U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

September 11, 2000 **FMLA-113**

Dear ***Name****,

Thank you for your letters seeking an opinion under the Family and Medical Leave Act of 1993 (FMLA) regarding return-to-work procedures required by the ***Name**** for employees who are returning to work following FMLA leave due to their own "serious health condition."

In the first letter, you specifically ask whether the FMLA would permit the ***Name**** to require an employee to submit to a "fitness-for-duty examination" before returning to work from FMLA leave where the employee's health care provider has certified the employee to be "fit to return to duty without restriction." You also asked that we assume for purposes of answering your inquiry that the handbook and manual provisions relied on by the ***Name**** are part of a collective bargaining agreement (CBA) under the FMLA regulations. In the second letter, you ask whether the ***Name****, in those instances where it failed to provide notice of any requirements for a medical certification as a condition of reinstatement, can delay an FMLA leave taker's return to work until such certification has been received.

As a condition of restoration, the FMLA permits an employer that has a uniformly- applied policy or practice to require all employees, or only certain employees, who take leave for their own serious health condition to provide a return-to-work certification from their health care provider. The certification need only be a simple statement of an employee's ability to work and must relate only to the particular health condition that caused the employee's need for FMLA leave. Under this provision, an employer may not impose additional requirements. These fitness-for-duty certification provisions, however, do not **supersede** any valid State or local law or CBA that governs return to work for such employees. (See 29 U.S.C. §2614(a)(4) and 29 C.F.R. §825.310.) How FMLA's certification provisions interact with the terms of a CBA that govern an employee's reinstatement is specifically discussed in §825.310(b) of the regulations. If the terms of the CBA, for instance, require a fitness-for-duty examination in addition to a return-to-work certification, then those terms apply with certain conditions. The FMLA, which has adopted the guidelines of the Americans with Disabilities Act (ADA), requires that any fitness-for-duty examination as a condition of returning to work must be job-related and consistent with business necessity.

As you have noted in your letter, a part of the CBA includes, by reference, the handbook and manual provisions regarding "return-to-work medical certifications," which are detailed medical reports, and "fitness-for-duty examinations." If the above-referenced return-to-work medical certification and fitness-for-duty examination provisions in the handbook and manual are a part of the CBA as you have asked that we assume, then these provisions would apply instead of FMLA's return-to-work certification requirements. If these provisions are not part of the CBA, then FMLA's return-to-work certification requirements would apply. This conclusion is consistent with the district court case referenced in your letter, i.e., Albert v. Runyon, where the court determined that the terms for a United States Postal Service District Manager returning to work were neither governed by a CBA, nor State or local law. In that case, the court determined that the FMLA would only require as a condition of restoration that the employee submit to the employer a certification obtained from the employee's health care provider that consisted of a simple statement of the employee's ability to return to work.

With respect to your letter on the effect of ***Name**** failure to give timely notice for return-to-work certifications, the regulations, at §825.310(e), discuss FMLA's notification procedures as they relate to medical certification requirements as a condition for reinstatement to the same or an equivalent position. This regulation tracks closely the general notification (§825.301(a)) and employee specific notification (§825.301(b)) requirements as they would relate to an employer's obligation to communicate its restoration policies to employees who are returning to work following FMLA leave due to their own serious health condition. Employers must notify employees in writing of their obligations and what happens if they fail to meet these obligations within a reasonable period of time, generally one or two business days, if feasible, following the employee's request for leave that is FMLA-qualifying. It should be noted that these notification requirements would permit the employer to modify the notice applicable to the return-to-work certification if the employee's medical condition should change during the course of the

leave and affect the certification requirements. In this situation, the employer's modified notice to the employee should come shortly after receipt of information from the employee that the medical condition has changed (i.e., within two business days absent extenuating circumstances).

The FMLA notification procedures establish the minimum notice due even when a CBA establishes the return-to-work certification requirements. If an employee's reinstatement is delayed as a result of the employer's failure to provide timely notice under the FMLA, the lack of notice would result in interference with and violation of the employee's statutory right to reinstatement. In such a situation, the employer can neither count the additional time against the employee's FMLA leave entitlement, nor penalize the employee for being absent. On the other hand, if the employer has provided a timely notice as specified in the FMLA regulations, that clearly identifies what the CBA requires the employee to submit, the employer may delay restoration until the employee submits the required certification. (See §§825.310(f), 825.311(c), and 825.312(c).)

I hope that this letter has fully responded to your concerns. If you require further assistance, 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).*