

WAYNE STATE UNIVERSITY

MEMORANDUM

TO: XXXXXXXXXXXX
Fax: (313) 291-2269
FROM: Michelle Fecteau, Labor Studies Center
DATE: February 21, 2003
RE: FMLA questions

Jim, I have some information in addition to the memo I sent on 2/18/03. The information is regarding the question:

Does an employee have to provide a doctor's diagnosis? / Under UAW-Ford absentee program a doctor's note with diagnosis is required for excused absences. Is this a violation of the FMLA?

I spoke with Robert Schwartz, the attorney who wrote The FMLA Handbook. He referred me to a section in the preamble of the final FMLA regulations of 1995. After the law was past in 1993 initial regulations were issued. The public was then allowed to comment and request changes to the final regulations. Discussion on Section 306 regarding employer's rights to medical information was debated and the issue of medical diagnosis was specifically addressed. This discussion lead to removing the employer's right to request diagnosis because such a request may violate ADA (American's with Disabilities Act). A summary of this discussion can be found in the preamble to the final regulations of 1995.

The preamble notes that there were ten commenters on this issue and states:

"The Women's Legal Defense Fund were reasonable representative of these commenters. They observed that the optional certification form provides more information to the employer than statutorily required (for example, diagnosis...), and that inquiries regarding such matters may be a violation to the ADA. They noted that health care providers may be reluctant to provide detailed medical information due to ethical and privacy concerns regarding confidentiality and employee waivers."

It states further:

"The regulation and form no longer provide for diagnosis, and make clear, consistent with the ADA and privacy concerns, that all information on the form relates only to the condition for which the employee is taking FMLA leave"

It appears that an employer's insistence for diagnosis may not only be in conflict with the FMLA but also the ADA. Again, since I am not a lawyer, you may want to run this by the union's attorneys.