



July 1, 1999

FMLA-106

Dear *Name**,

Thank you for your letter of April 29, 1999, concerning the Family and Medical Leave Act of 1993 (FMLA). I apologize that, because of the volume of work associated with administering the FMLA, I was not able to respond sooner to your concerns.

In enacting FMLA (29 USC 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.

In your letter, you ask whether an employee, who is eligible for FMLA leave for a qualifying reason, is entitled to the leave even though during the leave the employee intends to continue to work at his second job. The answer to your question will be determined by whether the employer has a uniformly-applied policy governing outside or supplemental employment. For example, the employer may have an established policy that prohibits outside employment while an employee is on a paid or unpaid leave of absence where benefits may be maintained. If so, the employee on FMLA leave would be subject to that policy as it is our position that an employee on FMLA leave continues to have an employment relationship with the employer. Consequently, the employer's employment policies continue to apply to an employee on FMLA leave in the same manner as they would apply to an employee who continues to work, or is absent while on some other form of leave. (See 29 USC §2614(a)(3)(B) of the Act and 29 CFR §§825.216 and 825.312(h) of the Regulations.)

As a special note, we wish to point out that neither the statute nor regulations prohibit outside employment by an employee on FMLA leave except as a result of the employer's established policies. In the absence of such a policy, the employee may do as he/she chooses while on FMLA leave.

Sincerely,

Michelle M. Bechtoldt
Office of Enforcement Policy
Family and Medical Leave Act Team

Enclosure

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