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Record Type: Record

To: John Morrall@EOP

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Subject: Suggestion for Regulatory Reform

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Name of Guidance:

Family and Medical Leave Act of 1993

Regulating Agency:

Department of Labor, Wage and Hour Division

Subagency (if any):

Citation (Code of Federal Regulation):

Code of Federal Regulations 29 C.F.R. § 825.203, et seq.

Authority (Statute/Regulation):

The Family and Medical Leave Act of 1993 5 U.S.C. 6381, et seq. 29 U.S.C. 2601, et seq.

Description of Problem (Nature of Impact and on Whom):

Section § 825.203 of the regulations promulgated under the FMLA allows certain leave to be taken intermittently or on a reduced leave schedule. This section allows leave to be taken in increments of less than one work day. The use of intermittent FMLA leave for incremental periods of less than one day has created significant logistical problems for employers, including: . Scheduling. Employers faced with employees taking intermittent FMLA leave in increments of less than a regular workday face scheduling nightmares. Employees generally take incremental FMLA leave sporadically and for various time periods. Consequently, employers are faced with finding substitute workers for employees on leave to work short, inconsistent time periods. Many times employers are unable to find

replacements to work such unique schedules and jobs go uncovered.. Payroll. Employees who take intermittent FMLA leave of less than one day create additional payroll problems for employers. Specifically, the employers regular payroll needs to be adjusted in increments that are inconsistent and atypical. This requires the employer to devote additional time and expense to processing payroll and requires burdensome, individual analysis in the computation of overtime, payroll taxes, and other withholding obligations.. Fraud. The opportunity for abuse when employees are allowed to take intermittent FMLA leave in less than full-day increments increases dramatically. Employer experience indicates a small, but significant, percentage of employees will attempt to use this type of incremental FMLA leave in a way that furthers their own interest not contemplated by the statute e.g., leisure activities, etc.. Consequently, employers are required to spend additional time scrutinizing such requests and less time devoted to their primary business.

Proposed Solution:

Section § 825.203 of the regulations promulgated under the FMLA allows certain leave to be taken intermittently or on a reduced leave schedule. This section allows leave to be taken in increments of less than one work day. The use of intermittent FMLA leave for incremental periods of less than one day has created significant logistical problems for employers, including: . Scheduling. Employers faced with employees taking intermittent FMLA leave in increments of less than a regular workday face scheduling nightmares. Employees generally take incremental FMLA leave sporadically and for various time periods. Consequently, employers are faced with finding substitute workers for employees on leave to work short, inconsistent time periods. Many times employers are unable to find replacements to work such unique schedules and jobs go uncovered.. Payroll. Employees who take intermittent FMLA leave of less than one day create additional payroll problems for employers. Specifically, the employers regular payroll needs to be adjusted in increments that are inconsistent and atypical. This requires the employer to devote additional time and expense to processing payroll and requires burdensome, individual analysis in the computation of overtime, payroll taxes, and other withholding obligations: Fraud. The opportunity for abuse when employees are allowed to take intermittent FMLA leave in **less** than full-day increments increases dramatically. Employer experience indicates a small, but significant, percentage of employees will attempt to use this type of incremental FMLA leave in a way that furthers their own interest not contemplated by the statute e.g., leisure activities, etc.. Consequently, employers are required to spend additional time scrutinizing such requests and less time devoted to their primary business.

Estimate of Economic Impacts (Quantified Benefits and Costs if possible / Qualified description as needed):

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including:

- **Scheduling.** Employers faced with employees taking intermittent FMLA leave in increments of less than a regular workday face scheduling nightmares. Employees generally take incremental FMLA leave sporadically and for various time periods. Consequently, employers are faced with finding substitute workers for employees on leave to work short, inconsistent time periods. Many times employers are unable to find replacements to work such unique schedules and jobs go uncovered..
- **Payroll.** Employees who take intermittent FMLA leave of less than one day create additional payroll problems for employers. Specifically, the employers regular payroll needs to be adjusted in increments that are inconsistent and atypical. This requires the employer to devote additional time and expense to processing payroll and requires burdensome, individual analysis in the computation of overtime, payroll taxes, and other withholding obligations..
- **Fraud.** The opportunity for abuse when employees are allowed to take intermittent FMLA leave in less than full-day increments increases dramatically. Employer experience indicates a small, but significant, percentage of employees will attempt to use this type of incremental FMLA leave in a way that furthers their own interest not contemplated by the statute e.g., leisure activities, etc..

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