

June 1, 2000
OPINION NUMBER 00-190

Ms. Linda Law Clark
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22-B Education-Colleges and other Institutions of
54 Higher Learning
 Insurance

An employee may use accrued sick leave when absent from work pursuant to an FMLA situation only if the employer's leave policy allows sick leave to be used for that purpose. FMLA does not distinguish classified or unclassified positions in its application.

Dear Ms. Clark:

You have requested an opinion of the Attorney General in your capacity as legal counsel to Northwestern State University (University) regarding the Family Medical Leave Act of 1993, 29 U. S. C. A. Sec. 2601 et seq. (FMLA). You first ask whether a University (state) employee can use accrued sick leave when absent from work in an FMLA situation.

In answer to your first question, we refer you to Section 825.207 of the final U. S. Department of Labor Regulations promulgated pursuant to the FMLA. It provides, in pertinent part, the following:

§ 825.207 Is FMLA Leave Paid or Unpaid?

- (a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute paid leave for FMLA leave....

* * *

- (c) Substitution of paid...medical/sick leave may be made for any (otherwise) unpaid FMLA leave needed to care for a family member or the employee's own serious health condition. Substitution of paid sick/medical leave may be elected to the extent the circumstances meet the employer's usual requirements for the use of sick/medical leave. An employer is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave "in any situation" where the employer's uniform policy would not normally allow

such paid leave. An employee, therefore, has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employer's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have a right to substitute paid medical/sick leave for a serious health condition which is not covered by the employer's leave plan.

As can be gleaned from the above, a state employee may use accrued sick leave in an FMLA situation only if the employer's sick leave plan allows paid leave to be used for that purpose.

You next ask whether a state employee can take accrued sick leave in an FMLA situation when the absence is for the purpose of taking care of an ill family member. As previously noted above, a state employee may take accrued sick leave in an FMLA situation only if the employer's leave plan allows sick leave to be used for that purpose. We have been advised by representatives of the State's Civil Service that Section 11.13 of its rules relating to the use of sick leave does not allow sick leave to be used for the purpose of taking care of an ill family member. Therefore, and in answer to your second question, a state employee may not use sick leave in an FMLA situation to care for an ill family member.

You finally ask whether the FMLA uniformly applies to both classified and unclassified positions. A review of the provisions of the FMLA reveals no distinction between classified and unclassified employees for purposes of its application.

Trusting this adequately responds to your inquiry, I am

Very truly yours,

RICHARD P. IEUYOUB
Attorney General

By:

ROBERT E. HARROUN, III
Assistant Attorney General

RPI/REH,₃/sfj

SYLLABUS
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Robert E. Harroun, III
Assistant Attorney General