



July 29, 2003

FMLA2003-4

Dear **Name\***

Thank you for your letter addressed to President George W. Bush seeking his assistance concerning the Family and Medical Leave Act of 1993 (FMLA). Your letter has been forwarded to the Wage and Hour Division of the U.S. Department of Labor for response as this office administers the FMLA for all private, state and local government employees, some federal employees, and employees of local education agencies that are covered under special provisions. Specifically, you are concerned about an attendance "point system" that your employer implemented in January of 2003. Under this system, an employee receives one point for each absence and the employee is subject to termination after accumulating seven points.

The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave each year – with continued group health insurance coverage – for specified family and medical reasons. Eligible employees are entitled to unpaid FMLA leave for any of the following reasons: (1) the birth of a son or daughter, and to care for the newborn child within one year of birth; (2) the placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child within one year of placement; (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.

Point systems, sometimes, referred to as "no fault" attendance policies, do not necessarily violate the FMLA as long as points are not assessed for employees who are absent due to any FMLA qualifying reason. Employers are prohibited from counting FMLA-qualifying absences against employees under a "no fault" attendance policy.

Determinations of compliance, eligibility and other issues under the FMLA are fact-specific. Based on the limited information provided in your letter, we are unable to determine the application of the FMLA to your daughter's circumstances. For your information, we are enclosing the *Compliance Guide to the Family and Medical Leave Act* which provides an explanation of the FMLA's benefits. Page 13 discusses "no fault" attendance policies.

Responsibility for investigating allegations of violations of the FMLA has been delegated to the district offices of the Wage and Hour Division. If, after reading the enclosed pamphlet you believe that your employer may have violated your daughter's rights under the FMLA, you may contact the nearest Wage and Hour District Office located at TCBY Building, Suite 725, 425 West Capitol Avenue, Little Rock, Arkansas 72201, telephone (501) 324-5292.

Sincerely,

Rosemary E. Sumner  
Office of Enforcement Policy  
Family and Medical Leave Act Team

Enclosure

cc: The White House

*Note: \* Name(s) withheld to preserve privacy, in accordance with 5 U.S.C. 552(b)(7).*