



January 31, 1994

FMLA-27

Dear *Name**,

This is in response to your inquiry to *Name** of my staff regarding return to work agreements following substance abuse rehabilitation treatment and whether they conflict with provisions of the Family and Medical Leave Act of 1993 (FMLA).

You indicate that the State of Texas requires all employers subject to the State's Workers' Compensation Act to maintain a substance abuse policy that provides, among other things, a description of any available treatment programs and how they may be requested by the employee, such as employer sponsored programs or assistance provided under health care insurance programs. Policies must also indicate any drug testing that may be undertaken by the employer.

You stated that many employers include a requirement that employees undergo mandatory drug testing. Some have established mechanisms for voluntary disclosure of personal substance abuse conditions by employees, which may result in the employer offering the employee assistance in obtaining rehabilitation or treatment, including taking time off from work. Additionally, some employers require employees who have disclosed their conditions and obtained rehabilitation treatment to execute a return to work agreement, which requires additional substance abuse testing for a period of time following treatment and return to work. These testing requirements are in addition to the testing program in place for all employees. You state that these procedures appear to be specifically authorized under the Americans with Disabilities Act (ADA), but question whether the ADA and FMLA are in conflict insofar as FMLA entitles an employee upon return from FMLA leave to be restored to the same or equivalent position without any modifications to the terms and conditions of the former employment as a result of the leave.

We do not interpret the FMLA as creating a conflict with employers' substance abuse policies required under State workers' compensation laws. For example, under § 104(a)(4) of the FMLA, as a condition of restoring an eligible employee who takes leave for a personal serious illness, an employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the employee's health care provider that the employee is able to resume work, "... except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees." Furthermore, in addressing the effect of FMLA on other laws, and particularly Federal and State antidiscrimination laws (such as the ADA), § 401(a) of the FMLA provides that [n]othing in this Act or any amendment made by this Act shall be construed to *modify or affect any* Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or *disability*." (Emphasis added.) The legislative history accompanying this provision makes it clear that the FMLA was not intended to modify or affect the ADA, or any regulations issued under that Act. Accordingly, the rights of employers to maintain a substance abuse policy as required by State workers' compensation laws and in accordance with ADA provisions and regulations are not affected by the enactment of the FMLA.

I hope that this is responsive to your inquiry. If we may be of further assistance, please do not hesitate to contact us again.

Sincerely,

J. DEAN SPEER
Director, Division of Policy and Analysis

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