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

June 16, 1999 **FMLA-105**

Dear ***Name****,

Thank you for your letter of March 15, 1999, in which you are seeking guidance on the Family and Medical Leave Act of 1993 (FMLA) in determining an employee's entitlement to leave in a 12-month period. I regret that the volume of work associated with administering the FMLA did not allow for an earlier reply to your letter.

The FMLA permits an employer to choose one of the four methods for determining the "12-month period" in which the 12 weeks of leave entitlement may be taken. These methods are the calendar year, any fixed 12-month "leave year," the 12-month period measured forward from the date any employee's first FMLA leave begins, or a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. Once an employer has made a selection, the employer must ensure that it is applied consistently and, in most cases, uniformly to all employees. An employer is also permitted to change to another alternative method so long as a 60-day notice is given to all employees, and the full benefit of 12 weeks of FMLA leave under whichever alternative method yields the greatest benefit during the 60-day transition period is retained by all employees. At the conclusion of the 60-day transition period, the employer may implement the new alternative method selected. (Regulations 29 CFR §825.200)

In your letter, you describe a situation where an employer has decided to change its method for determining the 12-month FMLA leave period from a "calendar year" to the "rolling" twelve month period measured backward from the date that an employee uses any FMLA leave. During the employer's "60-day" transition period, an employee requests FMLA leave which is granted. At the conclusion of the transition period, however, the employer denies FMLA leave as the employee has already exhausted more than 12 weeks of FMLA leave (excluding the 60-day transition period) in the preceding 12-month period. You ask whether the employer has acted appropriately in denying the employee's request for FMLA leave.

Based on the limited facts presented in your letter, it would appear that the employer would have been permitted at the conclusion of the 60-day transition period to deny further use of FMLA leave as, you have alleged, the employee has exhausted over 12 weeks of FMLA leave in the preceding 12-month period. As already noted in this letter, during the 60-day transition period, the employee is entitled to choose whichever method is most beneficial in terms of taking FMLA leave during this period. Once the 60-day transition period has ended, the employer is free to implement the new method, in this case the "rolling" 12-month period measured backward, in order to determine the employee's FMLA leave entitlement.

You may view this letter as providing guidance based upon the limited information contained in your letter regarding the factual circumstances surrounding the employer's actions and the employee's rights to FMLA leave. If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

Michelle M. Bechtoldt
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).*