



October 30, 1995

FMLA-74

Dear *Name**,

Your letter to *Name** of the Congressional Liaison Office of the Department of Labor has been referred to the Wage and Hour Division, the agency having primary enforcement responsibility for the Family and Medical Leave Act of 1993 (FMLA) for all private, State and local government employees and some Federal employees. Your constituent, *Name**, would like to know if she would be able to use more than 12 weeks of FMLA leave in a row for the birth of her child and, if so, would there have to be a medical need for the second 12 weeks.

The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave each year—with continued group health insurance coverage—for specified family and medical reasons.

Private employers are covered under FMLA if they have employed at least 50 employees during 20 or more calendar workweeks in the current or preceding calendar year; all public employers are covered. Employees are eligible under FMLA if they have worked for a covered employer for at least 12 months, have worked at least 1,250 hours during the 12 months preceding the start of leave, and are employed at a worksite where the employer employs at least 50 employees within 75 miles. The 12 months the employee has to have worked do not have to be consecutive.

Unpaid leave must be granted to an eligible employee for any of the following reasons: (1) for the birth of a son or daughter, and to care for the newborn child; (2) for placement with the employee of a son or daughter for adoption or foster care; (3) to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; and (4) for a serious health condition that makes the employee unable to perform his/her job.

It is up to the employer to choose the applicable 12-month period. The regulations implementing FMLA provide four options: the calendar year; any fixed 12-month period such as a leave or fiscal year; the 12-month period measured forward from the date leave begins; and, a rolling 12-month period measured backward from the day an employee uses FMLA leave. Under the first two methods, and to some extent under the third, an employee could use more than 12 weeks of FMLA leave in a row. These methods are discussed in Regulations, 29 CFR Part 825.200(b), a copy of which is enclosed for your constituent's information.

The FMLA provides that leave for the birth and care of a child or for placement for adoptions or foster care, as opposed to leave due to a child's serious health condition, must be completed within one year of the birth of the child. (Please see Regulations, 29 CFR Part 825.201.) The FMLA does not, however, limit such leave to 12 weeks in those instances where a new 12-month period may begin as, for example, where the employer elects to use the calendar year as the applicable 12-month period. Consequently, could possibly take additional leave to care for the child for reasons unrelated to a serious health condition depending on the 12-month period selected by her employer.



In order to have her questions fully answered, **Name** * should contact her employer. If she is not satisfied with the response, she may contact the office of the Wage and Hour Division responsible for enforcing FMLA in her area located at the Federal Building, 299 East Broward Boulevard, Room 409, Fort Lauderdale, Florida 33301-1976, telephone: (305) 356-7036.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosure
cc: Washington, D.C., Office

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