



July 25, 1994

FMLA-40

Dear *Name**,

This is in response to your letter addressed to Ms. Geri D. Palast, Assistant Secretary for Congressional Affairs regarding your concerns about the provisions of the Family and Medical Leave Act of 1993 (FMLA). Your letter has been referred to me for a response.

You express concern that an employee could be called upon to deal with one crisis, e.g., a sick child for several weeks, and then be faced with another medical event, e.g., the birth of a child, and not have adequate leave remaining under FMLA to entirely cover the second event. You express particular concern regarding the exhaustion of leave during a period when worker's compensation is also applicable. You feel this represents a flaw in the FMLA which may or may not have been included by design.

The FMLA provides 12 weeks of unpaid, job-protected leave with maintenance of group health benefits in any 12-month period for four types of medical emergencies. One of these emergencies is for the employee's own serious health condition which may result from an injury on or off the job. Congress clearly intended for the term "serious health condition" to include an injury sustained on the job, i.e., a worker's compensation injury.

While on the one hand it may seem inappropriate for a worker's compensation absence to run concurrently with FMLA leave, in some States the employer is not required to maintain the group health insurance during a worker's compensation absence. In some States, the employer is not required to re-employ the employee after a certain time has elapsed, nor is the employer required to place the employee in the same or equivalent job upon return. So, while in some situations it may seem inappropriate to exhaust FMLA leave during such an absence, in other circumstances it may be to the employee's benefit to be able to utilize such leave (FMLA).

Hopefully this has been responsive to your inquiry. If we may be of further assistance, please let us know.

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).*