



July 13, 1995

FMLA-65

Dear *Name**,

Thank you for your letter of May 18, 1995, addressed to Secretary Reich about the Family and Medical Leave Act of 1993 (FMLA). Your letter has been referred to the Wage and Hour Division for reply as this office has primary administration and enforcement under FMLA for all private, state and local government employees and some federal employees.

In your letter, you ask for an opinion as to how much can be deducted from an employee's wages to repay the employer for paying the employee's portion of the health care premium when the employee returns to work from an FMLA leave if the employee does not agree to the amount proposed by the employer and would prefer a smaller amount. As stated in your letter, we will assume that the employer is covered, the employee is eligible, the reason for taking FMLA leave is one permitted by the Act, and that there are no other compliance questions that might affect our response.

Section 825.210(d) of the FMLA Regulations requires the employer to provide the employee with advance notice of the terms and conditions under which employees may pay their shares of group health benefit plan premiums as a part of the notification requirements of section 825.301(b) and as outlined on optional use form Employer Response to Employee Request for Family or Medical Leave (WH-381).

Consequently, the problem you outline should occur when the leave begins or when the employee gives notice of the need for leave if that occurs earlier. In any event, section 825.210(b) and (c) respectively outline how payments may be made where the leave is paid or unpaid. Where none of the prescribed methods are chosen, the parties may chose any "system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums (e.g., through increased payroll deductions when the need for FMLA leave is foreseeable)." (825.210(c)(5))

The regulations do not contain guidelines with respect to those situations where the employer and employee are unable to resolve differences with respect to the repayment of the employee's share of group health benefit premiums. It is our view that such arrangements should be reasonable and not impose unreasonable hardships or difficulties on either party. For example, the employer should not attempt to recover payments all at once by deducting the entire amount due from the employee's first paycheck. On the other hand, the employee should not attempt to stretch the payments out over an unreasonably long time. The Department would view additional deductions equal to a regular group health plan premium as reasonable.

I hope, this has been responsive to your inquiry. Should you require further assistance, please do not hesitate to contact me.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

cc: New York Regional Office

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