



December 12, 1997

FMLA-92

Dear *Name*\*,

Thank you for your letters concerning the Family and Medical Leave Act of 1993 (FMLA). I apologize that, because of the volume of work associated with administering FMLA, we were not able to respond sooner to your request.

Your questions relate to employee absences pursuant to a public or private temporary disability plan or workers' compensation laws. You have asked whether such temporary disability leave or workers' compensation absences are paid leave within the meaning of the FMLA; whether the employer or employee may substitute paid vacation, personal, or medical or sick leave for such leave; whether the employer may recover both health and non-health premiums it has paid during such an absence; and whether employees accrue seniority and other benefits during such an absence.

As explained in the preamble to the regulations, leave under a temporary disability plan, whether public or private, or under a workers' compensation law is not a form of "accrued paid leave" within the meaning of the FMLA (see 60 Fed.Reg. 2180, 2205-06 (1995), preamble to 29 CFR 825.207). Nor is such leave under a temporary disability plan or workers' compensation law "unpaid" leave within the meaning of the FMLA (see 29 CFR 825.207(d)(1) and (2)). Therefore, where a work-related illness or injury constitutes a serious health condition which triggers application of the FMLA, and the employee has elected to receive payments from a private disability plan or from a state workers' compensation plan, the employer cannot require the employee to substitute, under section 102(d), any paid vacation, personal, or medical or sick leave, for any part of the absence that is covered by the payments under the temporary disability plan or under a workers' compensation plan. Similarly, an employee is precluded from relying upon FMLA's substitution provision to insist upon receiving both temporary disability or workers' compensation and accrued paid leave benefits during such an absence. In accordance with the regulations, however, the employer may, at the beginning of the absence, designate the temporary disability leave or workers' compensation absence as FMLA leave and count the period of the absence under both the temporary disability plan or workers' compensation plan and FMLA (see 29 CFR 825.207(d)(1) and (2); 29 CFR 825.208; 60 Fed.Reg. at 2205-2206).

With respect to the employer's right to recover its share of insurance premiums paid during the absence if the employee fails to return, the statute only authorizes the recovery of the employer's share of insurance premiums that are paid to maintain coverage for the employee under a group health plan (as defined in 29 CFR 825.800) during any period of unpaid leave (see 29 USC 2614(c)). Since leave taken pursuant to a temporary disability plan or workers' compensation plan is not unpaid leave within the meaning of the Act, the statutory provision for recovery of health insurance premiums does not apply (see 29 CFR 825.213(d)). Also, neither the statute nor the regulations provide for the employer's recovery of any non-health benefit premiums paid during a FMLA-designated temporary disability leave or workers' compensation absence, as opposed to during unpaid leave (see 29 CFR 825.213(b)).

Finally, if the employer designates the absence due to a temporary disability or workers' compensation as FMLA leave, then the employee is entitled to all employment benefits accrued prior to the date on which the leave commenced. The FMLA does not entitle the employee to the accrual of any seniority or employment benefits during any period of FMLA leave, nor to any right, benefit or position of employment other than that to which he or she would have been entitled had the employee not taken the leave (see 29 USC 2614; 29 CFR 825.215(d)(2) and (4)). Thus, an employee on FMLA leave does not accrue seniority or employment benefits during the absence by operation of the FMLA. Nevertheless, in addition to the group health benefits guaranteed under section 104(c) of the FMLA, an employee on FMLA leave—whether paid or unpaid—may be entitled to additional benefits while absent, depending on the employers established policy for providing such benefits when employees are absent on other forms of leave (see 29 CFR 825.209(h) and 825.220(c)).



I trust this letter has responded to your concerns. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Michelle M. Bechtoldt  
Office of Enforcement Policy  
Family and Medical Leave Act Team

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