

RECORD

§ 801.74 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 801.75 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court of a Decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

APPENDIX A TO PART 801—NOTICE TO EXAMINEE

Section 8(b) of the Employee Polygraph Protection Act, and Department of Labor regulations (29 CFR 801.22, 801.23, 801.24, and 801.25) require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording, [will] [will not] be used during the examination.

(c) Both you and the employer have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual preference or behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

(f) You have the right to consult with legal counsel or other representative before each phase of the test, although the legal counsel or other representative may be excluded

from the room where the test is administered during the actual testing phase.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employer to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employer's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employer that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order;

(4) To a U.S. Department of Labor official when specifically designated in writing by you to receive such information.

(b) Information acquired from a polygraph test may be disclosed by the employer to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to restrain violations of the Act, or may assess civil money penalties against the employer.

6. Your rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or

complaint under the Act, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

(Date)

(Signature)

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Subpart A—What is the Family and Medical Leave Act, and to Whom Does It Apply?

Sec.

- 825.100 What is the Family and Medical Leave Act?
- 825.101 What is the purpose of the Act?
- 825.102 When was the Act effective?
- 825.103 How did the Act affect leave in progress on, or taken before, the effective date of the Act?
- 825.104 What employers are covered by the Act?
- 825.105 In determining whether an employer is covered by FMLA, what does it mean to employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year?
- 825.106 How is “joint employment” treated under FMLA?
- 825.107 What is meant by “successor in interest”?
- 825.108 What is a “public agency”?
- 825.109 Are Federal agencies covered by these regulations?
- 825.110 Which employees are “eligible” to take leave under FMLA?
- 825.111 In determining if an employee is “eligible” under FMLA, how is the determination made whether the employer employs 50 employees within 75 miles of the worksite where the employee needing leave is employed?
- 825.112 Under what kinds of circumstances are employers required to grant family or medical leave?
- 825.113 What do “spouse,” “parent,” and “son or daughter” mean for purposes of an employee qualifying to take FMLA leave?
- 825.114 What is a “serious health condition” entitling the employee to FMLA leave?
- 825.115 What does it mean that “the employee is unable to perform the functions of the position of the employee”?
- 825.116 What does it mean that an employee is “needed to care for” a family member?
- 825.117 For an employee seeking intermittent FMLA leave or leave on a reduced

leave schedule, what is meant by “the medical necessity for” such leave?

825.118 What is a “health care provider”?

Subpart B—What Leave Is an Employee Entitled to Take Under the Family and Medical Leave Act?

- 825.200 How much leave may an employee take?
- 825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?
- 825.202 How much leave may a husband and wife take if they are employed by the same employer?
- 825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?
- 825.204 May an employer transfer an employee to an “alternative position” in order to accommodate intermittent leave or a reduced leave schedule?
- 825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?
- 825.206 May an employer deduct hourly amounts from an employee’s salary, when providing unpaid leave under FMLA, without affecting the employee’s qualifications for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime compensation, under the Fair Labor Standards Act?
- 825.207 Is FMLA leave paid or unpaid?
- 825.208 Under what circumstances may an employer designate leave, paid or unpaid, as FMLA leave and, as a result, count it against the employee’s total FMLA leave entitlement?
- 825.209 Is an employee entitled to benefits while using FMLA leave?
- 825.210 How may employees on FMLA leave pay their share of health benefit premiums?
- 825.211 What special health benefits maintenance rules apply to multi-employer health plans?
- 825.212 What are the consequences of an employee’s failure to make timely health plan premium payments?
- 825.213 May an employer recover costs it incurred for maintaining “group health plan” or non-health benefits coverage during FMLA leave?
- 825.214 What are an employee’s rights on returning to work from FMLA leave?
- 825.215 What is an equivalent position?
- 825.216 Are there any limitations on an employer’s obligation to reinstate an employee?
- 825.217 What is a “key employee”?
- 825.218 What does “substantial and grievous economic injury” mean?