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

March 10, 1995 **FMLA-55**

Dear ***Name****,

This is in response to your letter forwarding correspondence from ***Name****. ***Name**** expresses concern about the Family and Medical Leave Act of 1993 (FMLA) as it relates to the Americans With Disability Act (ADA) with respect to light duty accommodation and medical certification.

In enacting FMLA, Congress stated in Section 2 that there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods. Congress also stated in Section 2 that it is the purpose of this Act to entitle employees to take reasonable leave for medical reasons. Pursuant to Section 102(a)(1)(D), an eligible employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period because of a serious health condition that makes the employee unable to perform functions of the employee's position. Sections 104(a)(1)(A) and (B) provide that upon return from FMLA leave, employees must be restored to their original or to an equivalent position with equivalent pay, benefits, and terms and conditions of employment. Section 105 prohibits the employer from interfering with or discriminating against an employee who exercises his or her rights under FMLA. The position taken by the Department that prohibits an employer from requiring an employee to accept a "light duty" position in lieu of FMLA leave is the appropriate construction of the statutory language.

Leave provisions of FMLA are wholly distinct from the reasonable accommodation obligations of employers covered under the ADA. While FMLA provides an eligible employee the right to a temporary medical leave of absence for a serious health condition, ADA prohibits employment discrimination against "qualified individuals with disabilities." Reasonable accommodation is a critical component of the ADA's assurance of nondiscrimination and is any change in the work environment or in the way things are usually done, that results in equal employment opportunity for an individual with a disability. An employer under ADA must make a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless it can show that the accommodation would cause an undue hardship on the operation of its business. In the case of an employee with a serious health condition under FMLA who is also a qualified individual with a disability under ADA, requirements from both laws must be observed and applied in a manner that assures the most beneficial rights and protection. For example, a reasonable accommodation under ADA might be accomplished by providing an individual with a disability with a part-time job which does not ordinarily provide health benefits. Under FMLA, an eligible employee would be permitted to work a reduced leave schedule for up to 12 workweeks of leave in any 12-month period with group health plan benefits maintained during this time. Once the FMLA leave had been exhausted in the 12-month period, the employer would have no further obligations under FMLA and would follow the requirements of ADA and any other applicable law.

Beside the ADA, other laws such as state workers' compensation laws may require employers to offer employees the opportunity to take a restructured or light duty job. Under such circumstances, the employer must still afford an employee his or her FMLA rights while at the same time fulfilling the requirements under the respective state law. For example, under a state workers' compensation program, an employer may be required to offer an employee a light duty assignment when the appropriate medical authority has indicated that the person is able to return to work on a limited basis. Such an employee could elect to exercise the remainder of his or her FMLA leave rather than accept the light duty assignment. This does not mean, however, that the employee would be entitled to continue to receive benefits under the workers' compensation program. If that program is structured in such a way as to end benefits at the point at which the employee is deemed medically able to accept a light duty assignment and one is offered by the employer, but is turned down by the employee, the employer's obligations to provide such benefits may cease.

If an employee on FMLA leave voluntarily accepts a light duty assignment, the final regulations have been amended at 29 CFR 825.220(d) to provide that such an employee retains rights under FMLA to job restoration to the same or an equivalent position held prior to the start of the leave for a cumulative period

of up to 12 workweeks. This "cumulative period" would be measured by the time designated as FMLA leave for the workers' compensation leave of absence and the time employed in a light duty assignment.

The period of time employed in a light duty assignment cannot count, however, against the 12 weeks of FMLA leave. Examples of how FMLA interacts with federal and state anti-discrimination laws, such as the ADA, may be found at Regulations 29 CFR 825.702.

In general, the purpose of the medical certificate is to allow employers to obtain necessary information from a health care provider to verify that an employee in fact has a serious health condition, and the likely periods of absence by the employee. The medical certificate has been revised, copy enclosed, to require certification as to which aspect of the serious health condition definition applies, and to state the medical facts to support the definition. The regulations at 29 CFR 825.306 and the form (WH-380) have also been amended to no longer provide for diagnosis, and make clear, consistent with the ADA and privacy concerns, that all information on the form relates only to the condition for which the employee is taking FMLA leave.

For information, we are enclosing a copy of the final rule which will become effective on April 6, 1995 and a copy of the medical certification, form WH-380, as revised December 1994. I hope that the above fully addresses the concerns expressed by Name*. If we may be of further assistance, please do not hesitate to contact me.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosures

cc: Equal Employment Opportunity Commission

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