



February 15, 2007

Richard M. Brennan, Senior Regulatory Officer  
Wage and Hour Division, Employment Standards Administration  
U.S. Department of Labor, Room S-3502  
200 Constitution Avenue, N.W.  
Washington, DC 20210.  
[whdcomments@dol.gov](mailto:whdcomments@dol.gov)

Dear Mr. Brennan,

This letter is submitted by the National Women's Law Center (NWLC) in response to the Department of Labor's Request for Information (RFI) soliciting comments on regulations implementing the Family and Medical Leave Act (FMLA). NWLC is a non-profit legal advocacy organization, dedicated since its founding in 1972 to the advancement and protection of women's rights and the corresponding elimination of sex discrimination from all facets of American life. NWLC has been a strong supporter of the FMLA since it was first introduced. Close to 80 million workers have taken FMLA leave in the last 14 years, and 58 % of those workers are women. Accordingly, effective enforcement of the FMLA is crucial to NWLC's goal of securing equal opportunity for women in the workplace.

NWLC is concerned that the RFI suggests that the Department of Labor may be considering changes to the regulations that would roll back the FMLA's protections or scale back the FMLA's coverage for workers' health and family needs. NWLC strongly opposes changes that would limit the scope of the FMLA, and supports regulations that will ensure that workers can take full advantage of their FMLA protections. It is crucial for the Department of Labor to demonstrate a clear, consistent, and unbending commitment to comprehensive implementation and enforcement of the FMLA.

The FMLA is a real success story, and is an important step towards ensuring that the nation has productive and successful male and female workers and healthy and secure families. The law has enabled millions of workers to attend to critical family needs without risking loss of their jobs as a result. The benefits of avoiding this Hobson's choice accrue not merely to the workers and their families, but to their employers and to society at large as well. Therefore, we should be putting our energy into expanding the FMLA to cover more workers, and into making family and medical leave more affordable and accessible for all. While we discuss below key areas of concern based on the Department's Request for Information, NWLC strongly opposes any regulatory changes that would weaken current protections.

## **Key Issues of Concern**

### **Employee Eligibility**

NWLC opposes any changes to the current eligibility standards that would impose additional barriers for workers seeking to take FMLA leave. Existing rules regarding eligibility were drafted to strike an appropriate balance between the needs of employers and employees. At a minimum, we should preserve this balance and ensure that workers who meet the statutory requirements for leave are able to take that leave.

### **Serious Health Condition**

NWLC strongly opposes any regulatory changes that would scale back the definition of “serious health condition.” The current regulations defining “serious health condition” reflect the practical reality that serious health conditions that require family or medical leave can sometimes be of a fairly short duration.

Current FMLA regulations appropriately acknowledge that the relevant consideration for leave eligibility is the impact of the medical condition on a worker’s need for leave, and not the particular diagnosis. The existing regulations properly define serious health condition by examining a worker’s individual case, including the duration of the illness and the number of treatments, rather than categorically excluding any set of health conditions from FLMA coverage.

### **Leave Flexibility**

The current regulations addressing leave flexibility, including regulations on intermittent leave, appropriately balance workers’ need for flexibility and employers’ interest in having adequate staff to cover their workplace needs. Leave flexibility not only benefits workers; it also benefits employers by maximizing workers’ ability to meet workplace demands in the face of family and health challenges.

### **Paid Leave**

The current regulations allowing for the substitution of paid leave for FMLA leave are essential to some workers’ ability to exercise their rights under the law. Permitting workers to use their accrued paid leave as wage replacement during FMLA leave makes it possible for them to afford to take time off to address critical family and medical issues.

### **Communication Between Employers and Employees**

NWLC recommends that the Department of Labor significantly increase efforts to educate employees about their FMLA rights and employers about their FMLA obligations. For example, employers must be required to take steps to provide workers with adequate information regarding their rights and responsibilities under the FMLA. Employers also should be required to promptly inform workers when they are using their FMLA leave, and to maintain records of FMLA leave balances that are available to their employees.

The current FMLA regulations properly prohibit employers from counting FMLA leave against an employee in employee benefit programs, including attendance awards. The regulations appropriately recognize that workers should not be penalized for exercising their FMLA rights.

### **Medical Certification**

The existing medical certification regulations appropriately balance a worker's interest in a manageable certification process that does not impose unreasonable burdens with the employer's interest in accurate certification of the worker's medical condition. Additionally, the regulations recognize that employers' judgment regarding an employee's health condition should not be substituted for the professional medical opinion of the employee's health care provider. NWLC opposes any changes to the certification requirements that would impose additional, unnecessary burdens on workers who need to take FMLA leave. NWLC also opposes any regulatory changes that would allow employers to directly contact a worker's health care provider, which unnecessarily violates the worker's right to keep medical information confidential.

### **Conclusion: Additional Improvements to the FMLA**

The FMLA is a monumental step towards our goal of being a nation that values families. But it is only a first step. Millions of Americans do not have access to the Act's protections, and millions more cannot afford to take advantage of them. Instead of questioning the protections we currently have under the FMLA, we should be expanding the FMLA to make it more affordable and accessible to all working families. For example, NWLC supports legislation that would provide those taking leave with income during their leave, such as paid family and medical leave legislation, or the Healthy Families Act, which would provide a minimum number of paid sick days per year for each worker to recover from her or his own illness or care for a sick family member.

Thank you for the opportunity to comment on the importance of the Family and Medical Leave Act for millions of working American women and men and their families.

Sincerely,



Marcia D. Greenberger  
Co-President