



November 23, 1994

FMLA-50

Dear *Name\**,

Thank you for providing us with a copy of your paper entitled "The Family and Medical Leave Act: A Survey and an Analysis of its Impact and Implications." We appreciate the favorable comments concerning the Department of Labor's efforts in educating the public on the provisions of FMLA.

We wish to bring to your attention a few concerns about the summary of FMLA's major provisions listed in this paper. Comments from your paper are highlighted in bold print.

Covered Employers - "Employers that have fifty or more employees within a seventy-five mile radius" - the seventy-five mile radius goes to employee eligibility rather than the covered employer criteria. You may wish to consider a statement that reads: FMLA applies to private-sector employers that have fifty or more employees for twenty or more calendar weeks in the current or the preceding calendar year. All public-sector employers and employees of public or private elementary or secondary schools are covered regardless of the number of employees employed.

Restoration - "Employee are guaranteed that they will return either to the same job or to a comparable position..." - the operative word is equivalent along the lines of...will return either to the same job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

Key Employee and Employee Eligibility - provisions outlined in the "Certain employees can be exempted" paragraph needs to be clarified. This is not an exemption.

Key employees are -- salaried employees eligible for FMLA leave -- and among the highest paid 10% of all employees employed by the employer at or within 75 miles of the employee's worksite. Employers must grant FMLA leave to a key employee, but may deny restoration if communicated in writing when FMLA leave is requested and only when it is necessary to prevent "substantial and grievous economic injury" to the employer's operations.

Employee eligibility - FMLA leave must be granted to an eligible employee for any one of the qualifying reasons. An employee is eligible if the employee has worked for a covered employer for at least 12 months (need not be consecutive months); has worked at least 1,250 hours during the 12-month period immediately preceding the commencement of leave; and, is employed at a worksite where at least 50 employees are employed at or within 75 miles.

Medical Certification - "An employer may require a doctor's certification or a second medical opinion to verify a serious illness[.]"...should read...An employer may require a medical certification from a health care provider (as defined under FMLA) for leave due to a serious health condition, and may require a second if the employer has some reason to doubt the accuracy of the first medical certification. If the first and second opinions disagree, the employer may require a third opinion (at the employer's expense) and a fitness for duty report to return to work.

Paid leave substitution - Accrued paid leave can be substituted for all or part of the 12-week FMLA leave entitlement under certain conditions.

We appreciate your interest in FMLA and for making your paper available to the Department.

Sincerely,

Maria Echaveste  
Administrator

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