



November 3, 1993

FMLA-14

Dear *Name**,

During a recent meeting in which the provisions of the Family and Medical Leave Act of 1993 (FMLA) was discussed, a question was posed regarding the obligation of an employer whose employees are covered by a multi-employer benefit plan to maintain group health insurance during a period of unpaid leave. The question arose in the context that the employer had ceased all operations on a particular construction project for the winter and all employees had been laid off. This action takes place during a period when an employee is on unpaid FMLA leave.

The FMLA generally provides that an employer must maintain group health insurance for an employee taking FMLA leave in the same manner and at the same level as was provided on the date leave commences. During the discussions in Congress leading up to the passage of the FMLA, congress specifically addressed the special circumstances relating to employees covered by a multi-employer plan, as reflected in the legislative history.

An employer whose employees are provided benefits through the operation of a multi-employer plan must continue to make contributions during FMLA leave unless the employer demonstrates that the employee would not otherwise have been employed. Coverage by the health plan must continue at the level coverage would have been continued if the employee continued to be employed, unless it is demonstrated that the employee would not otherwise have been employed by the employer or any other member employer of the plan. An employer is otherwise relieved of making contributions to the plan on behalf of an employee taking unpaid FMLA leave if the plan expressly provides for some other method of maintaining coverage for a period of leave required by the FMLA.

In direct response to the question, if the employer whose employees receive benefits pursuant to a multi-employer plan ceases activity and all employees on that job are laid off the employer may discontinue contributions on behalf of an employee taking unpaid FMLA leave if the employer can demonstrate the employee would not have continued to be employed by either the employer or another employer who is a member of the same plan.

Of course, if the employer closes one construction site, lays off all employees, but moves those employees to another site to continue employment, the employer must continue to make contributions on behalf of the employee taking FMLA leave as it is reasonable to assume the employee would have continued employment at the alternate site as well.

Hopefully this has been responsive to the question. If further assistance is needed please contact me at telephone 219-8412.

Sincerely,

J. DEAN SPEER
Director, Division of Policy and Analysis

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