U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

March 5, 2003

Dear *Name**,

Thank you for your letter to Secretary Chao expressing your membership's concerns regarding the complaint intake process of the Southeast Region of the Wage and Hour Division (Division) of the U. S. Department of Labor under the Family and Medical Leave Act of 1993 (FMLA). She asked me to respond to your letter. The Division administers the FMLA for all private, state and local government employees, and some federal employees, including employees of the USPS. In addition to enforcing other standards, such as federal minimum wage, overtime, and child labor laws, the Division has processed over 25,000 FMLA complaints since the law was enacted.

Responsibility for investigations of complaints has been delegated to the various district offices of the Division, and these offices must exercise discretion regarding the scheduling of investigations. The number of complaints received by the Division varies by region and by district office. Each office has an obligation during the complaint intake process to explain thoroughly the Division's enforcement authority, the investigative process, and available resources so that employees may make informed decisions regarding the best avenue for pursuing their complaints. Therefore, a district office has discretion to defer pursuing a complaint where the complainant has also filed a grievance subject to binding arbitration.

In August 2002, the Solicitor of the Department of Labor issued a memorandum outlining principles to consider in determining whether the Department and the Division should defer to arbitration agreements. Putting these principles into action allows us to maximize the enforcement impact of our limited resources while recognizing what the Supreme Court has characterized as our "liberal federal policy favoring arbitration agreements." Some of the factors we consider in deciding whether to defer to arbitration include: whether the arbitration agreement covers the same statutory claims; whether the complaint involves an individual claim for relief; and, whether a complaint can be efficiently and expeditiously arbitrated. I have attached a copy of the Solicitor's memorandum, which is also available on the Department's web site at www.dol.gov/sol.

As you well know, collective bargaining agreements often offer greater benefits to employees than the basic protections provided by labor laws, such as the FMLA. Binding arbitration featured in collective bargaining agreements often can resolve employment problems more quickly and informally than investigating and litigating a FMLA complaint. If arbitration fails to resolve sufficiently a valid FMLA complaint, then the Division may accept the complaint for investigation.

However, in *name* situation, it appears from the information submitted to our Miami District Office that he was not protected by FMLA.

Our policy does not institute a *per se* rule against Department enforcement actions where an arbitral process is available. The factors identified in the attached memorandum are to be applied on a case-by-case basis and necessarily require the exercise of the Department's enforcement discretion. It is intended to expedite an employee's access to justice without compromising their procedural protections. Lastly, the Department and Division can act upon a FMLA complaint when the facts and equities of a particular case demand our intervention in order to achieve the broadest possible compliance with the law.

Should you have further questions or comments concerning enforcement strategies of the Division, please feel free to contact me at (202) 693-0051.

Sincerely,
Tammy D. McCutchen, Administrator

Enclosure

*Note: * The actual name(s) was removed to preserve privacy.*