incapacity relating to the same condition, that also involves:

- (i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(2) Any period of incapacity due to pregnancy, or for prenatal care.

- (3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
- (i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, epilepsy, *etc.*).

- (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- (5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Eligible employee means:

- (1) An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence; and
- (2) Who, on the date on which any FMLA leave is to commence, has been employed for at least 1,250 hours of

service with such employer during the previous 12-month period; and

- (3) Who is employed in any State of the United States, the District of Columbia or any Territories or possession of the United States.
- (4) Excludes any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code: and
- (5) Excludes any employee of the U.S. Senate or the U.S. House of Representatives covered under title V of the FMLA; and
- (6) Excludes any employee who is employed at a worksite at which the employer employs fewer than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is also fewer than 50.
- (7) Excludes any employee employed in any country other than the United States or any Territory or possession of the United States.

*Employ* means to suffer or permit to work.

Employee has the meaning given the same term as defined in section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), as follows:

- (1) The term "employee" means any individual employed by an employer;
- (2) In the case of an individual employed by a public agency, "employee" means—
- (i) Any individual employed by the Government of the United States—
- (A) As a civilian in the military departments (as defined in section 102 of Title 5, United States Code),
- (B) In any executive agency (as defined in section 105 of Title 5, United States Code), excluding any Federal officer or employee covered under subchapter V of chapter 63 of Title 5, United States Code,
- (C) In any unit of the legislative or judicial branch of the Government which has positions in the competitive service, excluding any employee of the U.S. Senate or U.S. House of Representatives who is covered under Title V of FMLA,
- (D) In a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or
- (ii) Any individual employed by the United States Postal Service or the Postal Rate Commission; and
- (iii) Any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—
- (A) Who is not subject to the civil service laws of the State, political subdivision, or agency which employs the employee; and
  - (B) Who—

- (1) Holds a public elective office of that State, political subdivision, or agency,
- (2) Is selected by the holder of such an office to be a member of his personal staff.
- (3) Is appointed by such an officeholder to serve on a policymaking level,
- (4) Is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of the office of such officeholder, or
- (5) Is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

Employee employed in an instructional capacity. See Teacher.

Employer means any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and includes—

- (1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;
- (2) Any successor in interest of an employer; and
  - (3) Any public agency.

Employment benefits means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan" as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3). The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (See § 825.209(a)).

*FLSA* means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

Group health plan means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees. For purposes of FMLA the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that: