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March 31, 1994

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2196

Mr. Moe Biller
President
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Gentlemen:

Enclosed is a draft revision of the notice given to employees who request leave for conditions covered by the Family and Medical Leave Act. The notice has been modified in accordance with comments received since its implementation in August 1993. The modifications are in bold type and they have been revised to include that sick leave is available under certain conditions to care for family members with a contagious disease.

As you know, additional changes may be required upon the issuance of the Department of Labor's (DOL) final regulations which are scheduled for publication in August 1994.

Should there be any questions concerning this matter, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

A handwritten signature in cursive script that reads "Sherry A. Cagnoli".

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)
Labor Relations

Enclosure

Attachment 2

FAMILY AND MEDICAL LEAVE (FMLA)
QUESTIONS & ANSWERS

- Q. Can an FLSA exempt employee now take leave in less than full day increments?
- A. Only if the time off is due to reasons covered by FMLA. Charging an FLSA exempt employee a partial day of leave for any other reason is a violation of the Fair Labor Standards Act.
- Q. How are the 12 weeks of FMLA tracked?
- A. By the leave request forms (3971) maintained for two years. When a leave is requested for a condition covered by FMLA, the supervisor writes FMLA in the form's remarks section. In most cases it will be pretty obvious to the supervisor when an employee is getting close to 12 weeks. When questions arise, the supervisor may have to review the request forms submitted by the employee since the start of the leave year.
- Q. Must the employee state the leave is FMLA?
- A. No, leave requested for a covered condition is part of the 12 workweeks provided by the FMLA policy. When an employee requests leave for a covered condition, the supervisor should note "FMLA" in the request form's remarks section, and give the employee the required notice.
- Q. I am having trouble getting a baby sitter on Saturdays and need to be off every other Saturday to care for my 5 month old baby. Can I take family leave every other Saturday for that purpose?
- A. Leave requested to care for your child, other than for medical reasons, may be taken on an intermittent basis only with your supervisor's approval. (ELM 516.61.)
- Q. When may a supervisor deny or delay leave requested for a condition covered by family leave?
- A. When less than 30 days' notice, or as much notice as practical under the circumstances, is given. Another situation is when leave requested on an intermittent or

reduced schedule because of the birth and care of the newly born child, or because of the placement of a child with the employee. Such leave is approved based on the employee's need, Postal Service need, and costs to the Postal Service. (ELM 515.51 and 515.61.)

- Q. Is FMLA in addition to sick and annual leave?
- A. FMLA is in addition to annual or sick leave that is taken for reasons not covered by FMLA. FMLA does not provide for additional sick or annual leave. It merely provides up to 12 workweeks absence for covered conditions. During such absence either annual, sick or LWOP is taken by the employee depending on the reason for the absence, and the employee's leave balances.
- Q. Can a step increase be deferred as a result of FMLA?
- A. It can happen, but is not likely. There is a maximum of 12 weeks during a leave year for leave taken as FMLA. An employee must have 13 weeks of LWOP during the step increase wait period for a step increase to be deferred. I should mention that the Family and Medical Leave Act does not require accrual of any rights or benefits during a period of leave.
- Q. Do employees retain the no-layoff protection when FMLA interrupts the 20 pay periods worked per year during the six year period of continuous service?
- A. Yes. However, since the maximum FMLA time off is 12 weeks or 6 pay periods per leave year, loss of the no-layoff protection would normally be for other reasons. The only time FMLA would interrupt the years required for protection is in cases where more than 12 weeks of FMLA during two different "leave" years result in more than 6 pay periods of absence during an individual employee's "anniversary" year. In these rare cases the no-layoff protection must manually be restored. This is accomplished by sending a memorandum to the Minneapolis Information Service Center.

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



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Dear Mr BURRIAS

This is in response to your request for an advisory opinion under the Family and Medical Leave Act of 1993 (FMLA) regarding mandatory "modified" or "light duty" job programs for temporarily disabled employees.

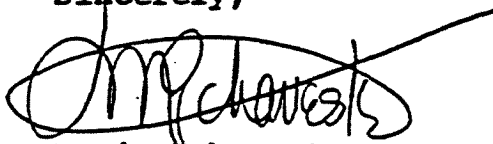
You ask if an employer can require a temporarily disabled "eligible employee," who seeks FMLA leave for a serious health condition that makes the employee unable to perform the employee's position, to accept an alternative position (with similar pay and benefits) that has been modified to eliminate the essential functions which the employee cannot perform. If so, you ask if the employer can deny the requested FMLA leave and require the employee's presence at work in the modified job.

The FMLA Regulations, 29 CFR Part 825, at § 825.702(d), provide that if FMLA entitles an employee to leave, an employer may not, in lieu of FMLA leave entitlement, require the employee to take a job with a reasonable accommodation. Thus, an employer could not require an employee to work in a restructured job instead of granting the employee's FMLA leave request in the example you posed in your inquiry.

FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave [see § 825.215(e)(4)], but the employee cannot be induced by the employer to accept a different position against the employee's wishes.

As noted in your letter, § 825.204 of the regulations addresses temporary transfers to alternative positions with equivalent pay and benefits for employees who request intermittent leave or leave on a reduced leave schedule for planned medical treatment, including for a period of recovery from a serious health condition.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Echaveste', with a long horizontal stroke extending to the right.

Maria Echaveste
Administrator

NOTICE FOR EMPLOYEES REQUESTING LEAVE FOR CONDITIONS
COVERED BY THE FAMILY AND MEDICAL LEAVE POLICIES

I. Qualifying Conditions

The Postal Service Family and Medical Leave policies provide that employees meeting the eligibility requirements must be allowed to take time off for up to 12 workweeks in a leave year for the following conditions:

- (1) Because of the birth of a son or daughter (including prenatal care), or to care for such son or daughter. Entitlement for this condition expires 1 year after the birth.
- (2) Because of the placement of a son or daughter with you for adoption or foster care. Entitlement for this condition expires 1 year after the placement.
- (3) In order to care for your spouse, son, daughter, or parent who has a serious health condition. Also, in order to care for those who have a serious health condition and who stand in the position of a son or daughter to you or who stood in the position of a parent to you when you were a child.
- (4) Because of a serious health condition that makes you unable to perform the functions of your position.

II. Eligibility

To be covered by these policies, you must have been employed by the Postal Service for a total of at least 1 year and must have worked a minimum of 1,250 hours during the 12-month period before the date your absence begins.

III. Type of Leave

Time off taken under these policies is counted toward the 12 workweeks allowed by the Family and Medical Leave Act; however, this is not a separate type of leave, but is charged to annual leave, sick leave, and/or LWOP in accordance with current leave policies. Note that sick leave is available only for your own health condition and for **exposure to, or caring for, a family member with a contagious disease ruled as requiring isolation, quarantine, or restriction of movement of the patient for a particular period by the health authorities having jurisdiction.** Sick leave cannot be used to care for others **except under these conditions.**

IV. Documentation

Supporting documentation is required for your leave request to receive final approval. **Documentation requirements may be waived in specific cases by your supervisor.**

- o For condition (1) or (2), you must provide the birth or placement date.
- o For condition (3), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, and appropriate medical facts. You must also provide documentation of when you are needed to provide the care or psychological support.

(CONTINUED)

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FAMILY AND MEDICAL LEAVE POLICES (CONT'D.)

- o For condition (4), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, appropriate medical facts.
- o If the time off requested is to care for someone other than a biological parent or child, appropriate explanation of the relationship may be required.

Supporting information that is not provided at the time the leave is requested must be provided within 15 days, unless this is not practical under the circumstances. If the Postal Service questions the adequacy of a medical certification, a second or third opinion may be required and the Postal Service will pay for these opinions.

If the absence is due to your own health condition and exceeds 21 calendar days, you must submit evidence of your ability to return to work before you will be allowed to return. Also, during your absence, you must keep your supervisor informed of your intentions to return to work and status changes that could affect your ability to return. Failure to provide information can result in the denial of family and medical leave under these policies.

V. Benefits

Health Insurance - To continue your health insurance during your absence, you must **continue** to pay the "employee portion" of the premiums. This ~~will~~ continues to be withheld from your salary while you are in a pay status. If the salary for a pay period does not cover the full employee portion, you ~~will be~~ are required to make the payment. If this occurs, you will be advised of the procedures for payment.

Life Insurance - Your basic life insurance is free and continues. If you are in a LWOP status for more than a year, this coverage is discontinued; ~~however in this case~~, you ~~will~~ have the option to convert to an individual policy. If you have optional life insurance coverage, it continues. Your premium payments ~~will~~ continue to be withheld from your pay check. If you are in a nonpay status, your optional insurance coverage continues without cost for up to 12 months. Thereafter you can convert this coverage to an individual policy.

Flexible Spending Accounts (FSAs) - If you participate in the program, see your employee brochure for the terms and conditions of continuing coverage during leave without pay.

VI. Return to Duty

At the end of your leave, you will be returned to the same position you held when the absence began (or a position equivalent to it), provided you are able to perform the functions of the position and would have held the position at the time you returned if you had not taken the time off.