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LIST OF REPORTED COURT CASES IN WHICH THE VALIDITY OF AN FMLA REGULATION

HAS BEEN CHALLENGED

Updated Report
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	Case Name	Year Case Filed	Date of Relevant Decision	Court	Specific Regulation	Court's Decision	Comments
1995							
1	*Manuel v. Westlake Polymers Corp*., 66 F.3d 758 (5th Cir. 1995)	1995	10/3/95	5th Cir.	825.302(c); 825.303(a) interim regulations	Valid.	Employee does not have to invoke the statute by name in order to invoke the protection of the statute.
1996							
2	*Rich v. Delta Air Lines, Inc.*, 921 F. Supp. 767 (N.D. Ga. 1996)	1994	2/7/96	N.D. Ga.	825.700(a)	Invalid.	Regulation is invalid to the extent it authorizes a private cause of action under the statute to enforce the terms of an employment program or plan that provides more than the statutorily required twelve weeks leave.
1997							
3	*Wolke v. Dreadnought Marine, Inc.*, 954 F. Supp. 1133 (E.D. Va. 1997)	1996	2/19/97	E.D. Va.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility status under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid because it impermissibly contradicts the clear intent of Congress to restrict FMLA leave to employees who have worked for the same employer for at least twelve months and who have worked at least 1250 hours for that employer within the immediately preceding twelve months.
4	*Dodgens v. Kent Manufacturing Co*., 955 F. Supp. 560 (D. S.C. 1997)	1995	2/20/97	D. S.C.	825.220(b)	Valid.	Regulation (stating that the statute's prohibition against "interfering with" the exercise of employee's rights under the FMLA prohibits employers from violating the FMLA, refusing to authorize FMLA leave, discouraging employees from taking FMLA leave, and manipulating the work force to avoid responsibilities under the FMLA) is not plainly erroneous or inconsistent with the statute.
5	*Duckworth v. Pratt & Whitney*, 980 F. Supp. 552 (D. Me. 1997) rev'd. 152 F.3d 1 (1st Cir. 1998)	1997	9/26/97	D. Me.	825.220(c)	Invalid.	Regulation (purporting to extend scope of FMLA's anti-discrimination protection to prospective employees) is contrary to the statute which provides a cause of action solely for employees and not for job applicants.

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6	*Miller v. Defiance Metal Products, Inc.*, 989 F. Supp. 945 (N.D. Ohio 1997)	1997	12/12/97	N.D. Ohio	825.110(d)	Valid.	Regulation constitutes a reasonable interpretation of the statute and defendant's failure to notify plaintiff that she was not eligible within two days of receiving her request for leave violated the regulation.
				1998			
7	*Cox v. Autozone, Inc.*, 990 F. Supp. 1369 (M.D. Ala. 1998), aff'd, McGregor v. Autozone, Inc., 180 F.3d 1305 (11th Cir. 1999)	1997	1/20/98	M.D. Ala.	825.208	Invalid.	Regulation (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") is invalid to the extent that it entitles employee to more than twelve weeks of leave during a twelve month period.
8	*Seaman v. Downtown Partnership of Baltimore, Inc.*, 991 F. Supp. 751 (D. Md. 1998)	1997	1/20/98	D. Md.	825.110(d)	Invalid.	Followed Wolke v. Dreadnought Marine, Inc., 954 F. Supp. 1133 (E.D. Va. 1997), which held that the regulation (prohibiting employer from later challenging employee's eligibility status under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid because it impermissibly contradicts the clear intent of Congress to restrict FMLA leave to employees who have worked for the same employer for at least twelve months and who have worked at least 1250 hours for that employer within the immediately preceding twelve months.
9	*Bluitt v. Eval Company of America, Inc.*, 3 F. Supp. 2d 761 (S.D. Tex. 1998)	1997	5/4/98	S.D. Tex.	825.220(d)	Valid.	Regulation (stating that "employees cannot waive, nor may employers induce employees to waive, their rights under FMLA") is a permissible construction of the statute.
10	*Duckworth v. Pratt & Whitney, Inc.*, 152 F.3d 1 (1st Cir. 1998)	1997	7/14/98	1st Cir.	825.220(c)	Valid.	Regulation (providing that employers may not take prospective employee's past use of FMLA leave into account in hiring decisions) is a permissible reading of the statute.
11	*Santrizos v. Aramark Corp.*, 1998 WL 704114 (N.D. Ill. Sept. 29, 1998)	1996	9/29/98	N.D. Ill.	825.110(d)	Validity not decided.	Court resolved the case on another issue, declining to take the significant step of rejecting 825.110(d).

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12	*Dormeyer v. Comerica Bank-Illinois*, 1998 WL 729591 (N.D. Ill. Oct. 14, 1998), aff'd., 223 F.3d 579 (7th Cir. 2000)	1996	10/14/98	N.D. Ill.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility status under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid because it impermissibly contradicts the clear intent of Congress to restrict FMLA leave to employees who have worked for the same employer for at least twelve months and who have worked at least 1250 hours for that employer within the immediately preceding twelve months.
1999							
13	*Toro v. Mastex Industries*, 32 F. Supp. 2d 25 (D. Mass. 1999)	1997	1/7/99	D. Mass.	825.303	Valid.	Regulation (providing that "when the approximate timing of the need for leave is not foreseeable, an employee should give notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case") is not contrary to congressional intent.
14	*Covucci v. Service Merchandise Co., Inc.*, 178 F.3d 1294 (6th Cir. 1999)	1997	2/8/99	6th Cir.	825.208(a), (b) interim regulations	Invalid.	Technical violation of the interim regulation (requiring employer to designate leave as FMLA leave) did not deny plaintiff substantive rights under the statute and thus plaintiff is not entitled to an additional twelve weeks leave.
15	*Ritchie v. Grand Casinos of Mississippi, Inc.*, 49 F. Supp. 2d 878 (S.D. Miss. 1999)	1998	2/17/99	S.D. Miss.	825.208(c)	Valid.	Regulation (stating that employer who fails to designate leave as FMLA qualifying "may not designate FMLA leave retroactively" and "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") is based on a permissible construction of the statute.
16	*Henthorn v. Olsten Corp.*, 1999 WL 102764 (N.D. Ill. Feb. 24, 1999)	1997	2/24/99	N.D. Ill.	825.305(d)	Invalid.	Regulation (requiring that employer advise employee of the consequences of failing to comply with the statute's medical certification requirement) is invalid to the extent it relieves employee of the statutory obligation to provide such certification.

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17	*McQuain v. Ebner Furnaces, Inc.*, 55 F. Supp. 2d 763 (N.D. Ohio 1999)	1998	6/17/99	N.D. Ohio	825.110(d)	Invalid.	Regulation (providing that employee who is otherwise not yet eligible for coverage will be deemed eligible if employer fails to advise employee of FMLA ineligibility within two days of receiving request for leave) is contrary to the plain language of the statute which clearly sets forth minimum requirements for eligibility.
18	*Covey v. Methodist Hospital of Dyersburg, Inc.*, 56 F. Supp. 2d 965 (W.D. Tenn. 1999)	1997	6/25/99	W.D. Tenn.	825.208(c); 825.700(a)	Invalid.	Regulations (providing that employer's failure to notify employee that leave taken pursuant to company leave policy counts as FMLA leave will result in none of the absence being counted as FMLA leave) are invalid to the extent they require employer to provide more than twelve weeks of leave during a twelve month period.
19	*McGregor v. Autozone, Inc.*, 180 F.3d 1305 (11th Cir. 1999)	1998	7/14/99	11th Cir.	825.208(c); 825.700(a)	Invalid.	Regulations (providing that employer's failure to notify employee that leave taken pursuant to company leave policy counts as FMLA leave will result in none of the absence being counted as FMLA leave) are invalid to the extent they require employer to provide more than twelve weeks of leave during a twelve month period.
20	*Donnellan v. New York City Transit Authority*, 1999 WL 527901 (S.D.N.Y. July 22, 1999)	1998	7/22/99	S.D.N.Y.	825.208 interim regulations	Validity not decided.	Court assumes regulation is valid and reads regulation as not redefining or expanding the substantive rights of the statute.
21	*Neal v. Children's Habilitation Center*, 1999 WL 706117 (N.D. Ill. Sept. 10, 1999)	1997	9/10/99	N.D. Ill.	825.208(a)	Invalid.	Regulation (providing that employer's failure to notify employee that leave taken pursuant to company leave policy counts as FMLA leave will result in none of the absence being counted as FMLA leave) is manifestly contrary to the statute because it can result in employer being required to provide more than twelve weeks of leave during a twelve month period.

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22	*Longstreth v. Copple,* 189 F.R.D. 401 (N.D. Iowa 1999)	1997	10/22/99	N.D. Iowa	825.208	Validity not decided.	Court refuses to modify its prior summary judgment decision in light of McGregor v. Autozone, Inc., 180 F.3d 1305 (11th Cir. 1999) (holding regulation invalid). Due to the split in authority regarding the validity of 825.208 and given the Eighth Circuit's recurrent application of the regulations as an interpretive guide, the court affirms its denial of summary judgment and allows plaintiff to proceed on her claim that defendant violated the notice provisions of the FMLA.
23	*Chan v. Loyola University Medical Center*, 1999 WL 1080372 (N.D. Ill. Nov. 23, 1999)	1997	11/23/99	N.D. Ill.	825.207(f); 825.208(a), (b)(1), (b)(2), (c); 825.301(b); 825.700(a)	Valid.	Regulations reflect a reasonable accommodation of conflicting policies and fill in the gaps of the FMLA by prescribing what information employers must provide to employees and when and how they must provide it.
				2000			
24	*Schloer v. Lucent Technologies, Inc*., 2000 WL 128698 (D. Md. Jan. 21, 2000)	1999	1/21/00	D. Md.	825.208(c); 825.700(a)	Invalid.	Follows McGregor v. Autozone, Inc., 180 F.3d 1305 (11th Cir. 1999), as the dispositive rule that regulations (providing that employer's failure to notify employee that leave taken pursuant to company leave policy counts as FMLA leave will result in none of the absence being counted as FMLA leave) are invalid to the extent they require employer to provide more than twelve weeks of leave during a twelve month period.
25	*Thorson v. Gemini, Inc.*, 205 F.3d 370 (8th Cir. 2000), cert. denied, 531 U.S. 871 (2000).	1999	3/3/00	8th Cir.	825.114(a)(2)	Valid.	Congress has not directly spoken on the issue of what constitutes a "serious health condition" and regulation's objective test for what constitutes a "serious health condition" is a permissible construction of the statute.
26	*Dirham v. Van Wert County Hospital*, 2000 WL 621139 (N.D. Ohio March 3, 2000)	1999	3/3/00	N.D. Ohio	825.208	Validity not decided.	Court distinguishes McGregor v. Autozone, Inc., 180 F.3d 1305 (11th Cir. 1999) (holding regulation invalid), and applies the regulation.

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27	*Curry v. Neumann*, 2000 WL 1763842 (S.D. Fla. Apr. 3, 2000)	1998	4/3/00	S.D. Fla.	825.301(b)(1), (c); 825.305(a)	Invalid.	Regulations (requiring employers to provide employees with written notice of the consequences of failing to provide medical certification) are invalid to the extent they purport to prevent employers from taking adverse action against employees for failing to provide such certification.
28	*Plant v. Morton International, Inc.*, 212 F.3d 929 (6th Cir. 2000)	1999	5/12/00	6th Cir.	825.208(c)	Valid.	Statute is silent as to the notice employer must give before designating paid leave as FMLA leave and regulation (prohibiting employer from retroactively designating paid leave as FMLA leave) constitutes a reasonable understanding of the statute.
29	*Ragsdale v. Wolverine Worldwide, Inc.*, 218 F.3d 933 (8th Cir. 2000), aff'd, 122 S. Ct. 1155 (2002)	1999	7/11/00	8th Cir.	825.208(c); 825.700(a)	Invalid.	Regulations (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") are invalid to the extent they contradict the statute and require employer to provide more than twelve weeks of leave during a twelve month period.
30	*Dormeyer v. Comerica Bank-Illinois*, 223 F.3d 579 (7th Cir. 2000)	1999	7/24/00	7th Cir.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility status under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid because it attempts to change the statute which clearly defines an eligible employee as one who has worked for the same employer for at least twelve months and who has worked at least 1250 hours for that employer within the immediately preceding twelve months.
31	*Bowden v. Bill Dodge Buick-GMC Truck, Inc.*, 2000 WL 1061226 (D. Me. July 28, 2000)	1999	7/28/00	D. Me.	825.208	Validity not decided.	Court does not reach the issue of whether regulation (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") is valid because a genuine issue of material fact exists as to whether plaintiff voluntarily resigned.

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32	*Schober v. SMC Pneumatics, Inc.*, 2000 WL 1231557 (S.D. Ind. Aug. 21, 2000) Please note that this decision arises from the same district court case as the decision reported on Row 39 of this chart.	1999	8/21/00	S.D. Ind.	825.220(c)	Valid.	Regulation (prohibiting employer from discriminating against employee for having used FMLA leave) is based on a reasonable interpretation of the statute.
33	*Twyman v. Dilks*, 2000 WL 1277917 (E.D. Pa. Sept. 8, 2000)	1999	9/8/00	E.D. Pa.	825.208(c); 825.700(a)	Invalid.	Regulations (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") are inconsistent with the express language of the statute which provides that an employer must provide a total of twelve weeks leave during a twelve month period.
34	*Gadinski v. Shamokin Area Community Hospital*, 116 F. Supp. 2d 586 (M.D. Pa. 2000)	1999	10/19/00	M.D. Pa.	825.208(a); 825.700(a)	Valid.	Regulations are valid where employer refuses to allow employee to return to work at the end of an agreed upon six-month leave; FMLA requires employer to return employee to previously held position after leave expires regardless of whether employer provides more leave than required by the statute and, where employer fails to do so, notice requirements and the consequences to employer for not providing notice will be enforced.
35	*Smith v. BellSouth Telecommunications International, Inc.*, 117 F. Supp. 2d 1213 (N.D. Ala. 2000), rev'd, 273 F.3d 1303 (11th Cir. 2001)	1999	10/24/00	N.D. Ala.	825.220(c)	Invalid.	Regulation (prohibiting discrimination against prospective employees on the basis of their use of FMLA leave) is inconsistent with the definition of employees provided by the statute.

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36	*Brungart v. BellSouth Telecommunications, Inc.*, 231 F.3d 791, cert. denied, (11th Cir. 2000)	1999	10/24/00	11th Cir.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility status under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid to the extent it extends the statute's eligibility provisions to cover employees who have not worked for the same employer for at least twelve months and who have not worked at least 1250 hours for that employer within the immediately preceding twelve months.
37	*Dolese v. Office Depot, Inc.*, 231 F.3d 202 (5th Cir. 2000)	2000	11/7/00	5th Cir.	825.700	Invalid.	Regulation is invalid to the extent it authorizes a private cause of action under the statute to enforce the terms of an employment program or plan that provides more leave than the statutorily required twelve weeks.
38	*Scheidecker v. Arvig Enterprises*, 122 F. Supp. 2d 1031 (D. Minn. 2000)	1999	11/9/00	D. Minn.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid to the extent it attempts to grant employees greater rights than those conferred by the statute.
39	*Schober v. SMC Pneumatics, Inc.*, 2000 WL 1911684 (S.D. Ind. Dec. 4, 2000) Please note that this decision arises from the same district court case as the decision reported on Row 32 of this chart.	1999	12/4/00	S.D. Ind.	825.208(c); 825.700(a)	Valid.	In deciding motion in limine to exclude evidence regarding employer's failure to designate time as FMLA leave, court determines that, in the circumstances of this case, application of the regulations (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") will not amount to an elevation of form over substance.

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2001							
40	*Sewall v. Chicago Transit Authority,* 2001 WL 40802 (N.D. Ill. Jan. 16, 2001)	1999	1/16/01	N.D. Ill.	825.110(d)	Invalid.	Regulation (deeming ineligible employee eligible for FMLA leave where employer fails to notify employee that he has not met the twelve months of employment requirement) is unreasonable to the extent that it changes the statutory eligibility requirements to include persons who have not worked for the same employer for at least twelve months and who have not worked at least 1250 hours for that employer within the immediately preceding twelve months.
41	*Nordquist v. City Finance Co.*, 173 F. Supp. 2d 537 (N.D. Miss. 2001)	2000	1/19/01	N.D. Miss.	825.110(d)	Validity not decided.	Court determines regulation (prohibiting employer from later challenging employee's eligibility where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is not applicable to the facts of the case; court notes, however, that if it were, it would likely reject regulation as an invalid attempt to extend FMLA coverage to employees who are not otherwise eligible.
42	*Nolan v. Hypercom Manufacturing Resources*, 2001 WL 378235 (D. Ariz. Mar. 26, 2001)	2000	3/26/01	D. Ariz.	825.208	Invalid.	Regulation (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") is contrary to the statute to the extent it requires employer to provide more than twelve weeks of leave during a twelve month period.
43	*Evanoff v. Minneapolis Public Schools*, 11 Fed. Appx. 670 (8th Cir. 2001)	2000	4/17/01	8th Cir.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) contravenes the plain language of the statute because it broadens the definition of eligible employee to include persons who have not worked for the same employer for at least twelve months and/or who have not worked at least 1250 hours for that employer within the immediately preceding twelve months.

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44	*Miller v. AT&T Corp*., 250 F.3d 820 (4th Cir. 2001)	2000	5/7/01	4th Cir.	825.114(b), (c)	Valid.	Regulation's definition of "treatment" by a health care professional (which includes examinations to determine if a serious health condition exists and evaluations of that serious health condition) is not overly broad; regulation does not contravene the underlying purpose of the statute to the limited extent that it permits coverage for the common flu.
45	*Daley v. Wellpoint Health Networks, Inc*., 146 F. Supp. 2d 92 (D. Mass. 2001)	1999	5/14/01	D. Mass.	825.208(c)	Invalid.	Regulation (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") is invalid to the extent it contradicts the statute and requires an employer to provide more than a total of twelve weeks leave during a twelve month period.
46	*Haggard v. Levi Strauss & Co*., 8 Fed. Appx. 599 (8th Cir. 2001)	2000	5/18/01	8th Cir.	825.208(c); 825.700(a)	Invalid.	Court follows Ragsdale v. Wolverine Worldwide, Inc., 218 F.3d 933 (8th Cir. 2000), which held that regulations (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") are invalid to the extent they require an employer to provide more than a total of twelve weeks leave during a twelve month period.
47	*Bachelder v America West Airlines, Inc*., 259 F.3d 1112 (9th Cir. 2001)	1999	8/8/01	9th Cir.	825.220(c)	Valid.	Regulation (stating that employer cannot use the taking of FMLA leave as a negative factor in employment actions) constitutes a reasonable interpretation of the statute's prohibition on "interference with" and "restraint of" employee rights under the statute even though it uses the term "discrimination" as opposed to the term "interfere" or "restrain."
48	*Whitaker v. Bosch Braking Systems*, 2001 WL 1694233 (W.D. Mich. Aug. 27, 2001)	2000	8/27/01	W.D. Mich.	825.114	Valid.	Regulation (stating that pregnancy can be a serious health condition based upon continuing treatment by a health care provider only if the pregnancy produces a period of incapacity or if preventive care is sought) is a reasonable and valid exercise of the Secretary of Labor's authority to promulgate regulations to assist in carrying out the provisions of the statute.

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49	*Fulham v. HSBC Bank USA*, 2001 WL 1029051 (S.D.N.Y. Sept. 6, 2001)	1999	9/6/01	S.D.N.Y.	825.208(c); 825.700	Invalid.	Regulations (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") are invalid to the extent they require employer to provide more than twelve weeks of leave during a twelve month period.
50	*Harbert v. Healthcare Services Group, Inc*., 173 F. Supp. 2d 1101 (D. Colo. 2001)	2000	9/28/01	D. Colo.	825.111(a)(3)	Valid.	The statute does not provide a definition of "worksite" and regulation's definition (in the context of a joint employment relationship) is not in contravention of the plain language or the stated goal of the statute.
51	*Woodford v. Community Action of Greene County, Inc*., 268 F.3d 51 (2d Cir. 2001)	2000	10/10/01	2nd Cir.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility status under the statute where, upon request for FMLA leave, employer confirms employee's eligibility) is invalid to the extent it widens the statutory definition of eligible employee to include employees who have not worked for the same employer for at least twelve months and/or who have not worked at least 1250 hours for that employer within the immediately preceding twelve months.
52	*Nusbaum v. CB Richard Ellis, Inc*., 171 F. Supp. 2d 377 (D. N.J. 2001)	2000	10/26/01	D. N.J.	825.208; 825.700	Valid.	Regulations (stating that if employer fails to designate leave as FMLA qualifying then "none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement") are consistent with the overall statutory scheme of allowing employees to make informed decisions about leave.
53	*Alexander v. Ford Motor Co*., 204 F.R.D. 314 (E.D. Mich. 2001)	2001	11/5/01	E.D. Mich.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility status under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid because it impermissibly contradicts the clear intent of Congress to restrict FMLA leave to employees who have worked for the same employer for at least twelve months and who have worked at least 1250 hours for that employer within the immediately preceding twelve months.

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54	*Smith v. BellSouth Telecommunications, Inc.*, 273 F.3d 1303 (11th Cir. 2001)	2000	11/27/01	11th Cir.	825.220(c)	Valid.	Regulation (prohibiting employers from discriminating against employees or prospective employees on the basis of their use of FMLA leave) is entitled to deference because the statute is ambiguous as to whether it provides a private cause of action solely to current employees, as opposed to former or prospective employees, and regulation constitutes a reasonable interpretation of the statute.
55	*Caraballo v. Puerto Rico Telephone, Inc*., 178 F. Supp. 2d 60 (D. P.R. 2001)	2001	12/12/01	D. Puerto Rico	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid because it attempts to change the statute's definition of eligible employee to include persons who have not worked for the same employer for at least twelve months and/or who have not worked at least 1250 hours for that employer within the immediately preceding twelve months.
56	*Kosakow v. New Rochelle Radiology Associates, P.C.*, 274 F.3d 706 (2d Cir. 2001)	2000	12/20/01	2nd Cir.	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid to the extent it attempts to change the statutory definition of eligible employee to include persons who have not worked for the same employer for at least twelve months and/or who have not worked at least 1250 hours for that employer within the immediately preceding twelve months.
57	*Hunt v. Rapides Healthcare System, LLC*, 277 F.3d 757 (5th Cir. 2001)	2000	12/26/01	5th Cir.	825.208(c)	Validity not decided.	Court determines that the posture of the case does not require it to reach the issue of whether regulation (prohibiting employer from retroactively designating leave as FMLA leave) is valid.

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2002							
58	*Ragsdale v. Wolverine World Wide, Inc.*, 122 S. Ct. 1155 (2002)	2000	3/19/02	U.S. Supreme Court	825.700(a)	Invalid.	Regulation (providing that if employer fails to designate leave as FMLA qualifying then none of the absence preceding the notice to the employee of the designation will be counted against the employee's 12-week FMLA leave entitlement) is invalid because it creates a categorical penalty unconnected to any prejudice suffered by employee, which is "incompatible with the FMLA's comprehensive remedial mechanism"; regulation is "invalid because it alters the FMLA's cause of action in a fundamental way: It relieves employees of the burden of proving any real impairment of their rights and resulting prejudice."

Cases Decided After Supreme Court Decision in *Ragsdale v. Wolverine World Wide, Inc.*

	Case Name	Year Case Filed	Date of Relevant Decision	Court	Specific Regulation	Court's Decision	Comments
59	*Smith v. Diffee Ford-Lincoln-Mercury, Inc.*, 298 F.3d 955 (10th Cir. 2002)	2000	7/29/2002	10th Cir.	825.216(a)	Valid.	Regulation (providing that "[a]n employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment") is not arbitrary, capricious or manifestly contrary to the FMLA; the regulation permissibly shifts to the employer the burden of proving that an employee, laid off during FMLA leave, would have been dismissed regardless of the employee's request for, or taking of, FMLA leave.
60	*Parker v. Hanhemann University Hospital*, 2002 WL 31830647 (D. N.J. Dec. 18, 2002)	2000	12/18/02	D. N.J.	825.216(a)	Valid.	Regulation (providing that "[a]n employer must be able to show that the employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment") is valid; the court follows the Tenth Circuit decision in *Smith v. Diffee Ford-Lincoln-Mercury, Inc.*, 298 F.3d 955 (10th Cir. 2002), which placed the burden on the employer to prove that the employee, laid off during FMLA leave, would have been dismissed regardless of the employee's request for, or taking of, FMLA leave. The court determines that the Tenth Circuit approach upholds the validity and plain language of the regulation.
61	*Ruder v. MaineGeneral Medical Center*, 204 F. Supp. 2d 16 (D. Me. 2002)	2001	5/10/02	D. Me.	825.110(b)	Valid.	Regulation (providing that "[i]f an employee is maintained on the payroll for any part of that week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer . . . the week counts as a week of employment") is valid and consistent with the purposes of the statute; the court holds that an employee may pass the one-year eligibility threshold of the FMLA while on vacation if he remains on the payroll and is receiving benefits during that vacation.
62	*Russell v. Convergys Customer Management Group,* 2002 WL 32059744 (E.D. Tenn. July 10, 2002)	2001	7/10/02	E.D. Tenn.	825.110(d)	Validity not decided.	Court determines that the posture of the case does not require it to reach the issue of whether regulation (prohibiting employer from later challenging employee's eligibility under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is valid.

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63	*Rocha v. Sauder Woodworking Co.*, 221 F. Supp. 2d 818 (N.D. Ohio 2002)	2001	8/30/02	N.D. Ohio	825.110(d)	Invalid.	Regulation (prohibiting employer from later challenging employee's eligibility under the statute where, upon request for FMLA leave, employer fails to timely notify employee that he is ineligible) is invalid.
64	*Gurley v. Ameriwood Industries, Inc.*, 2002 WL 31450544 (E.D. Mo. Sept.12, 2002)	2001	9/12/02	E.D. Mo.	825.110(b); 825.110(d)	Invalid.	Regulation 825.110(b) (providing that "[i]f an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer . . . the week counts as a week of employment") is invalid to the extent the regulation can be read to render a regular employee who has worked only eleven months, three weeks and one day an eligible employee. Regarding regulation 825.110(d), the court follows Eighth Circuit precedent in finding that the regulation is invalid because it adds a non-statutory notice obligation upon employers and extends FMLA eligibility to otherwise ineligible employees.
65	*Dierlam v. Wesley Jessen Corp.*, 222 F. Supp. 2d 1052 (N.D. Ill. 2002)	2001	9/23/02	N.D. Ill.	825.220(d) 825.215(c)(2)	Valid.	Regulation 825.220(d) (providing that "employees cannot waive, nor may employers induce employees to waive, their rights under FMLA") is consistent with Congress's expressed intent and constitutes a valid and permissible construction of the statute. Regulation 825.215(c)(2) (providing that "[t]o the extent an employee who takes FMLA leave has met all the requirements for . . . bonuses before FMLA leave began, the employee is entitled to continue this entitlement upon return from FMLA leave [and thus] may not be disqualified for the bonus(es) for the taking of FMLA leave") is a reasonable and permissible construction of the statute.
66	*Farina v. Compuware Corp.,* 256 F. Supp. 2d 1033 (D. Ariz. 2003)	1998	3/23/03	D. Ariz.	825.208(c)	Validity not decided.	Court did not decide validity issue, but followed the Supreme Court's guidance in *Ragsdale v. Wolverine Worldwide, Inc.*, 122 S. Ct. 1155 (2002), regarding how to enforce violations of the notice provisions under the FMLA.
67	*Phillips v. Leroy-Somer North America*, 2003 WL 1790941 (W.D. Tenn. March 28, 2003)	2001	3/28/03	W.D. Tenn.	825.208(c)	Invalid.	Regulation (providing that employer's failure to notify employee that leave taken pursuant to company leave policy counts as FMLA leave will result in none of the absences being counted as FMLA leave) is invalid following *Ragsdale v. Wolverine Worldwide, Inc.*, 122 S. Ct. 1155 (2002).

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68	*Faris v. Williams WPC-I, Inc.*, 332 F.3d 316 (5th Cir. 2003)	2002	5/27/03	5th Cir.	825.220(d)	Validity not decided.	Court determined that the party challenging the regulation (stating that "employees cannot waive, nor may employers induce employees to waive, their rights under the FMLA") did not present the challenge to the District Court and, therefore, the Court could not consider the issue on appeal.