



March 24, 1994

FMLA-32

Dear *Name**,

This is in response to your letter about the Family and Medical Leave Act of 1993 (FMLA).

The FMLA provides that "eligible" employees may take up to 12 workweeks of unpaid, job-protected leave in any 12-month period for the birth or placement of a child for adoption or foster care; to care for a child, spouse or parent with a serious health condition; or for the employee's own serious health condition that makes the employee unable to work. To be "eligible" under the FMLA, an employee must have worked for the employer for at least 12 months and for at least 1,250 hours in the previous 12 months, and must work at a location where the employer employs at least 50 employees within 75 miles. Employers covered by this law are required to maintain an eligible employee's group health benefits during FMLA leave under the same conditions as coverage would have been provided if the employee had worked continuously during the leave. Upon return from FMLA leave, the employee is entitled to be restored to the same employment position which the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Specifically, you have raised four questions concerning provisions under FMLA. Answers to these questions are as follows:

1. Is the current law for maternity leave still two weeks before delivery and six weeks after delivery for a normal delivery? What about for a C-section?

As noted, FMLA leave may be used for the birth of the child and may be taken prior to the birth of the child. Any period before and after the birth of the child where a mother is not able to work for medical reasons may be considered FMLA leave for a serious health condition, despite the fact that the period after birth is also FMLA leave to care for the newborn child. Your questions concerning maternity leave provisions, i.e., that such leave should commence two weeks prior to the delivery and extend for six weeks or longer for a normal delivery or C-section, should be addressed by your employer or by the state if these requirements are mandated by a state law.

2. Does maternity leave count as part of the 12 weeks of unpaid, job protected leave as stated in the Family and Medical Leave Act of 1993?

Paid leave provided under a plan covering temporary disabilities, such as disability leave for the birth of a child, is considered leave for purposes of FMLA and would be counted in the 12 weeks of leave permitted under the Act.

3. What is the total combined leave time (maternity and family leave) I can take in order to be fully protected against job loss?

The Act provides up to 12 workweeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons, such as the birth and care of the newborn child.

4. How often can I use Family Leave if necessary for the care of the infant? If on a yearly basis, is it based on the calendar year or otherwise?

An eligible employee is entitled to a total of 12 workweeks of FMLA leave during any 12-month period for the birth and care of the newborn child. An employee's entitlement to leave to care for the newborn child, however, expires at the end of the 12-month period beginning on the date of the birth. 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 any employee's first FMLA leave begins; or
- (4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave (except that such measure may not extend back before August 5, 1993, the effect date of FMLA).

You may wish to ask your employer to identify the "12-month period" that has been chosen for employees. For your information, enclosed is the Fact Sheet that summarizes provisions under FMLA.

I trust that you will find the foregoing information responsive to your inquiry. If additional information is required, please feel free to contact our Philadelphia, Pennsylvania district office at the following address and telephone number:

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
U.S. Customs House, Room 238
Second and Chestnut Streets
Philadelphia, Pennsylvania 19106
Telephone No. (215) 597-4950

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosure

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