



This letter is under review in light of issues raised by the U.S. Supreme Court in *Ragsdale v. Wolverine World Wide, Inc.* and other judicial decisions. It may be superseded by FMLA2002-5-A. (http://www.dol.gov/esa/whd/opinion/FMLA/2002_08_06_5A_FMLA.htm)

March 26, 1999

FMLA-103

Dear *Name**,

Thank you for your letter of March 3, 1999, seeking information on the Family and Medical Leave Act of 1993 (FMLA) as it would relate to an employer's more generous medical leave of absence policies regarding length of leave and job restoration.

In enacting FMLA (29 U.S.C. 2601 *et seq.*), the Congress stated that one of the purposes of this law is to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The FMLA allows up to 12 weeks of job-protected leave in any 12 months—with group health insurance coverage maintained during the leave—to eligible employees for the above mentioned family and medical reasons. Upon completion of the leave, the employee must be returned to work to the same or an equivalent position with equivalent pay, benefits and other terms and conditions of employment. It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under this Act, or to discharge or in any other manner discriminate against an employee for opposing or complaining about any unlawful practice related to this law.

The FMLA (§ 29 U.S.C. 2652) and the Regulations (§ 29 CFR 825.700) describe the interaction between FMLA and employer plans and provide that nothing in FMLA diminishes an employer's obligation under a collective bargaining agreement (CBA) or employment benefit program or plan to provide greater family or medical leave rights to employees than the rights established under FMLA, nor may the rights established under FMLA be diminished by any such CBA or plan.

In your letter, you give an example of a more generous employment leave plan that permits an employee to take up to 52 weeks of medical leave and to return to work. If the employee fails to return to work within the 52 weeks of medical leave, the employer may terminate the employee's employment. You asked whether the employer can lawfully terminate an employee's employment if an employee has been on a medical leave of absence for 52 weeks with 12 of those weeks also designated as FMLA leave, or whether the employee, after 52 weeks of a medical leave of absence, would be entitled at that point to an additional 12 weeks of FMLA leave.

In response to your question, we wish to note that the FMLA requires covered employers to provide eligible employees with up to 12 workweeks of leave in a 12-month period for any one or more of the specified family or medical reasons. By its terms, FMLA requires unpaid leave, but also provides for the use of appropriate paid leave for any portion of the unpaid leave required by the Act. (See § 29 U.S.C. 2612(d) and § 29 CFR 825.207.) If the employee is unable to or does not return to work at the end of 12 weeks of FMLA leave (provided the employer designated the leave as FMLA leave and so notified the employee in writing), all entitlements and rights under FMLA cease at that time. The employee is no longer entitled to any further job restoration rights under the FMLA. (See § 29 U.S.C. 2612(a) and §§ 29 CFR 825.200 and .214.)

An employer, however, must observe any employment benefit program or plan or CBA that provides greater family or medical leave rights to employees than the rights established by the FMLA. (See § 29 CFR 825.700.) Thus, the employer in your example may have an obligation under its own "medical leave of absence" policies to extend leave benefits for up to 52 weeks, but not beyond 52 weeks. If the medical leave of absence also qualifies as a serious health condition for FMLA purposes, the employer may designate 12 weeks of that absence as FMLA leave so long as the employee is eligible. While the discrimination prohibition in FMLA (§ 29 U.S.C. 2615 and § 29 CFR 825.220) would prevent an employer from treating FMLA leave takers differently than it would treat similarly situated employees who were not



eligible for FMLA leave, the FMLA would not require, nor prohibit, an employer to extend leave benefits beyond the 52 weeks.

The above information should be viewed as general guidance based upon the limited information contained in your letter. If we may be of further assistance to you, 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).*