



November 2, 1993

FMLA-11

Dear *Name**,

This is in response to your letter in which you expressed concerns regarding certain aspects of the regulations implementing the Family and Medical Leave Act of 1993 (FMLA). You relate your experience regarding an employee who had to take emergency leave. The employee was involved in a number of important projects and was unable to update company management on the status of projects prior to taking leave. You were advised by a Wage and Hour Division official that the employee had no obligation to provide information to you regarding the project while she was on leave.

You also express concern regarding the employer's obligation to maintain group health insurance coverage during a period of FMLA leave and restore the employee to the same or equivalent job and the same level of benefits the employee had when leave began, even though the employee failed to make the co-payments for insurance while on leave. You believe the insurance carrier should have some responsibility in this requirement.

Clearly, it is the intent of Congress in the statute and Secretary of Labor Reich in issuing implementing regulations that the implementation of the FMLA be a cooperative and beneficial exercise for both the employer and the employee. The regulations recognized the need for effective communications between the employee and employer in making arrangements for continuation of work in progress when the need to take FMLA leave became known. The Preamble to the regulations states, "Employees needing family or medical leave, even when not risking the possible loss of their job or health insurance, experience other kinds of stress unrelated to the event occurring in their personal lives. Employers report that many employees fear that leaving their job for some period of time will affect their employer's business, that their work will not get done or be done correctly, or that they will return to an accumulated backlog of work. Employers have found that it is extremely important to involve the employees in planning for how their work will get done during their absence. This effort helps relieve both the employer's and the employee's anxieties in this regard, and fosters cooperation among co-workers who may be called on to help cover the unit's work during the absence."

No attempt was made in the implementing regulations to address every possible fact situation that might arise regarding the taking of leave. The purpose of the regulations was to provide minimal guidelines to both employers and employees regarding the taking of FMLA leave. It was intended that in those situations not specifically addressed by the regulations, the employer and employee cooperatively resolve the issue to their mutual benefit. While the regulations do not specifically permit the employer to contact the employee during FMLA leave to inquire regarding work related matters, there also is no specific prohibition regarding such contact.

In the situation you describe, that the employee needed emergency leave immediately, there certainly was no time to exchange information regarding that employee's project assignments. It would be entirely appropriate to grant the emergency leave and request the employee to contact the supervisor as soon as convenient to discuss the status or progress of her work while she was taking FMLA leave.

With regard to the maintenance of group health insurance benefits, the statute makes no provision for any regulation regarding the insurance industry. The statute and the regulations make the employer responsible to maintain group health insurance during periods of FMLA leave and the restoration of all benefits when the employee returns from leave. In consideration of an employer's potential dilemma when the employee fails or is unable to make co-payments for premiums during unpaid leave, the regulations provide that the employer may unilaterally decide to pay the premiums for not only group health insurance but also other benefits such as life insurance, disability insurance, etc., thereby avoiding any lapse in coverage.



This provision enables the employer to meet the obligations to restore full benefits upon the employees return to work and avoid any requirements of the insurance carrier that may be imposed in the event coverage is allowed to lapse such as waiting periods, requirements to submit for a physical, or limitations that might be imposed regarding a new preexisting condition of the employee. The regulations further provide that the employer may recover any payments made on behalf of an employee during a period of unpaid leave to cover the employee's share of the premiums. Here again, the regulations do not provide specific guidance regarding the recovery by the employer of the employees share of premiums, but it is intended the employer and employee make arrangements for repayment that do not unduly impact the employee's financial condition such as periodic payroll deductions.

Hopefully this has been responsive to your inquiry. Should you need further assistance please let me know.

Sincerely,

J. DEAN SPEER
Director, Division of Policy and Analysis

cc: FMLA Coordinator Denver RO

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