M-01552

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

November 2, 2005

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NOV 7 2005
U.S. Letter Carriers' MBA

Ms. Myra Warren
Director of Life Insurance
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001-2144

Dear Myra:

This is in response to your October 20 correspondence asking for the Postal Service position on the "data" you enclosed with your letter regarding the administration of the Family and Medical Leave Act (FMLA) in Austin, Texas.

As the "data" you forwarded with your letter is an impassed Step B decision, it would be inappropriate to comment on its content. The following, however, represents the Postal Service position on the two issues you ask about.

Employees are not required to use the WH-380 when submitting certification for an FMLA-protected absence. The format of the certification is not important, as long as the content meets the informational requirements of the FMLA.

Employees are not required to automatically re-certify previously certified FMLA medical conditions at the beginning of each new leave year. They may, however, be asked to provide a new certification for a previously certified FMLA medical condition when they first ask for leave for that same medical condition in the new leave year. A copy of the policy on this matter and the opinion letter from the Department of Labor that supports it are enclosed for your information.

While you don't mention it in your letter, the Step B team addresses a dispute over whether the Postal Service violates the National Agreement when it refuses to accept FMLA certification submitted by employees when there is no request for leave. Please be aware that this issue is currently pending at the national level in case Q00C-4Q-C 03150730, filed by the American Postal Workers Union, AFL-CIO. We request, consequently, that G01N-4G-C 05059030, Austin, Texas, be held at the Step B level pending adjudication of the issue at the national level.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

If you have further questions concerning this matter, please contact Charles Baker at (202) 268-3832.

Sincerely,

A. J. Johnson
Manager
Labor Relations Policy and Programs

Enclosure(s)

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U.S. Letter Carriers' MBA

bcc: Mr. Tulino
Mr. Dockins*
Mr. Johnson* (LRPP05-394)
Ms. Martin*
Mr. Rachel*
Mr. Baker*
Mr. Henderson*
Mr. Paolella*
Ms. Forden*
Ms. Hambalek*
File: FMLA
Reading: (CEBaker)
Monthly Chron
DocID: Warren1.doc/LRShared/GRV_ARB/CA102122/1-Baker

LR122: Warren1.doc/Baker:ndm, x-5527:20260-4110

*copies distributed electronically via email

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

September 22, 2005

AREA MANAGERS, HUMAN RESOURCES
AREA MANAGERS, LABOR RELATIONS

SUBJECT: Annual FMLA Certifications

By letter dated March 21, we requested a written clarification from the Department of Labor (DOL) concerning the Postal Service's understanding that an employee with an FMLA-protected serious health condition, who has an absence for that condition in a new leave year, can be asked to provide a new certification for that condition.

By opinion letter dated September 14, DOL responded, confirming that 1) an employee with an FMLA-protected serious health condition can be asked to provide a new certification for that condition, not just a recertification, with the first absence in a new twelve month leave year and, 2) that second and third opinions can be sought on the new certifications, even if the underlying serious health condition had previously been certified and approved as FMLA-protected in past leave years. This is the case even if the Postal Service had requested a recertification during the previous twelve month leave year. A copy of the September 14 DOL opinion letter is attached.

Please insure that this information is disseminated to all FMLA coordinators in your area. If you have any questions concerning this matter, please contact Charles Baker at (202) 268-3832.

A. J. Johnson
Manager
Labor Relations Policy and Programs

Attachment

475 L'ENFANT PLAZA SW
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U.S. Department of Labor

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

SEP 14 2005

Mr. Doug Tulino
Manager
United States Postal Service
Labor Relations Policies and Programs
475 L'Enfant Plaza SW
Washington, D.C. 20260-4100

Dear Mr. Tulino:

This is in response to your request for clarification regarding the application of the medical certification provisions of the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2601 *et seq.* You state you understand that an employee who qualifies for FMLA leave for his or her own serious health condition may be asked to provide a new medical certification, not just a recertification, for his or her first FMLA-absence in a new leave year. You request confirmation that a second and third opinion can be sought on this new certification, even though the employee's serious health condition was previously certified, and FMLA leave approved, in previous years. We are aware that your employer is covered under Title I of the FMLA, and we assume for the purposes of this letter that your inquiry relates to eligible employees who have requested and taken leave in more than one FMLA 12-month leave year for the same qualifying serious health condition.

Background

The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave period – with continuation of group health insurance coverage under the same conditions as prior to leave – for specified family and medical reasons. 29 C.F.R. § 825.200(c) permits four methods for determining the 12-month leave period: (1) a calendar year; (2) any fixed 12-month leave year; (3) a 12-month period measured forward from the date any employee's first FMLA leave begins; or, (4) a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. Once the employer chooses the 12-month leave period, it must be applied consistently and uniformly to all employees, with certain limited exceptions.

Medical certification issued by a health care provider may be requested for FMLA leave for a serious health condition of the employee or the employee's spouse, child, or parent. *See* 29 U.S.C. § 2613 and 29 C.F.R. § 825.305. The purpose of the medical certification is to allow employers to obtain information from a health care provider to verify that an employee, or the employee's ill family member, has a serious health

condition, the likely periods of absences, and general information regarding the regimen of treatment. When requested, medical certification is a basic qualification for FMLA-qualifying leave for a serious health condition, and the employee is responsible for providing such certification to his or her employer. If an employee fails to submit a requested certification, the leave is not FMLA-protected leave. See 29 C.F.R. § 825.312(b).

Where the employer has reason to doubt the validity of the medical certification, the employer, at its own expense, may require the employee to obtain a second opinion and, if the employee's health care provider's certification and the second opinion certification conflict, a third opinion certification. *See* 29 C.F.R. § 825.307.

Subsequent recertification of the same serious health condition may be requested on a reasonable basis. *See* 29 U.S.C. § 2613(e). The regulations define the parameters under which recertification may be requested. *See* 29 C.F.R. § 825.308. Recertification is at the employee's expense unless the employer provides otherwise and second and third opinions may not be required on recertifications (§ 825.308(e)).

Medical Certification in a New 12-Month Leave Period

29 U.S.C. § 2612(a)(1)(C) and (D) of the FMLA entitle an eligible employee to 12 workweeks of leave for a serious health condition during the 12-month period selected by the employer [29 C.F.R. 825.200(b)] – subject to the medical certification requirements in 29 U.S.C. § 2613 of the Act. Medical certification in the new 12-month leave year is similar to the issue of retesting of the 1,250 hours-of-service employee eligibility criterion addressed in the FMLA-112 opinion letter dated September 11, 2000, copy enclosed. In that letter, we opined that an employee's eligibility, once satisfied for intermittent leave for a particular condition, would last through the entire current 12-month period FMLA leave year designated by the employer for FMLA purposes. However, if the employee used leave in a new FMLA leave year, the employer could reassess the employee's eligibility for FMLA leave at that time. Our analysis was consistent with *Barron v. Runyon*, 11 F. Supp. 2d 676 (E.D. Va. 1998), where the court concluded that FMLA leave "cannot be taken 'forever' on the basis of one leave request. Instead the statute grants an employee twelve weeks of leave per twelve-month period, not indefinitely." 11 F. Supp. 2d at 683.

Given the statutory focus on the leave year, our interpretation regarding new medical certifications is consistent with our interpretation on retesting the 1,250 hours-of-service employee eligibility criterion for the first absence in a new 12-month leave year for employees taking intermittent leave for the same serious health condition. It is our opinion that an employer may reinitiate the medical certification process with the first absence in a new 12-month leave year. A second and third medical opinion, as appropriate, could then be requested in any case in which the employer has reason to doubt the validity of the new medical certification. This is the case despite the fact that the employer had requested recertification in the previous 12-month leave year. Such a conclusion is also consistent with FMLA's purpose of balancing the interests of

employees who need leave with the interests of employers in the operation of their businesses. *See* 29 U.S.C. § 2601(b).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosure: FMLA-112