



June 30, 2003

FMLA2003-2

Dear *Name**

Your inquiry regarding the application of the Family and Medical Leave Act of 1993 (FMLA) was referred to this office for a response. Specifically, you asked if an employee, *Name** who is the legal guardian to her adult disabled sister, is entitled to FMLA for purposes of caring for this sister. You have indicated that based on your reading of DOL Opinion Letter-96 (June 4, 1998), you do not believe that the leave falls under the FMLA protections. However, you are seeking clarification from the Department on this matter. Based on the facts you have provided, we have concluded that *Name** situation is clearly distinguishable from that described in Opinion Letter 96, in which the parent-in-law for which the employee became the co-guardian did not become disabled until well past the age of 18 and no parent-child relationship ever existed between the employee and the legal ward.

The FMLA provides that, in part, an eligible employee of a covered employer may take FMLA leave "to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse son, daughter, or parent has a serious health condition." (Section 102(a)(1)(C)). The FMLA, in section 101(12), defines "son or daughter" as "biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability."

Opinion Letter-96 cites the legislative history of this section of the FMLA. The legislative history recognizes "that in special circumstances, where a child has a mental or physical disability, **a child's need for parental care may not end when he or she reaches 18 years of age**. In such circumstances, parents may continue to have an active role in caring for the son or daughter. An adult son or daughter who has a serious health condition and who is incapable of self-care because of a mental or physical disability presents the same compelling need for parental care as the child under 18 years of age with a serious health condition." (emphasis added). Thus, the legislative history makes clear that where a child under the age of 18 has a mental or physical disability that continues into adulthood, the **need** for parental care **continues** to exist and the individual remains a "child" for purposes of FMLA coverage.

In the case of *Name**, her sister had a mental or physical disability from birth that continued into adulthood, thus continuing the need for parental care and maintaining her status as a "daughter" for purposes of FMLA coverage. As *Name** serves as her sister's parent in her capacity as legal guardian since both of their biological parents are deceased, she is entitled to the protections of the FMLA for purposes of caring for this sister.

We believe a careful review of the FMLA, the legislative history, and DOL Opinion Letter 96 support no other result. If you have any further questions, please do not hesitate to contact our District Office located at 135 High Street, Room 210, Hartford, Connecticut 06103-1111 telephone, (860) 240-4160.

Sincerely,

Rosemary Sumner
Office of Enforcement Policy
Family Medical Leave Act Team Leader

*Note: * Name(s) withheld to preserve privacy, in accordance with 5 U.S.C. 552(b)(7).*