

NORTHERN WESTMORELAND CAREER & TECHNOLOGY CENTER

ADMINISTRATIVE
REGULATION

347-AR-1. NOTICE/ACKNOWLEDGEMENT OF RIGHT TO TAKE
INTERMITTENT OR REDUCED SCHEDULE LEAVE

Under certain circumstances as described below, the FMLA grants an employee the right to take a reduced or intermittent leave. The regulations applicable to this issue provide as follows:

Sec. 825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?

1. FMLA leave may be taken “intermittently or on a reduced leave schedule” under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.
2. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Such a schedule reduction might occur, for example, where an employee, with the employer's agreement, works part-time after the birth of a child, or takes leave in several segments. The employer's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.
3. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.
 - a. Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one (1) continuous period of time, and may include leave of periods from one (1) hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own

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condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

b. Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if s/he does not receive treatment by a health care provider.

4. There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one (1) hour or less. For example, an employee might take two (2) hours off for a medical appointment, or might work a reduced day of four (4) hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave, except as provided in Sec. 825.601 and 825.602

Sec. 825.204 May an employer transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?

1. If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition, or if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. See Sec. 825.601 for special rules applicable to instructional employees of schools.

2. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act), and state law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

3. The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so as to make

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them equivalent to the pay and benefits of the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four (4) hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

4. An employer may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employer to make such a transfer will be held to be contrary to the prohibited acts of the FMLA.

5. When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job s/he left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

Sec. 825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

1. If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the twelve (12) weeks of leave to which an employee is entitled. For example, if an employee who normally works five (5) days a week takes off one (1) day, the employee would use 1/5 of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use 1/2 week of FMLA leave each week.

2. Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee who normally works thirty (30) hours per

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week works only twenty (20) hours a week under a reduced leave schedule, the employee's ten (10) hours of leave would constitute 1/3 of a week of FMLA leave for each week the employee works the reduced leave schedule.

3. If an employer has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

4. If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

Sec. 825.202 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?

For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition (see Sec. 825.306) meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employer's operations. In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule. I hereby acknowledge receipt of this notice of my rights to take intermittent leave or reduced schedule leave subject to the terms, conditions and limitations of the FMLA and its implementing regulations.

Employee's Signature: _____ Date: _____

Print Name: _____