



February 6, 1998

FMLA-93

Dear *Name**,

Thank you for your letter concerning the Family and Medical Leave Act of 1993 (FMLA). I apologize that, because of the volume of work associated with administering FMLA, we were not able to respond sooner to your request.

You request reconsideration of a written response from our *Name** District Office concerning the granting of paid administrative leave for physical fitness activities when an employee is on intermittent FMLA leave on a reduced workweek schedule, i.e., every Monday to care for a relative. (We assume that the relative in this case is either a spouse, parent, son or daughter, which are the family members covered by FMLA.) Enclosed with your letter is Policy Issuance No. 29, which provides that the immediate supervisor "shall consider the needs of the Department's business, including the assignments and responsibilities of the employee" in approving an employee's request for such administrative leave. The administrative leave is limited to three one-half hour periods per week for an employee to participate in structured physical fitness activity during the lunch hour. Approval can be granted in situations where the request can be "reasonably accommodated." Use of such leave may be suspended if there is "abuse or if it is in the best interests of the Department." Because of the discretionary nature of this leave, you argue that the leave is not a "benefit" for FMLA leave purposes.

Section 101(5) of the FMLA defines employment benefits to include "all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions..." The Department of Labor has found nothing in the legislation or the legislative history to indicate that this definition should be interpreted narrowly or that Congress intended the list in the statute to be exhaustive. Thus, the Department interprets this definition broadly to include all benefits provided or made available to employees, including discretionary benefits such as paid administrative leave for physical fitness activity.

Section 105 of FMLA and section 825.220 of the Regulations, 29 CFR Part 825, set forth certain protection to employees who exercise their rights to take FMLA leave. The FMLA prohibits employers from interfering with, restraining, or denying an employee's rights under this law. Further, it is unlawful for any employer to discharge or in any other manner discriminate against any employee for opposing any unlawful practice under this law. Moreover, employers may not use the taking of FMLA leave as a negative factor in any employment action or decision.

"Interfering with" the exercise of an employee's rights would include refusal to grant FMLA, or discouraging an employee from taking FMLA leave. The FMLA, however, does not entitle any employee to any right, benefit, or position of employment other than any right, benefit, or position of employment to which the employee would have been entitled if the employee had not taken FMLA leave. Thus, the Act's anti-discrimination provisions prohibit an employer from requiring more of an employee who took FMLA leave than the employer would require of employees who take other forms of paid or unpaid leave. The decision to approve or deny paid administrative leave for physical fitness activity in this case must take into consideration what the employer would normally do in similar leave situations that involve non-FMLA leave, in addition to the other factors that are used to determine whether such leave would be granted. Simply denying an employee the use of administrative leave for physical fitness activity during the lunch hour because the employee is taking intermittent FMLA leave is discriminatory on its face.

We don't see anything in your description of the facts about why the employee was not allowed to use administrative leave for physical fitness but for the taking of FMLA leave. If the assessment of these facts is correct, we would view the denial of physical fitness leave in this case to be a violation of FMLA's anti-discrimination clause (Sections 105 of the Act and 29 CFR 825.220 of the Regulations) on the basis that the employer cannot treat employees who use FMLA leave in a manner that discriminates against them for taking FMLA leave.



I trust this letter clarifies our earlier response on this matter. If you require further assistance, please do not hesitate to contact the **Name*** District Office or me.

Sincerely,

Michelle M. Bechtoldt
Office of Enforcement Policy
Family and Medical Leave Act Team

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