



May 17, 1995

FMLA-62

Dear **Name \***,

Thank you for your letter of April 30, 1995, addressed to Secretary Robert Reich, which encloses correspondence from **Name \*** about the Family and Medical Leave Act of 1993 (FMLA). Your letter plus enclosures have 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 responsibility under FMLA for all private, state and local government employees, and some Federal employees.

**Name \*** expresses concern about the general notice requirements under FMLA for covered employers who do not have any eligible employees. Specifically, **Name \*** cites a political subdivision, i.e., public agency, which employs less than 50 employees. Pursuant to Section 101 of FMLA, public agencies are covered employers regardless of the number of employees employed. Also under this section, FMLA excludes from employee eligibility, any employee who is employed at a worksite where less than 50 employees are employed by the employer within 75 miles.

Section 109 of FMLA requires all covered employers to post " ... and keep posted in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted ..." a notice of the Act's provisions and information concerning procedures for filing complaints of violations. As the preamble to the final rule notes in the information provided by **Name \***, "FMLA imposes a statutory obligation on all covered employers to post the notice to employees informing them of FMLA's provisions, regardless of whether the employer has any 'eligible' employees." This section also notes that there is no authorized exception that relieves covered employers from this notice requirement when they have no eligible employees. Consequently, the Department does not have, given the current language of the statute, the option to waive the posting requirement as suggested by the comments to the final rule and **Name \***.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Daniel F. Sweeney  
Deputy Assistant Administrator

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