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

April 19, 1994 **FMLA-35**

Dear ***Name****,

This is in response to your inquiry forwarding correspondence from ***Name****. ***Name**** expresses concern about the Department of Labor's position under the Family and Medical Leave Act (FMLA) as stated in a letter dated November 15, 1993, copy enclosed, that does not allow the employer to require the employee to take a job with a reasonable accommodation in lieu of FMLA leave.

In enacting the law, Congress stated in Section 2, that there is inadequate job security for employees who have serious health conditions that prevent then from working for temporary periods. Congress also stated in Section 2 that it is the purpose of this Act to entitle employees to take reasonable leave for medical reasons. Pursuant to Section 102(a)(1)(D), an eligible employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period because of a serious health condition that makes the employee unable to perform functions of the employee's position. Section 104(a)(1)(A) and (B) provides that upon return from FMLA leave, employees must be restored to their original or to an equivalent position with equivalent pay, benefits, and terms and conditions of employment. Section 105 prohibits the employer from interfering with or discriminating against an employee who exercises his or her rights under FMLA.

Guidance provided by the Administrator in the opinion letter referenced by ***Name**** is quoted directly from the interim final regulations (copy enclosed) implementing FMLA. The reference may be found at 29 CFR 825.702(d). In the course of developing these regulations, a number of consultations were initiated with other Federal agencies including the Equal Employment Opportunity Commission that took no exception to the language in this section. Public comment on these regulations closed on December 3, 1993. The Department received approximately 900 comments which are presently being analyzed.

In the course of developing the final rule, the Department intends to review each section of the present regulations in light of the public comments and the Department's experience thus far in implementing the statute.

While FMLA's requirements do not permit an employer to require an eligible employee to take a job with a reasonable accommodation instead of taking FMLA leave, other laws such as the Americans With Disabilities (ADA) or state workers' compensation may require employers to offer employees the opportunity to take a restructured job. Under such circumstances, the employer must still afford an employee his or her FMLA rights while at the same time fulfilling the requirements under the respective state or federal law. For example, under a state workers' compensation program, an employer may be required to offer an employee a light duty assignment when the appropriate medical authority has indicated that the person is able to return to work on a limited basis. Such an employee could elect to exercise the remainder of his or her FMLA leave rather than accept the light duty assignment. This does not mean, however, that the employee would be entitled to continue to receive benefits under the workers' compensation program if that program is structured in such a way as to end benefits at the point at which the employee is deemed medically able to accept a light duty assignment and one is offered by the employer. Examples of how FMLA interacts with federal and state anti-discrimination laws, such as the ADA, may be found at Regulations 29 CFR 825.702.

I hope that the above fully addresses the concerns expressed by ***Name****. If we may be of further assistance, please do not hesitate to contact me. We are returning your constituent's letter as you have requested.

Sincerely,

Maria Echaveste
Administrator

Enclosures

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