

an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA's provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. *See* 825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a light duty position. If the employing office offers such a position, the employee is permitted but not required to accept the position. *See* 825.220(d). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. *See* 825.207(e). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA, as made applicable by the CAA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by

the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employing office may not be denied maternity leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301, *et seq.*, veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employing office during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. *See* 825.110(b)(2)(i) and (c)(2) and 825.802(c).

(h) For further information on Federal antidiscrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including Title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Congressional Workplace Rights.

ORDERS FOR TUESDAY, NOVEMBER 17, 2020

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, November 17; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; further, following leader remarks, the Senate proceed to executive session and resume consideration of the Johnson nomination under the previous order. Finally, I ask that the Senate recess following the cloture vote on the Beaton nomination until 2:15 p.m. to allow for the weekly conference meetings.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order following the remarks of Senator BROWN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio.

NOMINATION OF JUDY SHELTON

Mr. BROWN. Mr. President, I start by asking the Presiding Officer to wear a mask as he speaks and the people are below him.

I can't tell you what to do.

The PRESIDING OFFICER. I don't wear a mask when I am speaking like most Senators. I will put it back on, but I don't need your instruction.

Mr. BROWN. I know you don't need my instruction.

There clearly isn't much interest in this body in public health. We have a President who hasn't shown up at the Coronavirus Task Force in months. We have a majority leader who calls us back here to vote on an unqualified nominee and, at the same time, to vote for judge after judge, exposing all the people who can't say anything. I understand. There are people in front of the Presiding Officer and we expose all the staff here and the majority leader doesn't seem to care.

The American people sent a clear message in this election. They voted for stability. They rejected an administration that has failed them in the middle of a public health crisis and economic crisis. People want a government that works for them and is on their side. My colleagues in both parties know this.

I know some of you feel like you have to humor the outgoing President, continue to make excuses for him, continue to run from the media when they might ask a question about your opinion on the President. But you know that Joe Biden won, and you won. Most of you won your elections—including the Presiding Officer—fair and square on the same ballot. You don't have to play along with the tweets and the chaos.

He threatened the Republican Governor of Ohio today, for instance, because the Governor of Ohio—I think he said the term "President-Elect Biden," and that offended the President. You don't have to play along with the tweets and the chaos and the crazy anymore.

We need to move on. We need to actually deliver for the people who voted for us and put their faith in us. The last thing we should be doing is granting Trump one last wish—one more opportunity to salt the earth on his way out.

The Federal Reserve is supposed to be a steady, guiding hand, making sure our economy actually delivers for the people who make it work. They are supposed to worry about the big picture of the economy so hard-working families don't have to.

But Judy Shelton—most of my colleagues know this. I have talked to many of them. She believes the opposite. That is why Trump wants one last pick for the Federal Reserve, and Senator MCCONNELL and all the spineless people in this body continue to give him that last wish.

Eighty million Americans voted for stability. Shelton promises more Trump chaos. I know we have disagreements. We have progressive economic ideas and conservative economic ideas. I am fine with disagreements. That is what government is about. That is what self-government is about.