



August 8, 1994

FMLA-41

Dear *Name **,

This is in response to your request for an opinion addressed to *Name **, District Director, New Orleans District Office. Your request has been forwarded to me for a response. You ask if "House Officers" of public hospitals are covered by the Family and Medical Leave Act of 1993 (FMLA).

These "House Officers" are medical residents (doctors) who are generally employed under successive one-year contracts for a total of two to six years depending on the discipline involved. You express concern that if a resident is on FMLA leave for six weeks, a serious problem could develop in attempting to return the employee to the same job. The physician would likely be in jeopardy of being hopelessly behind in the program and subject to being dropped from the program. You indicate § 825.216 may be the only possible relief, if the resident is covered.

The question is whether the "House Officers" are employees for purposes of (FMLA). For purposes of FMLA, the definition of an employee or to employ is taken from § 3(g) of the Fair Labor Standards Act. Based on the limited information you have provided, it is our conclusion that these individuals are employees of the hospital. As all public agencies are covered employers for purposes of FMLA (see § 825.104(a)), the only issue would be whether a resident is an eligible employee. If so, the employee is entitled to FMLA leave for any one of the reasons provided in §825.100(a).

Contrary to your assumption, § 825.216 does not provide the hospital any relief in the event the employee takes leave. Under § 825.216, the hospital would have to show that the employee's contract would not have been renewed for some reason other than the taking of FMLA leave. Further, in § 825.215(b) the employee must be given an opportunity to make up any loss in qualifications resulting from the taking of FMLA leave.

Hopefully this has been responsive to your inquiry. If we may be of further assistance please let us 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).*