



September 27, 1993

FMLA-5

Dear *Name**,

This is in reply to your letter to President Clinton regarding the Family and Medical Leave Act of 1993 (FMLA).

You question whether it would be legal for your employer, *Name**, to change its medical leave policy before the FMLA became effective on August 5 from one of providing 12 weeks of paid disability leave to one providing 12 weeks of unpaid leave, as FMLA provides. While it is certainly unfortunate, and clearly inconsistent with the spirit of FMLA, that your employer decided to reduce employee benefits before the FMLA became law, there is nothing in FMLA that prevents an employer from amending existing leave and employee benefit programs as your employer has done, provided the resulting policies comply with the FMLA and any other applicable Federal, State or local law. Although the Congress did not intend that the new law discourage employers from adopting or retaining more generous policies, as you point out from your review of section 402 of the FMLA, Congress did not include a "grandfathering" provision to prohibit employers from changing pre existing benefit programs after the FMLA was passed in February but before the law took effect on August 5.

We would note, however, that the new Federal FMLA does not diminish an employer's obligation to comply with any State or local law requiring that employers provide more generous benefits to employees than FMLA requires. If a leave of absence qualifies for FMLA leave and other benefits under State law, the leave period would count simultaneously toward an employee's entitlement under both laws. For example, if State law provides paid benefits for six weeks to employees temporarily disabled due to pregnancy, an employee would be entitled to an additional six weeks of unpaid FMLA leave (or any substituted, accrued paid leave) at the conclusion of the first six weeks.

I hope that this has been responsive to your questions. Enclosed for your information are copies of relevant publications under the FMLA, including a copy of the implementing regulations, 29 CFR Part 825. You may find sections 825.700 and .701 to be particularly informative on the relationship between FMLA and existing employer benefit plans and State laws.

If we may be of further assistance, please do not hesitate to contact us directly, or you may contact the nearest local office of the Wage and Hour Division, listed in most telephone directories under the U.S. Government, Department of Labor, Employment Standards Administration.

Sincerely,

J. Dean Speer
Director, Division of Policy and Analysis

Enclosures

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