U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

July 23, 2002 **FMLA2002-4**

Dear ***Name****

This is in response to your letter requesting guidance concerning leave taken on an intermittent basis after birth or placement of a child for adoption under the Family and Medical Leave Act of 1993 (FMLA). We regret that due to the large volume of correspondence handled by this office, our response to your request has been delayed. Specifically, you ask that, given the employer's right not to allow intermittent leaves following birth or adoption unless it agrees otherwise, may the employer require that such leaves be taken in minimum increments of not less than one full workday?

We agree with your conclusion that because an agreement between the employee and employer is required for the use of FMLA-qualifying intermittent or reduced schedule leave for the birth or placement of a child, the agreement may also govern the size of an increment of leave taken by the employee despite the language of Section 825.203(d) of the FMLA Regulations.

Section 102(b)(1) of the FMLA provides that qualifying leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Intermittent leave is not available for the birth and care of a newborn child or for the placement with the employee of a son or daughter for adoption or foster care unless the employee and employer agree otherwise. The Act, however, does entitle eligible employees to take FMLA-qualifying leave on an intermittent or reduced schedule when medically necessary for their own or a family member's serious health condition. Neither the Act nor the FMLA Regulations, 29 CFR Part 825, limit the size of an increment of leave. However, §825.302(d) stipulates that an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences of leave, provided it is one hour or less. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave, except as provided in §§825.601 and 825.602 that discuss a partial exception to this rule for employees of schools.

Section 825.203(b) of the FMLA Regulations addresses the distinction provided in the statute for intermittent and reduced schedule leaves taken for the different reasons authorized by the FMLA. It states that when leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. The employer's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn or newly placed child has a serious health condition.

Therefore, after birth or placement of a child, an eligible employee is entitled to take a block of 12 weeks of FMLA leave to care for and bond with the child. Since the employee is not entitled by the statute to take this type of FMLA leave on an intermittent or reduced schedule basis without an agreement with the employer, we believe that the employee's use of intermittent leave or leave on a reduced schedule after birth or the placement of a child will be governed by the terms of the agreement entered into by the employee and the employer. Accordingly, we believe that the employee and employer agreement may include restrictions on the minimum size of the increment of intermittent or reduced schedule leave taken for such purposes.

This answer is based solely on the information presented in your letter. If you have further questions or additional information is required, please do not hesitate to contact us again.

Sincerely,

Rosemary E. Sumner
Office of Enforcement Policy
Family and Medical Leave Act Team

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