



July 24, 2003

FMLA2003-3-A

Dear **Name***,

This is in response to your letter dated June 4, 2003, addressed to the Secretary of Labor Elaine L. Chao and Tammy D. McCutchen, Administrator of the Wage and Hour Division, regarding the handling of your complaint under the Family and Medical Leave Act of 1993 (FMLA) against **Name*** by the Wage and Hour Division District Office (DO) in Kansas City, Kansas. A member of my staff has spoken with you on several occasions regarding your concerns.

The Kansas City DO conducted an investigation of your complaint beginning in June 2002, and could not substantiate that you were terminated in violation of the FMLA. The outcome of that investigation was reviewed by the Midwest Regional Office (RO) in Chicago, Illinois, which has authority to review the enforcement actions of the Kansas City DO. The Midwest RO concluded that the DO acted in accordance with established policies and procedures. Subsequently, you contacted a member of the FMLA Team in Washington, D.C., office of the Wage and Hour Division (the Division) to discuss your concerns.

You enclosed additional documents with your June 4th letter which you contend support that you were terminated from your employment in violation of the FMLA. You also contend that the U. S. Department of Labor is not subject to the automatic stay provisions of the Bankruptcy Code (11 U.S.C. 362(a)) and, therefore, is able to recover money you believe is due to you from **Name*** since your termination on May 30, 2002. You advised us that **Name*** filed for Chapter 11 bankruptcy protection on May 31, 2002.

In our view, the police and regulatory power exception to the automatic stay provision of the bankruptcy code would allow the Department of Labor to bring an action under the FMLA in district court while an employer is in bankruptcy. 11 U.S.C. 362(b)(4). Injunctive relief could be obtained in such an action, which in the proper circumstances may allow reinstatement to a complainant's prior position. However, the Department cannot collect back wages or other monetary relief from an employer in bankruptcy as a result of that action. A proof of claim would have to be filed in bankruptcy court in order to obtain monetary relief. That claim would be subject to the priorities and rules of the bankruptcy court.

We are forwarding your letter with its enclosures to our Midwest RO. The Midwest RO will review the additional documentation you provided and determine if this new information is sufficient to support directing the Kansas City DO to complete additional fact-finding in your case. Someone from the RO will contact you directly to advise you of the outcome of their review, and to discuss the bankruptcy as it relates to your case. You may contact the RO directly at (312) 596-7204. In addition, you may independently file a proof of claim with the bankruptcy court.

Sincerely,

Tammy D. McCutchen
Administrator

cc: Midwest Regional Office

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