



November 28, 1994

FMLA-51

Dear *Name**,

Thank you for your letter dated May 6, 1994, concerning the Family and Medical Leave Act of 1993 (FMLA). You specifically request an opinion on two issues that involve an employee's entitlement to FMLA leave to care for a child with a serious health condition. The first issue seeks an explanation of how FMLA distinguishes between a child who is under 18 years of age and one who is over 18 years. The second issue seeks a ruling on whether an employee who is a parent may be entitled to FMLA leave to care for a child over 18 years who has given birth or who has a serious health condition related to pregnancy.

Issue No. 1

Pursuant to 29 U.S.C. 2612(a)(1)(C), a parent who is an eligible employee under FMLA is entitled to take up to 12 workweeks of leave in any 12-month period to care for a son or daughter if that child has a serious health condition. "Son or daughter" is defined under-FMLA, at 29 U.S.C. 2611(12), to be a child who either is under 18 years of age or is "18 years of age or older and incapable of self-care because of a mental or physical disability." A child 18 years or over, who does not have the limitations described in the statutory definition of "son or daughter," is not among the immediate family members for which an eligible employee may take FMLA leave.

The Senate Report cited on page three of your letter, Senate Report No. 103-3 "Family and Medical Leave Act of 1993, as reported in the Daily Labor Report (BNA on February 8, 1993 at S-34) states that the definition of "son" or "daughter" includes disabled children over 18 years.¹ In drawing the line for when a parent may be entitled to FMLA leave to care for a child with a "serious health condition," Congress has determined that there is a "compelling need for parental care" both when a child is under age 18 and when a child is over age 18 and is mentally or physically disabled. Although the Senate Report specifically addresses the situation of a child whose disability existed prior to age 18, the statute by its terms, makes no distinction between children who were mentally or physically disabled prior to age 18 and those who became disabled after age 18.

The interim regulations (29 CFR 825.113(c)), which incorporate the statutory provisions, qualify an eligible employee's entitlement to FMLA leave for a son or daughter older than age 18 to those who are "incapable of self-care because of a mental or physical disability." Subparagraph (c)(1) defines "incapable of self care" as "requiring active assistance or supervision to provide daily self-care in several of the activities of daily living or ADL's." Subparagraph (c)(2) defines "physical or mental disability" by incorporating the regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. and codified at 29 CFR Part 1630. The age on which the child became disabled is not a factor for determining an eligible employee's entitlement to FMLA leave under these regulations.

Issue No. 2

For an eligible employee to be entitled to take leave to care for a daughter with a serious health condition, the statute and regulations require that the statutory definition of child be met. As mentioned above, a parent may be entitled to FMLA leave to care for an adult child with a serious health condition if the child has a physical or mental disability within the meaning of the ADA Regulations, 29 CFR Part 1630. A parent is not entitled to FMLA leave to care for a child-over age 18 who is not disabled within the meaning of the ADA regulations, including a daughter over 18 years who has a serious health condition because of pregnancy or is recovering from childbirth. As you have correctly observed, "disability" within the meaning of the ADA does not include pregnancy. We see no "conflict" in this regard between the ADA and FMLA.



I hope that the above fully addresses your concerns. If I may be of further assistance, please do not hesitate to contact me. I apologize for any inconvenience caused by our delay in responding to your request.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

cc: Equal Employment Opportunity Commission

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