(vi) the employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see § 825.218):

(vii) the employee's right to restoration to the same or an equivalent job upon return from leave (see §§ 825.214 and 825.604); and,

(viii) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see § 825.213).

(2) The specific notice may include other information—*e.g.*, whether the employer will require periodic reports of the employee's status and intent to return to work, but is not required to do so. A prototype notice is contained in Appendix D of this part, or may be obtained from local offices of the Department of Labor's Wage and Hour Division, which employers may adapt for their use to meet these specific notice requirements.

(c) Except as provided in this subparagraph, the written notice required by paragraph (b) (and by subparagraph (a)(2) where applicable) must be provided to the employee no less often than the first time in each sixmonth period that an employee gives notice of the need for FMLA leave (if FMLA leave is taken during the sixmonth period). The notice shall be given within a reasonable time after notice of the need for leave is given by the employee—within one or two business days if feasible. If leave has already begun, the notice should be mailed to the employee's address of record.

(1) If the specific information provided by the notice changes with respect to a subsequent period of FMLA leave during the six-month period, the employer shall, within one or two business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subparagraph (b) which has changed. For example, if the initial leave period were paid leave and the subsequent leave period would be unpaid leave, the employer may need to give notice of the arrangements for making premium payments.

(2)(i) Except as provided in subparagraph (ii), if the employer is requiring medical certification or a "fitness-for-duty" report, written notice of the requirement shall be given with respect to each employee notice of a need for leave.

(ii) Subsequent written notification shall *not* be required if the initial notice

in the six-months period and the employer handbook or other written documents (if any) describing the employer's leave policies, clearly provided that certification or a "fitnessfor-duty" report would be required (e.g., by stating that certification would be required in all cases, by stating that certification would be required in all cases in which leave of more than a specified number of days is taken, or by stating that a "fitness-for-duty" report would be required in all cases for back injuries for employees in a certain occupation). Where subsequent written notice is not required, at least oral notice shall be provided. (See § 825.305(a).)

(d) Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA.

(e) Employers furnishing FMLA-required notices to sensory impaired individuals must also comply with all applicable requirements under Federal or State law.

(f) If an employer fails to provide notice in accordance with the provisions of this section, the employer may not take action against an employee for failure to comply with any provision required to be set forth in the notice.

## § 825.302 What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?

(a) An employee must provide the employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. Whether the leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

(b) "As soon as practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.

For foreseeable leave where it is not possible to give as much as 30 days notice, "as soon as practicable" ordinarily would mean at least verbal notification to the employer within one or two business days of when the need for leave becomes known to the employee.

- (c) An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The employer should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave (see § 825.305).
- (d) An employer may also require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave. For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employer procedures will not permit an employer to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice.
- (e) When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employer to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements,