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

July 19, 1995 **FMLA-66**

Dear ***Name****,

This is in response to your request for a review of an issue raised by your constituent, ***Name****. ***Name**** notes an apparently unexplained inconsistency in the final rule (Regulations, 29 CFR Part 825) implementing the Family and Medical Leave Act of 1993 (FMLA).

Name* notes that FMLA assures an employee 12 weeks of unpaid leave for the birth and care of a child but limits married couples who work for the same employer a total of 12 weeks combined for such leave. He also notes that this restriction does not apply to unmarried couples working for the same employer. ***Name**** is concerned that this interpretation provides unmarried parents with significantly better leave benefits than married parents.

The FMLA defines spouse to mean "a husband or wife, as the case may be." Senator Nickles made the following comments regarding this section:

This is the same definition that appears in Title 10 of the United States Code (10 U.S.C. 101).

Under this amendment, an employer would be required to give an eligible female employee unpaid leave to care for her husband and an eligible male employee unpaid leave to care for his wife. No employer would be required to grant an eligible employee unpaid leave to care for an unmarried domestic partner.

This simple definition will spare us a great deal of costly and unnecessary litigation. Without this amendment, the bill would invite lawsuits by workers who unsuccessfully seek leave on the basis of the illness of their unmarried adult companions. (Congressional Record (S 1347), February 4, 1993.)

With respect to spouses employed by the same employer, FMLA states that "[i]n any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken" for the birth and care of a newborn child, for placement with the employee of a child for adoption or foster care, or for the care of a parent with a serious health condition. The Senate Committee Report notes that this "provision is intended to eliminate any employer incentive to refuse to hire married couples." (Senate Report 103-3.)

The final rule reflects the language of these two sections. As the statute is currently written, the Department cannot apply the restriction on spouses who work for the same employer to similarly situated unmarried couples.

I trust that the above fully explains the language of the final rule that concerns your constituent.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

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