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MEMORANDUM

SUBJECT: FLMA & Grievance Handling

TO: XXXXXXXXXXXX

FROM: Michelle Fecteau

DATE: 4/21/98

This memo is in response to your questions regarding FMLA policy as discussed in our training 3/30/98. I reviewed the regulations and contacted the U.S. Department of Labor in Washington D.C. for direction. I specifically spoke with Michelle Pechtoldt (202) 219-4907. After posing my questions to several representatives in the FMLA division, including the solicitors office, I was assured she was the foremost expert in the area of concern.

Below please find a summary of her answers to the following questions:

1) Who must the employee contact within management in order to qualify for an FMLA leave of absence? In other words, how is the term "employer" defined under the act?

2) How long does an employer have to request a second opinion?

In answer to the first question, Ms. Pechtoldt responded that the company could require a notification policy for advanced requests for **foreseeable** leave, for example for pregnancy leave. The burden of notifying workers of this policy is on the employer. They must make it known to workers through postings and or policy handbooks, etc.

In cases of absences which are **<u>not</u> foreseeable** employees are only required to give sufficient notice to their "employer", they do not have to specifically request the FMLA (Sec. 825.302(c)). It is the employer's responsibility to determine if FMLA applies (provided the employee submits enough

information to make known that an FMLA qualifying reason may apply). Please see attached document for further explanation.

Under Section 825.104(a) an “employer” includes “any person who acts directly or indirectly in the interest of an employer to any of the employer’s employees.” The definition of “employer” in Section 3(d) of the Fair Labor Standards Act, 29 U.S.C. 203(d), also enforced by the Wage and Hour Division, similarly includes any person acting directly or indirectly in the interest of an employer in relation to an employee. As under FLSA, individuals “acting in the interest of an employer” are individually liable for any violations of the requirements of FMLA.

Furthermore, Ms. Pechtoldt stated that the employer had the burden of determining whether an employee qualified for an FMLA absence once an employee provided sufficient notice that there absence may be due to a qualifying reason.

Please review employer notification requirements under section 825.110(d), 825.208, and 825.301. They are printed on the attached document.

In answer to the second question “How long does an employer have to request a second opinion?”, Ms. Pechtoldt responded that an employer’s request must be “fairly immediate” but within a realm of reasonableness. She stated that two to three weeks to get the second opinion would be reasonable.

I hope that this information is helpful to you. Please remember that I am not a lawyer, and you may want to consult one.

If I can ever be of further assistance, please do not hesitate to contact me.