



December 29, 1994

FMLA-53

Dear *Name*\*,

Thank you for your letter, addressed to Secretary Robert Reich, about the provisions of the Family and Medical Leave Act of 1993 (FMLA). Your letter has been referred to the Wage and Hour Division of the U.S. Department of Labor for reply as this office has primary administration and enforcement responsibilities under FMA for all private, state and local government employees, and some Federal employees.

The FMLA allows up to 12 workweeks of unpaid, job-protected leave in any 12-months—with group health insurance coverage maintained during the leave—to eligible employees for specified family and medical reasons.

Employers are covered under the FMLA if they have employed at least 50 employees during 20 or more calendar workweeks in the current or the preceding calendar year. Employees are eligible under the FMLA if they have worked for a covered employer for at least 12 months that need not be consecutive, have worked at least 1,250 hours during the 12 months preceding the start of leave, and are employed at a worksite where the employer employs at least 50 employees within 75 miles.

Unpaid FMLA leave must be granted to an eligible employee for any of the following reasons: (1) for birth of a son or daughter, and to care for the newborn child; (2) for placement with the employee of a son or daughter for adoption or foster care; (3) to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; and (4) for a serious health condition that makes the employee unable to perform his/her job.

Upon return from FMLA leave, the employee is entitled to be restored to the same employment position which the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Where leave is taken to care for the newborn child or for placement with the employee of a son or daughter for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Where FMLA leave is taken to care for a sick family member or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when medically necessary. The employer may require 30 days advance notice when the leave is "foreseeable" and a medical certification from the treating health care provider only when the employee or the employee's family member has a serious health condition.

It would appear from the limited information contained in your letter that the employer need not have approved your requests for leave to care for your newborn child from November 6 through 18 and December 1 through 5. These requests would be considered to be intermittent FMLA leave as they are leaves taken in separate blocks of time following your initial leave of absence due to the birth of the child. This conclusion is based on the information contained in your letter which stated that you returned to work on November 4 and advised your employer on that date that you wished to take two additional leaves as noted above. The employer may have been in violation for requiring medical certification for a leave of absence that appeared not to involve a serious health condition either of your own self or of an immediate family member. The employer could have required 30 days advance notice before approving, if it chose to approve, either intermittent leave request to care for the newborn child.



The information contained in your letter is too limited to determine whether your employer has violated any provisions of FMLA. If you feel that the employer has violated FMLA, you may contact the Wage and Hour area office that handled your previous complaint.

Sincerely,

Daniel F. Sweeney  
Deputy Assistant Administrator

cc: Dallas Regional Office

*\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*