

The Family Medical Leave Act and Massachusetts Maternity Leave Act Provide Time at Home for New Moms

By Julie Dialessi-Lafley, Esq.

Understanding an employee's rights under the Family Medical Leave Act (FMLA) in conjunction with the Massachusetts Maternity Leave Act (MMLA) can be difficult territory to navigate. A wrong turn for an employer could lead to a claim of discrimination in violation of Massachusetts General Law Chapter 151B by an employee on the basis of sex and handicap discrimination with the Massachusetts' Commission against Discrimination. So what should an employee and an employer know about the rights of an individual under the FMLA and MMLA to avoid these problems?

To begin, the FMLA, at 29 USC §2601, applies to employers with 50 or more employees and requires that eligible employees be provided with up to 12 weeks of unpaid leave at one of the following events:

- At the birth, adoption, or foster placement of a child, and to subsequently care for that child;
- To take care of a child, spouse, or parent with a serious health condition; and
- If the employee has a serious health condition.

Keep in mind that employees are only eligible for rights under the FMLA if they worked for their employer for at least 12 months, worked at least 1,250 hours for the employer in the prior 12 months, and worked at a site with 50 or more employ-

ees at the site or within a 75-mile radius.

The leave allowed under the FMLA can be taken all at once or on an intermittent or reduced basis by the employee. Simply put, the employee does not need to use the entire 12-week leave at one time. The leave can be used over shorter peri-

ods of time but not to exceed the total of 12 weeks. Depending on the employer's policies, the leave may be compensated; however, the employer is not required by the FMLA to pay the employee for the leave period. An employer may opt not to pay an employee; however, the employer

must continue to provide health insurance on the same basis it provided the health insurance prior to the employee going on leave.

An employee may request or an employer may require that the employee use paid leave such as sick leave or vacation time during the leave period under FMLA. At the end of FMLA leave, the employee must be restored to the same position or an equivalent "with equivalent benefits, pay, and other terms and conditions of employment." When determining an employee's rights, not only must the employer look to the FMLA but also to the employee's entitlements under the MMLA.

The MMLA, under Massachusetts General Laws c.149, §105D, provides unpaid maternity leave not to exceed 8 weeks for the following purposes:

- Giving birth
- Adopting a child under the age of 18; or
- Adopting a child under the age of 23 if the child is mentally or physically disabled.

A female employee is eligible for such leave if she meets certain requirements. She must be employed by an employer that has six or

more employees; the employee must have completed the initial probationary period, if any, set by her employer, which can not exceed 6 months, or if there is no such probationary period, she must have been a full-time employee for at least 3 consecutive months; and she must provide her



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time employee for at least 3 consecutive months; and she must provide her employer with 2 weeks notice in advance of her expected departure date and intention to return to the workplace.

Again, the MMLA requires that a female employee who meets the above requirements must be restored to her previous position, or one similar with same pay, length of service credit, and seniority as the position she held on the date on which she left on leave.

In most circumstances, leave periods under the MMLA and FMLA run concurrently. That is to say that an employee cannot use the 12 weeks of Family Medical Leave and then tack on another 8 weeks

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of maternity leave. There is, however, an exception to this rule: if an employee suffers from any sort of pregnancy-related disability before giving birth to a child, she would be entitled to the 12 weeks' leave under the FMLA provision covering a serious health condition. Additionally, she would then be entitled to the 8-week maternity leave for the period immediately following the birth of her child under the MMLA. If the employee indicates to her employer that she is using her FMLA due to complications of her pregnancy, she would be entitled to an additional 8 weeks of maternity leave following the birth under the MMLA despite the fact that she already used her 12 weeks under the FMLA.

It may sound too easy for an employee to take this leave time, so be aware that under the FMLA, an employer is permitted to request medical certification from an employee requesting leave due to a serious health condition. The certification

requested and provided by the employee should detail the date the medical condition commenced, its likely duration, any appropriate medical facts relating to the condition, and the fact that the employee is currently unable to perform the functions of the job. Further, an employer may also request that the employee returning from a FMLA leave submit a fitness for duty certificate from his or her health care provider that attests to the ability to resume work.

With so many issues to be considered before, during, and after pregnancy, new moms should be assured that if they desire to be at home with their child after a pregnancy or qualified adoption, they do not need to rush out the door back to work. The FMLA and MMLA will provide them the time at home if they need or want it. ■

About the Author



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Julie A. Dialessi-Lafley, Esquire, is a multifaceted attorney with the law firm of Bacon & Wilson, P.C., who focuses her practice in business law, real estate, estate planning and administration, and family law. She is committed to community service, serves on several charitable and organizational boards, and has been honored as a SuperLawyers Rising Star in *Boston Magazine* for the past 2 years. Julie is a frequent lecturer on legal topics and has written numerous articles that may be found on her website, www.bacon-wilson.com.

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