



January 31, 1994

FMLA-28

Dear *Name**,

This is in response to your request for an opinion concerning the status of employees of the office of the Legislative Auditor of the State of Louisiana under the Family and Medical Leave Act of 1993 (FMLA).

Section 101(3) of the FMLA (29 U.S.C. § 2611(3)) defines the term "employee" for FMLA purposes as having the same meaning given that term in section 3(e) of the Fair Labor Standards Act (FLSA) (29 U.S.C. § 203(e)). Section 3(e)(2)(C)(i) and (ii)(V) of the FLSA exclude from the definition of "employee" ... any individual employed by a State... who is not subject to the civil service laws of the State... and ... who ... is an employee in the legislative branch or legislative body of that State ... and is not employed by the legislative library of such State ..." The implementing FMLA regulations, 29 CFR Part 825, incorporate these statutory definitions in § 825.800 (see definition of "employee" included therein).

You indicate that the Office of the Legislative Auditor of the State of Louisiana is an agency of the legislative branch of the State, and that its employees are not subject to the civil service regulations of the State. Accordingly, based on FMLA's statutory provisions, employees of the Office of the Legislative Auditor would not be considered eligible "employees" within the meaning of the FMLA and would, therefore, not be subject to the provisions of the FMLA.

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).*