**FMLA and Pregnancy**

Under the FMLA regulations, a mother can use 12 weeks of FMLA leave for the birth of a child, for prenatal care and incapacity related to pregnancy or for prenatal care, and for her own serious health condition following the birth of a child. A father can use FMLA leave for the birth of a child and to care for his/her spouse who is incapacitated (due to pregnancy or childbirth).

**Q: Are both parents entitled to leave for childbirth?**

Both parents are entitled to FMLA leave to be with the healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. An employee’s' entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth.

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. Parent does not include parents-in-law.

If state law allows, or the employer permits, bonding leave to be taken beyond this period such leave will not qualify as FMLA leave.

**Q: Can my employee take off any time during the first 12 months – for example, intermittent time off?**

An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employer agrees.

**Q: What if both parents work for the same employer?**

Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee’s son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, (or to care for the employee’s parent with a serious health condition).

However, a spouse would still be entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition.

**Q: An employee’s girlfriend is pregnant with their child. What are his rights under the FMLA?**

The employee may take time off once the child is born to bond with his son or daughter. The employee may not take time off to care for a non-spouse girlfriend during her pregnancy/childbirth due to her serious health condition.

**Q: If FMLA doesn’t apply are there other leave laws to protect a pregnant employee?**

Each state varies, but in general, the Pregnancy Disability Act (PDA) forbids employment discrimination based on pregnancy, including by requiring employers to provide the same benefits for women who are pregnant as are provided to other employees with short-term disabilities.

Unlike the FMLA, the PDA does not require employees to be employed for a certain period of time to be protected. An employee employed for less than 12 months by the employer (and, therefore, not an “eligible” employee under FMLA) may not be denied maternity leave if the employer normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

**Note**: Review state laws for state-specific provisions.

Written by a Catapult Advisor