Certification: Recertification does not apply to leave taken for a qualifying exigency.
XIV. MILITARY CAREGIVER LEAVE

825.112 Qualifying Reasons for Leave, General: To care for a covered servicemember with a serious injury or illness, if the employee is the spouse, son, daughter, parent or next of kin of the servicemember.

825.122 Definitions: Next of kin of covered servicemember: nearest blood relative (other than covered servicemember’s spouse, parent, son or daughter). There is a specific order of priority (see (d)) and the covered servicemember can designate another blood relative for FML purposes. See also (h) and (i) for definitions of parent and sons and daughters of covered servicemember.

825.124 Leave to Care for a Family Member or a Covered Servicemember: Needed to care for a family member or a covered servicemember means both physical and psychological care.

825.127 Leave to Care for a Covered Servicemember with a Serious Injury or Illness:

- Covers current members of the regular armed forces, reserves and National Guards, and those on temporary disability retirement lists who are in out-patient status.

- The covered servicemember must have a serious injury or illness incurred in the line of duty or on active duty for which she is undergoing medical treatment, recuperation, therapy or is in outpatient status or on the temporary disability retired list.

- “Serious injury or illness” means incurred in the line of active duty that may render the servicemember medically unfit to perform the duties of her office, grade, rank or rating.

- The employee must be spouse, parent, son, daughter or next of kin of covered servicemember.

- The employee can take leave to care for injured son or daughter who is 18 or older.

- The employer can require confirmation of covered family relationship to covered servicemember.

- The employee gets up to 26 workweeks for this FMLA purpose in a "single 12 month period."
• The employer’s leave year immaterial for determining entitlement here as
  the 12-month period begins on the first day the employee takes leave to
care for the covered servicemember and ends 12 months after that date.

• If the employee does not use all of the 26 weeks during this single 12-
  month period, the rest is forfeited for that 12-month period.

• This is per injury per covered servicemember.

• If the employee takes care of more than one covered servicemember or the
  same covered servicemember with a subsequent serious injury or illness,
the employee is limited to taking no more than 26 workweeks of leave in
any single 12-month period.

• The employee who takes FML for both a “traditional” purpose and to care
for a covered servicemember under this section is limited to a total of 26
weeks during a single 12-month period and can take no more than 12
workweeks of that time for the “traditional” reasons.

• The employer cannot double designate if leave qualifies both as leave to
care for a covered servicemember and leave to care for a family member
with a SHC.

• “As with other leaves for qualifying reasons,” the employer may back
designate.

825.310 Certification for Military Caregiver Leave: Special forms are
available for this leave and there are designated HCPs who make this
certification.

825.313 Failure to Provide Certifications: Recertification does not apply to
leave to care for a covered servicemember.