



October 19, 1994

FMLA-48

Dear **Name ***,

Thank you for your letter of August 26, 1994, addressed to Secretary Robert Reich, about the Family and Medical Leave Act of 1993 (FMLA). Your letter has been referred to the Wage and Hour Division of the U.S. Department of Labor for reply as this office has primary administration and enforcement responsibilities under FMLA for all private, state and local government employees, and some Federal employees.

You are specifically concerned about § 103(c)(2) of FMLA which contains a statutory prohibition against an employer obtaining a second medical opinion from a health care provider employed on a regular basis by the employer. You request the Department to grant an exception to this statutory prohibition for faculty medical doctors employed by the **Name ***.

First we note that FMLA does not in any way prohibit or affect the practice where University faculty members are the regular physicians of employees of the University. However, the statute grants no authority to the Department of Labor to waive or otherwise modify the statutory provisions of §103(c)(2), and thus we are unable to grant your request to exempt faculty medical doctors of the University **Name *** from the statutory limitations specified in §103(c)(2) of FMLA. This limitation is intended to protect an employee whose original medical certificate has been challenged by the employer and to ensure an unbiased second medical opinion from the employer designated physician. If the second medical opinion differs from the original medical opinion, the health care provider to furnish the third medical opinion—which will be final and binding on both parties—is not subject to the prohibition against using a health care provider regularly employed by the employer but must be approved jointly by the employee and employer.

We appreciate your concerns about FMLA. If you have any questions or require further assistance, please do not hesitate to contact me.

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).*