



June 3, 1998

FMLA-95

Dear *Name**,

Your request for an interpretation of the application of the Family and Medical Leave Act of 1993 (FMLA) has been referred to this office for a response. In your particular situation, the Office of the Sheriff employs eight technical support telecommunication technicians who perform a variety of tasks. One of these technicians is currently on FMLA leave. This particular technician has also received "extensive specialized training and certification in audio/video enhancement for evidence analysis and testimony as an expert witness. No other Telecommunication Technician in the unit has received comparable training nor is qualified to perform these specialized functions." You also state that, during the technician's FMLA leave, "the unit has experienced not only a backlog for video analysis, but also an increased demand for these services internally and from other law enforcement entities."

You pose five specific questions with regard to your obligations to provide FMLA leave and the employee's right to be restored to the same or an equivalent position.

Question 1: Under what circumstances may an employer assert a 'compelling business interest' in determining work redistribution or position restructuring involving employees on FMLA leave?

Answer 1. The FMLA does not provide for an exception to its requirement to restore an employee to the same or an equivalent position due to 'compelling business interests.' An employer may redistribute the employee's work, restructure positions, or take other actions during the employee's absences on FMLA leave, as required for the continued operation of the business. Regardless of the action taken, the employer is required to restore the employee taking FMLA to the same or an equivalent position as noted in Regulations, 29 CFR Part 825.214 and 825.216.

Question 2: Although language in FMLA narrowly limits restoration exemptions to 'highly compensated employees', does FMLA allow an expansion of those limits to circumstances where reinstatement of the employee on leave to the employee's original or equivalent would result in 'undue hardship' to the employer?

Answer 2. The FMLA does not provide for any expansion of the exemption applicable to 'certain highly compensated employees' for any reason.

Question 3: Given the facts stated, management is faced with an increased workload with only one employee certified to perform the tasks required. In this particular situation, would the reorganization of tasks among the telecommunications technicians, without altering compensation or benefits of the employee on FMLA leave, constitute a failure to return the employee to the same or equivalent position?

Answer 3. Regulations, 29 CFR Part 825.216(a), state in part that an "employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period." If the reorganization was solely the result of an increased workload and would have occurred had the employee continued to work, the employer would not necessarily be required to restore the employee to the same or an equivalent position. If, however, the reorganization was due solely to the reallocation of the employee's work while the employee was on leave, the employee would be entitled to be restored to the same or an equivalent position. Only those terms and conditions of employment that would be considered de minimis or intangible, immeasurable aspects of the job would not be considered in determining whether the employer had complied with the FMLA requirements. (Regulations, 29 CFR 825.215(f)) Not having access to a company vehicle and diminished opportunities for overtime would not seem to be de minimis, intangible, immeasurable aspects of the job.



Question 4: The FMLA speaks clearly with regard to its prohibition against employer decisions that diminish an employee's employment status. Given the proposed management action, the task redistribution would not diminish the employee's status but rather enhance the employee's opportunity to assume greater responsibilities and authority. Would an enhanced position stay a noncompliance issue?

Answer 4. Upon returning to work an employer may offer an employee a position that differs from the position that the employee had prior to starting FMLA leave. The employer may not, however, induce the employee to accept a different position against the employee's wishes. (Regulations, 29 CFR Part 825.215(e)(4))

Question 5: If a 'compelling business interest' is successfully asserted, does the FMLA scrutiny continue by evaluating the impact of that decision?

Answer 5. There is no 'compelling business interest' exception under FMLA. As provided for under FMLA and the regulations, a covered employer must grant FMLA leave, continue group health coverage, and provide restoration to an eligible employee for those reasons cited in the statute. Under certain circumstances, an employer may deny restoration to "certain highly compensated employees." (Regulations, 29 CFR 825.216(c) and 825.217)

I hope the above has fully addressed your concerns. I regret the lengthy delay in responding to your request.

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).*