



October 27, 1993

FMLA-10

Dear *Name**,

This is in reply to your letter to the Administrator, Wage and Hour Division, U.S. Department of Labor, asking questions regarding the application of the Family and Medical Leave Act of 1993 (FMLA) and its relationship to the New Jersey family leave law.

One of the three tests for eligibility of an employee to take FMLA leave provided in section 825.110(a) of Regulations, 29 CFR Part 825, is that the employee "is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite." As provided in section 825.111(a)(2), for employees with no fixed worksite, the "worksite" is the site to which they are assigned as their home base, from which their work is assigned, or to which they report. Under Scenario 1 in your letter, the sales representative reports to the employer headquarters in New Jersey where her supervisory management is located, which for FMLA purposes would be her "worksite." If there are 50 or more employees within 75 miles of that worksite, this sales representative is eligible to take FMLA leave.

Under Scenario 2, the sales representative's "worksite" would be the headquarters in New Jersey and he would be eligible to take FMLA if there are 50 or more employees within 75 miles of that worksite.

The sales representative in Scenario 3, would also be eligible to take leave, provided the 50-employee test noted above is met. Whether an employer is a covered employer under State law is not relevant to any determination of coverage under FMLA. As provided in section 825.701(a), nothing in supersedes any provision of State or local law which provides greater family or medical leave rights. The Department of Labor, however, will not enforce State family leave laws, and States may not enforce the FMLA.

The Department did prepare some side-by-side comparisons of FMLA and various State family leave laws to assist the public, with the aid of the State governments. With respect to the New Jersey family leave law, we consulted with the New Jersey Division on Civil Rights and entries describing the State law were made and/or edited with in accordance with information furnished by the State. The Department of Labor does not enforce or interpret the application of State laws.

We have again contacted the New Jersey Division of Civil Rights regarding the two issues you raised. We have been informed that the New Jersey law specifically permits the use of family and medical leave to care for a seriously ill father-in-law or mother-in-law. There is no requirement for a parent-child relationship as described in your letter. Based upon this information, we believe this entry on the side-by-side comparison of the FMLA and New Jersey law is correct. On intermittent leave, we agree with you that the New Jersey and Federal laws contain similar provisions, and our publication will be revised to reflect this comparability.

If you need further clarification of the requirements of the New Jersey law, it is suggested that you contact Linda Wong Peres, Assistant Director of the Policy Bureau, New Jersey Division on Civil Rights, at (609) 984-7091.

Sincerely,

J. Dean Speer
Director, Division of Policy and Analysis

cc: New Jersey Division on Civil Rights

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