



May 18, 1994

FMLA-36

Dear **Name ***,

This is in response to your letter forwarding correspondence from **Name *** about the Family and Medical Leave Act of 1993 (FMLA). Your letter has been referred to the Wage and Hour Division for reply as this office has primary administration and enforcement responsibilities under the FMLA for all private, state and local government employees and some federal employees, such as employees of the United States Postal Service and Postal Rate Commission.

The FMLA, which became effective for most employees on August 5, 1993, 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. If a collective bargaining agreement (CBA) was in effect on that date, the FMLA became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier.

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 which do not have to 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 by 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 position that the employee held when the leave commenced, or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.

The FMLA statute (i.e., § 102(d)) and Regulations 29 CFR 825.207 provide that an eligible employee may elect, or an employer may require the employee to substitute any of the accrued paid vacation leave, personal or family leave, or medical or sick leave for any part of the 12 workweeks of unpaid FMLA leave under certain conditions. Paid vacation leave, personal leave, or family leave may be substituted for all or part of any unpaid FMLA leave provided to care for the employee's child after birth, or placement for adoption or foster care, or to care for a seriously ill family member. Paid sick leave or medical leave may be used and counted as FMLA leave for the employee's own serious health condition, and to the extent permitted by the employer's plan to care for the employee's seriously ill family member. Use of paid family leave as FMLA leave is also limited by the normal use of the employer's plan. The FMLA does not supersede any provision of State or local law that provides greater family or medical leave rights than those established under the FMLA so long as the state law has jurisdiction over the employer. In this instant case, the Wisconsin family and medical leave law does not have jurisdiction over the Federal government and its provisions would not be applicable to any Federal employee. Given this fact, the under Title I would have jurisdiction over Federal employees employed by the United States Postal Service. The provisions covering the substitution of accrued paid leave under the FMLA, as previously mentioned, would be applicable to **Name ***.

Under these circumstances, the United States Postal Service would be correct to deny **Name *** request to substitute accrued paid sick leave for unpaid FMLA leave to care for his newborn child. **Name *** may substitute accrued paid vacation leave or may take an unpaid FMLA leave of absence to care for his newborn child. A copy of Regulations 29 CFR 825.207 and 701 about the substitution of paid leave and the application of state laws under FMLA is enclosed for information purposes.



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

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosure

cc: Washington, D.C., office

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