



August 23, 1995

FMLA-70

Dear *Name**,

This is in response to your letter regarding the Family and Medical Leave Act of 1993 (FMLA).

You ask, in your letter, how overtime hours are to be counted for purposes of determining whether or not an employee has satisfied the eligibility test of working 1,250 hours in the 12-month period immediately prior to the beginning of the employee's FMLA leave. For purposes of this test, there is no difference between overtime and non-overtime hours worked. No premium is applied to the "hours actually worked" test under FMLA regardless of whether the employee may have received an overtime premium of pay under Federal or State law or the terms of a collective bargaining agreement. Further, only hours actually worked are counted. For example, annual or sick leave, paid or unpaid holidays, or FMLA leave are not counted.

As you have requested, we are enclosing a current copy of the medical certification, Optional Form WH-380. We are also enclosing a copy of the revised employer response to employee request for leave, Optional Form WH-381.

If we may be of further service to you, please do not hesitate to contact us.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosures

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