



April 12, 1994

FMLA-34

Dear *Name**,

This is in response to your letter making an inquiry regarding provisions of the Family and Medical Leave Act of 1993 (FMLA). You request guidance regarding the relationship between compensatory time accumulated by a public employee and the taking of FMLA leave.

The 1985 amendments to the Fair Labor Standards Act (FLSA) created an alternative for public employers to pay overtime compensation required by FLSA by providing accrual of compensatory time off in lieu of immediate payment in cash. When overtime hours are worked the public employer is required to credit the employee at the rate of one and one-half hour of compensatory time for each overtime hour worked. This accrued time is then to be used at the discretion of the employee with two exceptions. A public employer may deny a request for the use of compensatory time in situations when to do so would be unduly disruptive to the agency's operations, and when such use is not requested pursuant to the agreement or understanding reached between the employer and the employee or the employee's representative prior to the performance of the work.

The FMLA provides that an employee is entitled to 12 weeks of unpaid leave for certain family or medical reasons. The FMLA further provides for substitution of certain accrued paid leaves for periods of unpaid FMLA leave. Section 102(d)(2) of the statute provides that an employee may elect or an employer may require the substitution of accrued paid leave for periods of unpaid FMLA leave. The types of leave identified in the statute are: paid vacation leave, personal leave, family leave and medical or sick leave. The legislative history makes it clear that the types of accruals that may be substituted for unpaid FMLA leave are types of leave provided by the employer. Compensatory time off accrued in lieu of the payment in cash of FLSA required statutory overtime pay is not a form of accrued personal leave, nor is it identified in FMLA as an accrual that may be substituted for unpaid FMLA leave.

A public employee may elect, subject to employer approval, to use accrued compensatory time off for an absence that would otherwise qualify as a reason for taking FMLA leave. If the employee does so, the employer may not designate the absence as FMLA leave and thereby reduce the employee's FMLA leave entitlement.

Hopefully this has been responsive to your inquiry. If I may be of further assistance please let me know.

Sincerely,

J. Dean Speer
Director, Division of Policy and Analysis

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