



July 3, 1997

FMLA-89

Dear *Name*\*,

This is in response to your request for guidance under the Family and Medical Leave Act of 1993 (FMLA) as it relates to the Oregon Family Leave Act and the Fair Labor Standards Act (FLSA) exemption for executive, administration and professional employees. I apologize that the volume of work involved with administering the FMLA has delayed this response.

You are correct in your analysis concerning the requirements for payment "on a salary basis" as a prerequisite for the FLSA exemption under the pertinent regulations, 29 CFR 541.118 and 29 CFR 825.206. Under the special statutory exception to the "salary basis" requirements of the FLSA exemption provided by Section 102(c) of the FMLA, only FMLA-eligible employees, who work for FMLA-covered employers, and who take leave for FMLA-qualifying reasons, may have their salaries reduced on a pro-rata basis for the amount of unpaid FMLA leave taken without losing their exempt status under the FLSA. See 29 CFR 825.206(c). Furthermore, if an employer requires an employee to take a full day of leave in circumstances where the employee does not need the full day off to attend to the situation requiring FMLA leave, the employer would be violating both the FLSA regulations at 29 CFR 541.118(a)(1) (deductions from salary not permitted for absences occasioned by the employer), and the FMLA regulations at 29 CFR 825.203(d) (employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave (except under special rules for local educational agencies)).

I hope that the above response fully explains the Department's position and the rationale behind that position. We would be glad to address any further concerns or questions you might have.

Sincerely,

Michael Ginley  
Director  
Office of Enforcement Policy

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