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

**February 14, 1996** **FMLA-78**

Dear ***Name****,

This is in response to your request for information as to how the Department of Labor will administer subsection 825.110(c) of the regulations implementing the Family and Medical Leave Act of 1993 (FMLA). I apologize that the volume of work associated with administering FMLA has delayed this response. This section states, in pertinent part, that:

For this purpose, full-time teachers ... of an elementary or secondary school system, ...are deemed to meet the 1,250 hour test. An employer must be able to clearly demonstrate that such an employee did not work 1,250 hours during the previous 12 months in order to claim the employee is not "eligible" for FMLA leave.

To be eligible for FMLA leave, an employee must meet three criteria, including that the employee has completed 1,250 hours of service for the employer during the 12-month period preceding the start of the leave. The regulations describe how to determine hours of service for this purpose for employees not subject to the minimum wage and overtime requirements of the Fair Labor Standards Act, and thus for whom no record of hours-worked are required or kept. Full-time FLSA-exempt employees for whom no hours-worked records have been kept and who have worked for the employer for at least 12 months are presumed to have met the 1,250 hours of service requirement for purposes of eligibility for FMLA leave.

An employer must be able to clearly demonstrate that such an employee did not work 1,250 hours during the preceding 12-month period if FMLA leave is to be denied on the basis that the employee is not eligible. For example, in consideration of the time spent at home reviewing homework and tests, full-time teachers in an elementary or secondary school system, or institution of higher education, or other educational establishment or institution are deemed to meet the 1,250 hour test. It should also be noted that an employee would not have to be paid for the time in order for such time to be included as a part of "hours of service."

In your letter, you provide two examples and ask if either employee would be considered eligible for FMLA leave. The first is a teacher employed three hours on each of the 180 days of the school year. The second is a teacher employed 6.5 hours on each of the 180 days of the school year. In both situations, we assume that these are scheduled in-class hours and that the employee does not, during the applicable 12-month period, work for the school in any other capacity.

In the first example, the teacher does not appear to be full-time. We would not, therefore, assume or deem this employee to be eligible. In the second, it appears that this is a full-time position and that the employee would be deemed eligible because of the additional time spent in related activities.

It should be pointed out that the question of employee eligibility in any specific situation will be determined by the information available in each case. Where such information is not available from the employer's records, it may be obtained from other sources including employee interviews. There is no given increment or percentage that will be added to an employee's scheduled hours for purposes of determining eligibility. Only full-time employees will be deemed eligible. Even in these situations, the employer has an opportunity to clearly demonstrate that the employee did not work at least 1,250 hours during the preceding 12-month period and is, therefore, not eligible.

Sincerely,

Howard B. Ostmann
Family and Medical Leave Act Team
Office of Enforcement Policy

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