

PAUL C. THOMPSON  
International President

RICK L. MARCEAU  
Assistant President

DAN E. JOHNSON  
General Secretary and Treasurer



14600 DETROIT AVENUE  
CLEVELAND, OHIO 44107-4250  
PHONE: 216-228-9400  
FAX: 216-228-0937  
www.utu.org

**LEGAL DEPARTMENT**

CLINTON J. MILLER, III  
General Counsel

• KEVIN C. BRODAR  
Associate General Counsel

• ROBERT L. McCARTY  
Associate General Counsel

• DANIEL R. ELLIOTT, III  
Associate General Counsel

FAX and mail

December 20, 2006

R. E. Karstetter, General Chairperson  
4702 W. Commercial Dr., Ste. A  
North Little Rock, AR 72116  
Tel: (501) 5573-0184  
Fax: (501) 753-0185

Dear Mr. Karstetter:

This is in reference to your December 11, 2006 letter to UTU General Counsel Clinton J. Miller, III and Associate General Counsel Kevin C. Brodar, which was given to me for response, regarding the calculation of allowable reduced leave time under the Family and Medical Leave Act ("FMLA"). The pertinent provision under the federal regulations regarding FMLA provides as follows:

**How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?**

(a) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes off one day, the employee would use 1/5 of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use 1/2 week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule.

(c) If an employer has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

-2-

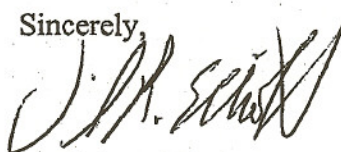
(d) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

28 CFR § 825.205.

Based on the letters attached to our correspondence, Dale Golden has taken fifty-three (53) days of FMLA leave this year. He apparently had 24 or 37 job starts during the 12 workweeks preceding his first use of FMLA leave. My understanding is the employer can calculate the reduced leave schedule based on an average of starts for a workweek during this 12 week time period. See 28 CFR § 825.205(b). Mr. Golden has taken more leave days than starts during that period, so it does not appear the carrier has violated the Act here.

However, if Mr. Golden feels the UP has violated the Act, he should file a complaint with the Department of Labor for investigation.

Sincerely,



Daniel R. Elliott, III  
General Counsel

cc: P. C. Thompson, International President  
R. L. Marceau, Assistant President  
D. L. Hakey, Vice President-Administration  
C. J. Miller, III, General Counsel