



July 19, 2002

FMLA2002-2

Dear **Name***

This is in response to your letters of April 1, 2002, and May 22, 2002, regarding the Family and Medical Leave Act of 1993 (FMLA). You write in reference to the actions of a specific employee (whom you call Officer John Doe) who failed to report for duty on scheduled shifts. Upon his return to duty, Officer Doe gave the Scheduling Unit a note requesting that the previous day's absence be changed on his records to a "family leave day." You are concerned that Officer Doe did not request leave in advance, and that he offered no further explanation of his absence. You state you have approved the taking of FMLA leave on an intermittent basis for Officer Doe. No information concerning the serious health condition for which the leave has been approved was submitted in your inquiry.

As you know, the FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave each year – with continued group health insurance coverage – for specified family and medical reasons. FMLA leave may be taken all at once or may be taken intermittently or on a reduced leave schedule when medically necessary for the employee's own serious health condition, or when the employee is needed to care for a spouse, child, or parent with a serious health condition.

The FMLA at § 102(e) and its implementing regulations at 29 CFR Part 825.302 and § 825.303 set out the obligations of the employee to provide notice to the employer of the need for leave. Where the need for leave is unforeseeable, including unforeseen intermittent leave, an employee is required to provide notice "as soon as practicable" given the particular facts and circumstances. It is expected that this notice shall be given within one or two working days of learning of the need for leave, except in extraordinary circumstances where it is not feasible. Additionally, § 825.208 requires that an employee must give enough information when requesting leave for the employer to determine that the leave qualifies under the Act.

An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave that qualifies as FMLA leave. For instance, an employer may require an advance written notice specifying the reason(s) for the leave, when the leave will start, and the anticipated duration of the leave (except an employee cannot be required to provide advance written notice when FMLA leave is needed for a medical emergency.) If the employee fails to follow such internal employer notification procedures, the employer may not disallow or delay the taking of FMLA leave if the employee gives timely verbal or other notice. An employer can, however, impose a penalty in a situation where the employee was in a position of providing advance notice of the need for FMLA leave and failed to provide the notice in accordance with FMLA's requirements and the company's notification policy, if less stringent than FMLA's. Opinion letter FMLA-101, that provides some additional examples of how this principle is applied, is enclosed for your information.

Determinations of compliance, eligibility and other issues under the FMLA are fact-specific. Unfortunately, from the information provided, we are unable to determine the application of the FMLA to the particular situation discussed in your letter. If, after reading the enclosed opinion letter you have additional questions, you may contact the Wage and Hour District Office nearest you at 200 Sheffield Street, Suite 102, Mountainside, New Jersey, 07092, telephone (973) 645-2279.

Sincerely,

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

Enclosure

Note: * Name(s) withheld to preserve privacy, in accordance with 5 U.S.C. 552(b)(7).