



June 21, 1995

FMLA-64

Dear *Name\**,

Thank you for your letter of May 5, 1995, addressed to Secretary Reich, forwarding correspondence from about the Family and Medical Leave Act of 1993 (FMLA). Your letter plus enclosures have been referred to the Wage and Hour Division of the U.S. Department of Labor for reply as this office has primary administration and enforcement responsibility under FMLA for all private, state and local government employees, and some Federal employees. *Name\** expresses concern with the interaction of FMLA's requirements to maintain group health plan coverage during an FMLA leave absence and COBRA with respect to continuation of group health plan coverage once FMLA leave has ended.

In general, FMLA allows up to 12 workweeks of unpaid, job-protected leave in any 12-month period—with group health insurance coverage maintained during the leave—to eligible employees for specified family and medical leave. Upon return to work, the employer is obligated to restore the employee to the employee's same position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. Maintenance of health benefits and employment and benefits protection are direct statutory requirements under FMLA at 29 USC 2614.

Under certain circumstances, which are discussed in the revised final rule at section 825.212 of Regulations, 29 CFR Part 825, an employer's obligation to maintain group health benefits may cease under FMLA. Where an employee's premium payment is late, the group health plan coverage may be dropped or canceled only when the employer has provided at least a 15-day written notice to the employee that the payment is late and, unless received, coverage will cease in 15 days. An employer's obligation to maintain group health benefits may also cease if an employee elects to withdraw from coverage during FMLA leave. Such an action would not be prohibited under FMLA as long as the decision was truly voluntary and future reinstatement would not be barred by the terms of the plan or the employer.

When coverage lapses because an employee has not made required premium payments or the employee elects to cancel coverage during the unpaid FMLA leave, upon return to work the employer must restore the employee to coverage and benefits that are equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed or coverage had not been canceled, including family or dependent coverage. In such cases, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

To ensure that the employer can meet its responsibilities to provide equivalent group health insurance coverage upon the employee's return to work from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employer elects to maintain such benefits during the leave, at the conclusion of leave, the employer is entitled to recover the costs incurred for paying the employee's share of any premiums. These recovery provisions under FMLA permit employers to maintain health insurance coverage at no greater costs than what an employer would otherwise pay if an employee was continuously employed during the entire leave period and ensures that the employee will be reinstated to equivalent benefits upon return to work.

While FMLA regulates the maintenance of group health coverage by employers for periods of qualifying FMLA leave, the law does not extend authority to the Department of Labor to require insurance carriers to waive provisions in their existing contracts with employers or to otherwise bear a portion of the burden for maintaining health insurance for employees who take FMLA leave.

To respond to employers' concerns regarding how the requirements under FMLA affect their obligations under COBRA, the Internal Revenue Service published Notice 94-103. This notice, which is enclosed for information, provides guidance on the COBRA continuation coverage requirements of section 4980B of the Internal Revenue Code that may arise once FMLA leave has ended. If *Name\** wishes further



assistance on COBRA, he may contact Mr. Russ Weinheimer of the Office of the Associate Chief Counsel, Internal Revenue Service Headquarters, U.S. Department of the Treasury, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone (202) 622-4695.

If we can be of further assistance with respect to the provisions of FMLA, please do not hesitate to contact me. We are returning your constituent's correspondence as requested.

Sincerely,

Daniel F. Sweeney  
Deputy Assistant Administrator

Enclosures

cc: Mr. Russ Weinheimer

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