



July 7, 1994

FMLA-37

Dear *Name**,

Thank you for your letter of June 8, 1994, addressed to Secretary Robert B. Reich about the Family and Medical Leave Act of 1993 (FMLA). Your letter has been referred to the Wage and Hour Division for reply as this office has primary administration and enforcement responsibilities under the FMLA for all private, state and local government employees and some federal employees. This letter will also confirm information already provided to you by *Name** during a recent telephone conversation.

In your letter, you ask two questions with respect to FMLA regarding an employee who was first employed by a temporary help agency while working on your premises and was subsequently hired by your company as a regular employee and the applicability of State laws with different provisions.

First, you want to know whether the time the employee was employed by the temporary help agency and was working on your premises should be counted towards the tests that determine eligibility, specifically the 1,250 hours worked test and the 12-months of service test. A temporary help agency and the employer are considered joint employers for purposes of determining employer coverage and employee eligibility for purposes of FMLA. (See Regulations, 29 CFR Part 825.106(d).) Consequently, the time that the employee was employed by the temporary help agency would be counted towards the eligibility tests. In the instance cited in your letter, the employee would meet the 12-months of service test on October 4, 1994.

Second, the statute (Section 401(b)) and regulations (825.701) both state that FMLA shall not supersede any provision of any State or local law that provides greater family or medical leave rights. Employees in Tennessee would be entitled to the full 16 weeks of maternity leave provided under State law, provided of course they meet the requirements of that law. During the first 12 weeks of such leave, those employees would also be entitled to the full benefits of FMLA.

If you require further assistance, please do not hesitate to contact us.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

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