Comparison of Current and Proposed FMLA Rules

Current	Proposed	Impact
825.110 - An employee is charged FMLA hours from the point he or she becomes eligible. Consider a worker who has been employed for 11½ months when he is out of work for one month due to a serious health condition. Because he was not eligible for FMLA at the start of the absence, the FMLA designation would not begin until he completes the 12th month. Only two weeks of leave would be charged against his FMLA allotment.	Under the proposed rule the employer can charge FMLA leave retroactively to the start of the absence. The result is that the employee would be charged four weeks of FMLA leave	This could cause an employee to use his or her FMLA faster as time previously excluded would now be counted.
825.114 – A condition can qualify as a "serious health condition" after an employee has an absence of more that three days if it is followed by two visits to a healthcare provider or one visit and one form of treatment.	Under the proposed rule the visits or treatments must occur within 30 days of the start of the absence.	The proposed rule would create a window within which an employee must receive treatment. The prior language provided an open-ended period, which was better for the employee because some ailments do not manifest themselves quickly.
825.114 – An individual who has a life-long or long-term qualifying condition can be required to provide certification once a year or for the term determined by the healthcare provider, whichever is less.	Under the proposed rule the employer can require certification twice a year.	This will require the employee to make costly, repeated, and unnecessary trips to a healthcare provider to document a condition that is not expected to change.

825.122 – Current rules allow employees to qualify for FMLA by providing a birth certificate and/or a legal document to verify birth, adoption, or taking custody of a minor child, along with a statement from the employee.	Under the proposed rule the employee's statement must be notarized and a copy of the employee's tax information showing that the child is claimed as a dependent may also be required.	This is an insulting and unnecessary invasion of an employee's personal and private matters. It treats all employees as though they cannot be trusted.
825.203 When an employee is scheduling treatment, current law states that he or she should "attempt" to schedule treatments so as to avoid unduly disrupting the employer's operation.	The proposal adds language indicating that the employee has a "statutory obligation" to ensure that treatments do not unduly disrupt the employer's operation	This would create a legal requirement that goes beyond the language of the original law.
825.203 – When employees are absent they can be charged FMLA for hours they miss in their normal work week. Overtime hours are not included in that designation	Under the proposed rule employees can be charged FMLA for overtime hours they were required to work but missed due to their FMLA condition.	This would cause employees to use their FMLA protection at a rate quicker than originally intended in the act.
825.300 – Currently, when substituting paid leave for unpaid leave, employees are required to follow the law or the employer's leave policies, whichever is less stringent.	Under the proposed rule the employee must follow the employer's leave rules.	This will encourage employers to enact more stringent leave policies, as they cannot be forced to honor less stringent requirements in the law.

825.300 – Currently, if an employee submits a completed FMLA certification to his or her employer and the employer seeks a clarification of the certificate, the absence is provisionally covered by FMLA. In addition, if the employer needs clarification of a completed form, the employer has the option of seeking a second opinion at the employer's expense.	Under the proposal, employers can delay designating the absence as protected until they are satisfied with the information contained in the certification, simply by stating they believe the information is "vague or ambiguous."	This proposal grants extensive power to line supervisors. They can force employees to return to their healthcare providers, delay FMLA approval, and use these tactics to coerce employees and their healthcare providers to disclose private medical information. The cost of repeated trips to the doctor would be borne by the employee.
825.306 – Under current regulations, there is no place on FMLA forms for healthcare providers to report their diagnosis or prognosis when certifying employees for Family Medical leave; they must supply only the "medical facts" that justify the absence.	New regulations would permit (but not require) healthcare providers to offer a diagnosis and/or prognosis.	Experts suggest this change may violate medical privacy laws. As a practical matter, it may encourage employers to ask about an employee's diagnosis and prognosis.
825.307 – Currently an employer cannot contact employees' healthcare providers without their knowledge and consent.	Proposed changes would allow employers to make contact unilaterally if they suspect fraud or misrepresentation.	This will allow aggressive supervisors to make contact with healthcare providers without the knowledge of employees, thus compromising their right of privacy.

825.307 – Current rules stipulate that only employer healthcare professionals may discuss medical matters with an employee's healthcare provider.	The proposed change would allow employers to designate any representative for the purpose of making such inquiries.	This will allow non-medical personnel to discuss a worker's medical concerns with the worker's healthcare professional.
825.300- Once a supervisor has knowledge that an employee's absence *may* be related to FMLA, he or she has two business days to provide information to the employee about the employee's FMLA rights.	The proposed rule would expand the time frame to five business days	Employees already have difficulty getting timely notice of their rights from their employer. Giving employers more time seems unnecessary.
825.307 – Current rules require employers to give copies of second- and third-party evaluations to employees within two business days.	Proposed changes would expand this period to five business days.	Employers have often failed to give timely notices under the current rule. Expanding the timeframe makes no sense.
825.310 – Current rules stipulate that in some instances employees may return to duty from an FMLA absence with a simple statement from their doctor indicating they can return. Evaluations regarding fitness-for-duty exams, if necessary, were given after their return to duty and were the responsibility of the employer.	Proposed changes would allow employers to present healthcare providers with a list of duties and physical requirements of an employee's job. The employer can require the healthcare provider to consider these requirements and submit statements as to whether or not the employee can perform them before they return to work.	This will create longer delays in when employees attempt to return to work. This will result in additional expenses to the employees and force them to use more of their FMLA protection during the delay.