



August 26, 2005

FMLA2005-1-A

Dear **Name***,

This is in response to your letter requesting an opinion to clarify issues surrounding the application of the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601 et seq., to an absence for the placement of a child for adoption or foster care. You specifically inquire about an employee who has a child placed in the home for foster care and then, after a period of one or more years, decides to adopt that same child. You cite the FMLA regulations at 29 CFR 825.201 that state, in part, "entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement..." and ask which placement date (for foster care or for adoption) qualifies the employee for leave entitlement or if both placement dates qualify for FMLA leave as separate events. You also inquire as to whether or not taking an adopted child on a vacation to introduce him/her to extended family can be a qualifying event under the FMLA.

The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave each year – with continuation of group health insurance coverage under the same conditions as prior to leave and reinstatement to the same or equivalent position – for specified family and medical reasons. In answering your inquiry, we assume you refer to a covered employer, an eligible employee and that all other applicable criteria for FMLA leave have been met.

As you are aware, FMLA section 102(a)(1)(B) and the regulations at 29 CFR 825.112(a)(2) allow an eligible employee to take leave for the placement of a son or daughter with the employee for adoption or foster care. In addition, section 102(a)(2) of the Act provides that "[t]he entitlement to leave...for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement."

The regulations also discuss the timing of when an employee may use FMLA leave for purposes of adoption or foster care placements. Regulation 825.200(a) provides that an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for, among other purposes, the "placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child" (emphasis added). The regulation is based on the Act's legislative history, which similarly emphasizes that the leave is available to care for a "child newly placed with the employee for adoption or foster care." Senate Report No. 103-3, p.24. The statutory focus on the date of placement and the legislative history indicate that only the initial date of placement with a family triggers the right to leave.

In the scenario you provide, the child would be "newly placed" at the time of the foster care placement rather than when the subsequent adoption occurs. Therefore, only the placement for foster care would be a FMLA qualifying event.

You also ask whether taking an adopted child on vacation to meet extended family members constitutes a FMLA qualifying event. The FMLA does not require an employer to grant FMLA leave for the purpose of taking an adopted child on vacation to meet extended family. FMLA section 102(b) provides that leave taken for the placement of a son or daughter with the employee for adoption or foster care "shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise." Intermittent leave is leave taken in separate blocks of time for the same FMLA-qualifying reason. In other words, FMLA leave for the placement of a child for foster care or adoption needs to be taken in one block of time, unless the employer and employee agree that the leave can be taken intermittently.

Nothing in the FMLA, however, prohibits the employee from introducing his or her newly placed son or daughter to extended family members while taking leave for the placement of the child. The initial



placement of the child for adoption or foster care would be the qualifying event. While on leave for the placement, as a part of integrating the child into your employee's family, he or she could introduce the child to the extended family.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the questions presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures: Family and Medical Leave Act of 1993, sections 102(a)(1)(B), 102(a)(2) and 102(b)(1)
29 CFR 825.112(a)(2) and 825.201

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