



December 13, 1996

FMLA-88

Dear *Name**,

This is in response to your letter of October 8, 1996, forwarding correspondence from *Name**, about the Family and Medical Leave Act of 1993 (FMLA). In her communication, *Name** expresses two concerns about how much FMLA leave is available to an employee during a 12-month period and whether the employer can change the 12-month period designated for FMLA leave purposes.

The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave each year – with continued health insurance coverage maintained during the leave – for specified family and medical leave reasons. Upon return from leave, the employee must be restored to the same position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.

Private-sector 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-sector employers are covered under FMLA. Employees are eligible under FMLA if they have worked for a covered employer for at least 12 months which need not be consecutive 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.

Unpaid FMLA 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, and to care for the newly placed child; (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.

An eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the specified family and medical reasons previously mentioned. An employer is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs: (1) the calendar year; (2) any fixed 12-month "leave year," such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary" date; (3) the 12-month period measured forward from the date an employee's first FMLA leave begins; or (4) a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. The method selected by the employer must generally be applied consistently and uniformly to all employees. The employer is permitted to change to another method, but is required to provide at least a 60 days notice to all employees. During the 60-day transition period, employees must retain the full benefit of 12 weeks of leave under any one of the methods that would provide the greatest benefit to the employee. Under no circumstances may a new method for determining the 12-month period be implemented in order to avoid the FMLA's leave requirements.

*Name** communication indicates that she has taken, or will take, FMLA leave for two separate reasons, i.e., for her own serious health condition due to complications from pregnancy and for the birth and care of the newborn child. Assuming that the employer designated the week of leave taken in July because of pregnancy complications as FMLA leave and she has not taken any other FMLA leave during 1996, *Name** would have 11 weeks of FMLA leave remaining if the employer chose as the method for determining the 12-month period either the calendar year or the 12-month period measured forward from the date the employee first took FMLA leave. If the calendar year determines the 12-month period for FMLA leave purposes, as a new calendar year begins an eligible employee would be entitled to 12 weeks of FMLA leave regardless of the amount of FMLA leave taken in the previous calendar year. Taking FMLA leave for more than one reason in the designated 12-month period does not entitle the employee to additional FMLA leave.



We have provided a general response to **Name*** concerns as her communication contained limited information about her situation and the company's policy. If she feels that her FMLA rights may have been violated or wishes to discuss her situation further, she may contact our district office in Wilkes-Barre, Pennsylvania, at the following address and telephone number: US Department of Labor, Employment Standards Administration, Wage and Hour Division, 3329 Penn Place, 20 North Pennsylvania Avenue, Wilkes-Barre, Pennsylvania 18701, telephone number (717) 826-6316. Enclosed for your constituent's information is the FMLA fact sheet which describes the provisions of this Act.

Sincerely,

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

Enclosure

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