



May 17, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your April 20 inquiry regarding the eligibility of postal employees to use leave donated under the Leave Sharing Program for absences authorized under the Family and Medical Leave Act.

Employees who suffer serious personal health conditions and who are eligible for coverage under the Family and Medical Leave Act may participate in the Leave Sharing Program (LSP). However, eligibility is not automatic in that the employee must qualify under the current provisions of the LSP. For example, donated leave would not be available to employees who may qualify for FMLA before they exhaust their earned/unused sick and annual leave balances and accumulate 80 hours or more of leave without pay due to the serious health condition. Also, an employee may be eligible for coverage under FMLA but may be excluded from the LSP because he/she is a noncareer employee.

This is certainly consistent with existing leave policies and with our viewpoint that employees need our support and consideration when confronted with serious illnesses. If you have any further questions, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

A handwritten signature in black ink, appearing to read "Sherry A. Cagnoli".

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



April 12, 1994

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This is in response to your March 9 correspondence concerning the need for uniform responses to Family and Medical Leave Act (FMLA) questions. Enclosed for your review is Attachment 1, the responses we prepared for your questions as well as Attachment 2, additional questions and answers which have arisen since our last meeting.

The responses represent our best efforts to provide guidance and information to all our employees so that workplace relationships are not dissolved while workers attend to pressing family health obligations or their own serious illness. If you have any questions concerning our answers or if you would like to discuss them, please call Corine T. Rodriguez of my staff at (202) 268-3823.

I appreciate your help and cooperation in this matter.

Sincerely,

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

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

Enclosures

Attachment 1

1. What certification is required for employees requesting FMLA because of the birth or placement of a son or daughter and in order to care for such son or daughter after birth:

The required information is:

- a) That the employee is the parent.
- b) Date of birth or placement of this son or daughter.

Note: There are no specified optional forms which the supervisor must accept. Optional forms are acceptable only if they are completed with sufficient detail (as described in 825.306).

2. Is medical certification required for the birth or placement of a son or daughter?

No medical certification is required for the placement or to care for a son or daughter who does not have a serious health condition.

825.302(c)

Medical certification is required if the mother is requesting time off because of the pregnancy.

825.114

3. Can an employee use intermittent leave or work a reduced schedule for the birth or placement of a son or daughter or to care for a newborn son or daughter?

Yes, but only with the agreement of the employer.

825.203

4. Can an employee use intermittent leave or work a reduced schedule because of pregnancy or the serious health condition of a newborn child?

Yes, when medically necessary due to the mother's pregnancy or the newborn child's serious health condition. The employer may require a certification from the health care provider that such leave is medically necessary and the expected duration and schedule of such leave.

825.117

5. Is the employer's approval required for an employee to use intermittent leave or work a reduced schedule if the employee, spouse, child or parent has a serious health condition?

No, provided proper medical certification has been provided. (The employee must attempt to schedule their leave so as not to disrupt the employer's operation and may be assigned to an alternative position with equivalent pay and benefits that better accommodates the intermittent or reduced leave schedule.)

825.203 and 825.117

6. Are employees entitled to FMLA if their absence is required during procedures intended to induce pregnancy, i.e., in-vitro fertilization and other insemination procedures.

Yes, as certified by the attending physician.

825.114c and 825.114 (3)

7. Is treatment for substance abuse covered as a serious health condition?

Yes, if certified by the medical care provider as a serious health condition.

825.114

8. Is an employee required to provide medical documentation for each absence after a medical provider has certified that the employee is receiving continuing treatment?

No, but the employer may request certification if there is reason to question the appropriateness of the leave or its duration. An employer may request recertification of medical conditions to support leave requests at any reasonable interval, but not more often than every 30 days, unless:

- a) The employee requests an extension of leave.
- b) Circumstances have changed significantly from the original request.
- c) The employer receives information that casts doubt upon the continuing validity of the certification.
- d) The absence is for a different condition or reason.

825.305(b) and 825.308

9. Does the employee have the option of using LWOP in conjunction with annual or sick leave for FMLA?

Yes, subject to the approval of the leave in accordance with normal leave approval procedures.

825.208 and Article 10, section 6

10. Can an employee be disciplined or receive other administrative action for absences covered by the FMLA?

No. However, if the absence exceeds more than 12 weeks as authorized by FMLA, an employee could be subject to disciplinary action or other administrative action.

825.220(c)

11. What can an employer do if it questions the adequacy of a medical certification?

If the certification includes the required information, the employer may require the employee to obtain a second medical opinion at the employer's expense. The second health care provider may not be employed on a regular basis by the employer.

825.307 and 825.308

12. Is advance written notice required for employees' use of FMLA?

Not in the case of unexpected emergencies. In such cases, the employee should provide notice by telephone, telegraph, FAX or other electronic means. Additional information must be provided when it can readily be accomplished as a practical matter.

825.302 and 825.303

13. Can properly submitted FMLA requests be denied because of operational reasons?

No. If the absence is otherwise justified under FMLA, the leave cannot be denied. (When the necessity for leave is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice as practicable. If the necessity for leave is based on planned medical treatment the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer and shall provide the employer with not less than 30 days notice, as practicable.

825.100, 825.112, 825.203 and PL 103-3 Section 102(e)

14. If an employee provides notice of the need for FMLA leave, what information must the employer provide to the employee?

a) Whether or not the leave will be counted against the FMLA entitlement.

- b) Any requirements for the employee to furnish medical certification and the consequences of failing to do so.
- c) The employee's right to use annual, sick leave, or LWOP.
- d) Any requirement for the employee to make health benefit payments and the arrangements for making such payments.
- e) Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment.
- f) The employee's right to restoration to the same or an equivalent job upon return from leave.
- g) The employee's potential liability for payment of health insurance premiums paid by the employer if the employee fails to return to work.

825.301 (c)

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.