

Darjean, Bradley [MD]

From: Darjean, Bradley [MD]
Sent: Friday, May 17, 2019 11:57 AM
To: Rawles, Melisa D
Cc: Auth, M. Angie; Auth, M. Angie; Wilkerson, Helen [MD]; Anderson, Kristy [MD]
Subject: RE: DOL Opinion Letter Regarding Delays in Designating Paid Leave as FMLA

Melisa:

The Supreme Court has stated, very clearly, that opinion letters “lack the force of law [and] do not warrant Chevron-style deference.” *Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000). “Instead, interpretations contained in formats such as opinion letters are ‘entitled to respect’ . . . but only to the extent that those interpretations have the ‘power to persuade,’” courts. *Id.* See also *Skidmore v. Swift & Co.*, 323 U.S. 134, 139–40 (1944). The Third Circuit has also specifically noted that informal agency interpretations, such as opinion letters “do not rise to the level of regulation and do not have the effect of law.” *Madison v. Res. for Human Dev., Inc.*, 233 F.3d 175, 186–87 (3d Cir. 2000)(quoting *Brooks v. Village of Ridgefield Park*, 185 F.3d 130, 135 (3d Cir.1999)). As a result, “informal agency interpretation are entitled to respect based only on their persuasiveness.” *Id.*

We disagree with your belief that current language is not enforceable.

Brad
SAAAAC/MSEA

From: Rawles, Melisa D <MRAWLES@AACPS.org>
Sent: Friday, May 17, 2019 10:28 AM
To: Darjean, Bradley [MD] <bdarjean@mseanea.org>
Cc: Auth, M. Angie <mkennedy-auth@AACPS.org>; Auth, M. Angie <mkennedy-auth@AACPS.org>
Subject: FW: DOL Opinion Letter Regarding Delays in Designating Paid Leave as FMLA

Brad:

The Department of Labor recently issued an advisory opinion regarding an employee’s option for FMLA leave designation. The opinion clearly states that an employer is prohibited from delaying FMLA designation. Therefore, we cannot enforce the provision that allows employees to use 50 days of paid leave prior to concurrent FMLA utilization. Accordingly, current FMLA language must be amended to ensure compliance. I have provided the the Department of Labor’s opinion and several related articles for your convenient reference.

Department of Labor Advisory Opinion: https://www.dol.gov/whd/opinion/FMLA/2019/2019_03_14_1A_FMLA.pdf
AASPA Legislative Brief: <https://myemail.constantcontact.com/-AASPA-Legislative-Brief.html?soid=1116773069311&aid=drcEZ9oZSr8>

Musudafunai Article: http://www.mondaq.com/article.asp?articleid=800726&email_access=on

Melisa

Melisa D. Rawles, Esq.
Director of Employee Relations