MTA Division of Legal Services

PREGNANCY AND PARENTAL LEAVE FOR SCHOOL EMPLOYEES

Questions & Answers

If you are working and expecting a child or planning a family, you need to know your rights under the Massachusetts Parental Leave Law (MPLL), the federal Family and Medical Leave Act (FMLA), the federal Pregnancy Discrimination Act (PDA) and the state Small Necessities Leave Act (SNLA). You also may have rights under the federal Americans with Disabilities Act (ADA), the state's antidiscrimination laws and your collective bargaining agreement. To the extent that any of these statutory and contractual provisions address the same subject or are in conflict, you are entitled to the most generous of the benefits provided.

What is the Massachusetts Parental Leave Law?

This is a state law (M.G.L. c. 149, § 105D) allowing employees eight weeks of consecutive leave for childbirth or adoption. You are eligible to exercise leave under this law if you have completed any probationary period (not to exceed three months) dictated by the terms of your employment. If there is no such probationary period, you are eligible if you have worked full time for your employer for three months. Under the Massachusetts Parental Leave Law, unlike the Family and Medical Leave Act, you are entitled to eight weeks immediately following your child's birth or adoption, whether or not you have exercised other leave prior to your child's arrival. MPLL leave may be with or without pay depending on the terms of your collective bargaining agreement. The employer is entitled to two weeks' notice of anticipated exercise of MPLL leave.

What is the Family and Medical Leave Act?

This is a federal law (29 U.S.C. §§ 2601-2654) providing a total of 12 weeks of leave during a12-month period for any combination of the following reasons: (1) the birth, adoption or foster care of a child; (2) the employee's own serious health condition, and (3) care for a parent, spouse or dependent who has a serious health condition. ("Serious health condition" is described below). For parental leave purposes, leave under the Family and Medical Leave Act must be taken in consecutive weeks unless the employer and employee agree otherwise. Further, you may exercise parental leave under FMLA only during the 12 months following the birth or adoption of your child. If your intention to exercise parental leave is foreseeable, you are required to give your employer at least 30 days' notice of your intention to take FMLA leave. Leave may commence in less than 30 days if the birth or adoption placement occurs earlier than anticipated, but notice must still be given as soon as practicable.

What is the Pregnancy Discrimination Act?

This is a federal law amending Title VII of the Civil Rights Act of 1964 that makes it illegal to discharge or otherwise take an adverse action against an employee because she is pregnant, has an abortion or gives birth to a child. It also requires employers to treat pregnancy-related disabilities and illnesses the same as any other illness or temporary disability, for purposes of medical verification, availability of paid leave, accrual of seniority and other benefits, insurance coverage, entitlement to promotions and other perquisites of employment. The state's antidiscrimination statute (M.G.L. c. 151B) provides similar protection.

What is the Small Necessities Leave Act?

The Small Necessities Leave Act is a state law that allows eligible employees up to 24 hours of leave every year in addition to the 12 weeks allowed under the Family and Medical Leave Act, for the following purposes:

- To accompany a child to routine medical or dental appointments, such as checkups or vaccinations;
- To participate in school activities directly related to a child's educational advancement, such as parent-teacher conferences;

- To accompany an elderly relative to routine medical or dental appointments, or for other professional services related to the elder's care.

To be eligible for SNLA leave, you must meet the same criteria as for FMLA leave, described below. Your employer may require that you exercise SNLA leave in minimum increments of one hour, but may not require that you take more SNLA leave time than you require.

Who is eligible for leave under the FMLA and SNLA?

This leave is available to employees who have worked for the school district for at least 12 months (not necessarily consecutively) ***and*** who have worked at least 1,250 hours during the immediately prior 12 months. "Hours worked" includes ***actual*** work time that your employer has ***required*** of you, including time correcting homework, preparing lessons, correcting tests and attending trainings – even if those hours are spent at home or elsewhere. "Hours worked" does ***not*** include time off the job, such as sick or personal leave.

Full-time K-12 professional instructional employees (teachers) who have worked a full school year are presumed to meet the hours requirement unless the school district can prove that they did not actually work 1,250 hours.

Education Support Professionals and higher education personnel are not entitled to this presumption. Part-time ESPs and higher education personnel, especially adjuncts, may not meet the 1,250-hour threshold.

What is a serious health condition for the purposes of the FMLA?

A serious health condition for Family and Medical Leave Act purposes is an illness, injury, impairment or physical or mental condition that meets at least one of the following criteria:

- Causes in-patient care;
- Causes a period of incapacity of at least three consecutive calendar days and involves continuing medical treatment;
- Is related to pregnancy or childbirth;
- Is a chronic serious health condition;
- Is a long-term or permanent disability; or
- Requires multiple treatments in order to prevent long-term incapacity.

Will I be paid during my MPLL, FMLA or SNLA leave?

None of these laws in and of themselves require the employer to pay you during your leave. However, these laws and the Pregnancy Discrimination Act would require the employer to pay you if it would pay other similarly situated employees. Therefore, you would be entitled to use your accrued paid sick leave during any period of time in which you are sick or disabled during your pregnancy and after childbirth. Often, doctors will certify that you are disabled from childbirth for six to eight weeks afterward. Similarly, if you generally would be permitted to use accrued vacation days for absences due to other reasons, then you must be permitted to do so for absences related to pregnancy or child rearing.

If you remain on parental leave after you are no longer sick or disabled, or after you have used up your sick or vacation leave, the law ***allows*** but does not ***require*** your employer to pay you. At that point, your entitlement to be paid would depend upon your collective bargaining agreement or other employer policies.

Note regarding adoption: The law generally would not entitle you to use paid sick leave since you have not experienced an illness or disability from pregnancy or childbirth. Of course, if you are actually ill or you are caring for a family member (including your adopted child) who has a serious illness, you would be entitled to medical leave under the Family and Medical Leave Act. You would be entitled to paid sick leave to the same extent that it would be available to other employees who are sick or caring for a sick family member. Moreover, your contract might provide for extended paid parental leave regardless of illness or disability.

Can my employer force me to use up my sick or vacation days during my FMLA leave if I would rather take unpaid leave?

During the eight weeks of leave under the Massachusetts Parental Leave Law following your child's arrival (by birth or adoption), your employer cannot force you to use up your sick leave or your vacation leave if you do not wish to do so.

The Family and Medical Leave Act and the Small Necessities Leave Act permit your employer to force you to use up available paid leave under some circumstances. However, the employer cannot impose this on you without first bargaining with your local association. Even then, you cannot be forced to use up your paid leave unless the time would qualify for paid leave under the employer's usual rules. For example, if your contract allows you to use sick leave only for your own personal illness, your employer cannot force you to use up your sick leave on days on which you are caring for your newborn child. As another example, if your employer or your contract would not permit you to use paid sick or vacation leave to care for a sick child, then the employer cannot force you to use those days if you take FMLA leave to care for a sick child.

Am I entitled to extended sick leave after the six or eight weeks of "normal" childbirth-related disability?

If you have an extended period of illness or disability related to your pregnancy or childbirth, you would be entitled to use Family and Medical Leave Act leave for that purpose, assuming you have not exceeded 12 weeks per year. Also, under the Pregnancy Discrimination Act, your employer must treat your extended illness the same way it would treat any other extended illness or disability. If extended leave is available for other illnesses, it must be available to you. If employees with other illnesses are entitled to paid sick leave for extended periods of time, then so are you.

May I use the sick leave bank for pregnancy and childbirth-related illnesses?

The criteria for access to a sick leave bank are often quite stringent and may not apply to short periods of absence such as the normal six to eight weeks following childbirth. However, under the Pregnancy Discrimination Act, the criteria for access to the sick leave bank cannot discriminate against pregnancy or childbirth-related illnesses.

What notice must I give my employer for MPLL or FMLA leave?

For the eight weeks of leave under the Massachusetts Parental Leave Law, you must provide two weeks' notice of your anticipated date of departure and your intention to return to employment, though such notice may be less than two weeks if due to circumstances beyond your control (e.g. early delivery). If you intend to use more than the eight weeks of leave allowed by the MPLL – for example, you are taking leave pursuant to the Family and Medical Leave Act, rather than the MPLL – you are required to give the notice required by the FMLA.

For FMLA leave, you must give at least 30 days' notice if the leave is foreseeable; otherwise, give notice "as soon as practicable."

For Small Necessities Leave Act leave, you must give at least seven days' notice if the leave is foreseeable; otherwise, give whatever notice is "practicable."

In giving notice, you are not required to refer to the specific law or use any "magic words." While we generally recommend that you submit your request in writing, that is not required. Whether oral or written, the notice should give your employer enough information about the reasons for your leave so that the employer is satisfied that such leave is covered under the FMLA or SNLA.

Am I entitled to 12 weeks of FMLA leave in addition to the eight weeks of MPLL leave and/or any contractual leave?

Usually these leave entitlements run "concurrently," which means they overlap. If you have not used any of your 12 weeks of leave under the Family and Medical Leave Act, then you would have 12 weeks of leave after your child arrives, not 20. If your contract allows you one year of parental leave, you generally would be entitled to a maximum of one year, not a year plus 12 weeks.

Remember, however, that the Massachusetts Parental Leave Law gives employees eight consecutive weeks of leave (not necessarily with pay) after their child arrives, regardless of how much FMLA or contractual leave they may have left. Thus, you are always entitled to at least eight weeks.

The amount of time to which you are entitled beyond eight weeks depends on how much of your 12 weeks of annual FMLA leave you have used up before your child arrives and upon how much parental leave your contract gives you.

If you are ill as a result of pregnancy or childbirth, you may be entitled to additional leave under your contractual sick leave provisions. If your illness is disabling, you may also be entitled to accommodations under the state's handicap discrimination law (M.G.L. Chapter 151B). If the disability is long term or permanent, you may be entitled to additional leave as a "reasonable accommodation" under the Americans with Disabilities Act.

Is it legal for my contract to give me a longer parental leave or more paid leave than I would get under these laws?

Yes, your contract can and often does give you more than the law gives you. You are always entitled to the best of the benefits provided to you under the Family and Medical Leave Act, the Massachusetts Parental Leave Law, the Small Necessities Leave Act or your contract. For example, many contracts guarantee employees a year or more of parental leave, even though the FMLA only gives you 12 weeks. If so, you would be entitled to the full amount set forth in your contract.

What if my contract seems to give me less than the law gives me?

Your contract cannot take away any of your rights under the Family and Medical Leave Act, the Massachusetts Parental Leave Law, the Small Necessities Leave Act, the Pregnancy Discrimination Act or employment discrimination laws. If your contract seems to give you less than what the law gives you, you are entitled to the full benefits provided under the law.

May I take parental leave in small portions or part time?

Under the state Small Necessities Leave Act (see above), you may take up to 24 hours of leave per year in small increments as needed. The employer may choose to limit the increments to one hour or more, subject to collective bargaining.

Under the Family and Medical Leave Act, parental leave is only available on a full-time basis and in consecutive weeks. However, FMLA leave for your own or a family member's serious illness is available intermittently or through a reduced schedule. Intermittent leave involves taking separate blocks of time ranging from an hour to several weeks, such as for regular doctor visits or periodic ultrasound tests. A "reduced schedule" means shortening your workday or workweek to accommodate a serious medical condition.

A female employee may take FMLA leave in increments or part time for pregnancy complications and/or for recovery from childbirth. Any eligible employee may take FMLA leave in increments or part time in order to care for a child or other close family member with a serious medical condition. Parental leave under FMLA to care for a healthy child, however, must be taken on a full-time basis in consecutive weeks and must be exercised within 12 months of the birth or adoption of the child. Your contract may permit intermittent or part-time parental leave even though it is not required under the law.

Leave under the Massachusetts Parental Leave Law must be exercised consecutively from the time of the birth or adoption of a child.

Can my employer require me to begin or end my parental leave at a certain time?

Generally, the answer is no. The Pregnancy Discrimination Act prohibits your employer from requiring you to leave your job before you want to, and the Family and Medical Leave Act similarly leaves the timing of your leave up to you. Under no circumstance can the employer force you to begin your leave sooner than you wish – such as at the beginning of an academic term.

Regarding your return date, the FMLA does contain one exception to these general rules. If the leave you request would end during the final weeks of a semester, then under some circumstances the employer may require you to remain on leave until the end of that academic term. Since this is optional under the law, the employer would have to negotiate with the local association before imposing such a requirement.

Leave exercised pursuant to the Massachusetts Parental Leave Law may commence only upon the birth or adoption of a child and must be taken consecutively, so neither the employer nor the employee has discretion with respect to that matter.

If vacation weeks (such as summer vacation) occur during my leave, do those weeks count against my MPLL, FMLA or contractual entitlements? What about paid sick leave?

Under the Family and Medical Leave Act, vacation weeks do not count against your 12-week entitlement. If you use three weeks of FMLA leave at the end of one school year, you will have nine weeks left at the beginning of the next school year. In fact, if your employer uses the academic year rather than the calendar year as the 12-month period, you may be entitled to an additional 12 weeks at the beginning of the following school year. Under the Massachusetts Parental Leave Law, the issue is not settled. An argument also can be made that vacation weeks should not count against the eight weeks of MPLL leave.

Regarding sick leave, however, the answer is generally different. You cannot claim FMLA leave for your own illness (such as complications of pregnancy or recovery from childbirth) for a period of time in which you are not actually sick or disabled. Therefore, any FMLA or MPLL leave you take after you are no longer disabled from pregnancy or childbirth would be parental leave rather than medical leave. As noted above, the FMLA generally does not require your employer to provide paid sick leave during parental leave.

Example: If you give birth without complications in May, your period of disability would end six to eight weeks later, in mid-summer. The summer weeks would not count against your unpaid FMLA leave entitlement and you would still have some weeks remaining in September. However, since you would no longer be sick or disabled in September, you would not be entitled to use your paid sick leave at that time – unless your contract gives you that right.

If I can't do all the things I usually do on the job because of my pregnancy, can I get an alternative assignment? Do disability discrimination laws apply to pregnancy?

Under the Pregnancy Discrimination Act, your employer must treat you the same way it treats other temporarily disabled employees. If the employer (or the collective bargaining agreement) provides light duty, part-time work or alternative assignments to other temporarily disabled employees, then you cannot be denied the same treatment.

In addition, the state's handicap discrimination law applies to pregnancy-related disabilities. Under that law, if your condition impairs your ability to perform major life activities, then your employer must accommodate your disability through light duty, alternative assignments, room changes, etc. Whether such accommodations are reasonable or necessary depends upon the circumstances of each case.

Under what circumstances can my employer require me to supply medical certification in order to get leave?

No medical documentation or certification is required in order to obtain parental leave under the Family and Medical Leave Act, Massachusetts Parental Leave Law or Small Necessities Leave Act. Your employer cannot require you to submit any medical documentation in order to qualify for the eight weeks of leave under the MPLL.

For other periods of illness or disability relating to your pregnancy (beyond the eight MPLL weeks), your employer may request that you submit medical verification of your need for leave only if the employer normally requires a doctor's statement for other kinds of medical leave. The U.S. Department of Labor has published a recommended form (Form WH-380-E) for purposes of medical documentation of FMLA leave for an employee's serious medical condition.

What type of medical documentation can my employer require when I return from leave due to pregnancy?

When you return from leave, your employer may require you to submit to a medical verification of "fitness for duty" (i.e., a doctor's note) only if the following factors are present:

- You are returning from a medical leave related to your own personal illness or injury that made you incapable of performing your job;
- The employer has a uniform policy of requiring similarly situated employees to submit fitness-for-duty certifications when returning from medical leave;
- The medical verification is limited to the illness for which you took your leave; or
- The certification relates to an essential function of your job.

The certification itself need be only a simple statement of your ability to return to work. If the employer correctly follows certain procedural requirements, it could require certification with respect to your ability to perform essential job functions and could contact your doctor to get clarification of the certification.

If your contract does not allow fitness-for-duty certifications or otherwise gives you more rights than the Family and Medical Leave Act does, then your employer must follow the contract.

Am I eligible for short- or long-term disability insurance benefits for my pregnancy or childbirth?

If your employer provides such benefits, the Pregnancy Discrimination Act requires that they be made available for pregnancy and childbirth on the same basis as any other disability.

Must my health insurance cover pregnancy, childbirth and abortion?

Your health insurance must cover pregnancy and childbirth-related illnesses and disabilities in the same manner and to the same extent that it covers other illnesses and disabilities. Health insurance coverage for disabilities includes those related to abortions.

Whether your health insurance coverage includes any particular medical procedure depends on the terms of the plan in which you participate.

If my employer offers different health insurance plans, must coverage for pregnancy-related conditions be offered in all of them?

Yes. Each of the plans must cover pregnancy-related conditions to the same extent that they cover other illnesses and disabilities. For example, if you have an individual plan, you cannot be forced to enroll in a more expensive family plan in order to receive coverage for your pregnancy-related condition.

Am I entitled to health insurance coverage while on parental leave? Must the employer continue to pay its portion of the premium?

While you are on Family and Medical Leave Act leave (whether parental leave or medical leave) and during your leave under the eight-week Massachusetts Parental Leave Law, your employer must continue your group insurance coverage. Under the FMLA, your employer must also continue to pay its portion of your health insurance premiums, even if the leave is without pay.

If you remain on leave beyond your FMLA or MPLL entitlement, the municipal health insurance law (M.G.L. c. 32B) allows you to remain within the group insurance plan. However, whether the employer must continue to contribute toward your premium would depend on whether your leave was parental or medical.

If you are on paid parental leave, your employer must continue to contribute toward your health insurance premiums. If you are on unpaid parental leave, your employer is generally prohibited from contributing toward your health insurance premiums.

If you are on paid or unpaid medical leave (for example, because you have experienced prolonged complications from your pregnancy or childbirth), the municipal health insurance law requires your employer to continue its normal contributions toward your health insurance.

If I do not go back to work after taking parental leave, could I be required to pay back any insurance premiums that were paid by my employer during my leave?

If you fail to return to work after your leave, the employer cannot require you to reimburse it for premium contributions for any portion of your leave that was under the Massachusetts Parental Leave Law or for medical reasons, whether for your own personal illness or to care for an ill family member. For leave under the Family and Medical Leave Act, your employer is allowed (but not required) to demand reimbursement for premium contributions it made during the leave period. An exception is made, however, when the reason for failure to return is the continued serious illness of you or your family member or other circumstances beyond your control (if, for example, you move far away for your spouse's employment or if you are laid off during the period of leave). Choosing to stay home with a healthy child does not qualify as a circumstance beyond your control. Since the FMLA does not require an employer to demand reimbursement of its premium share when an employee fails to return from leave, the issue would be a mandatory subject of bargaining.

What rights do I have if I am pregnant and am exposed at work to a dangerous contagious disease?

You should discuss your concerns with your association representatives, who may be able to assist you in approaching your school administrators to work out a solution. The state health code requires that children who have certain known contagious diseases be excluded from school. However, you may be concerned about exposure from children who have not yet been identified as carrying an infection and who are therefore not yet excluded from school. In this situation, the only practical way for the employer to help you avoid exposure would be to give you a leave of absence during the period of contagion. We believe that the employer would have an obligation to give you such leave under the Americans with Disabilities Act or the state handicap discrimination law. You should explore with your local association whether your contract permits you to use your accumulated paid sick leave in order to remain on the payroll during such leave.

Will my job be kept open for me while I'm on MPLL or FMLA leave?

When you return from leave under the Family and Medical Leave Act and/or the Massachusetts Parental Leave Law, your employer must restore you to your previous position or a position that is equivalent in benefits, pay, seniority and other terms and conditions of employment. A school district may follow "established practices" and the collective bargaining agreement in determining an "equivalent" position. A district cannot impose requirements (such as an additional license) that effectively preclude your return to work.

What effect will parental leave have on my seniority?

Your seniority cannot be broken during a period of statutorily or contractually allowed leave. This means that if you have seven years of seniority at the time you begin your leave, you will return to work with a minimum of seven years of seniority. Neither the Family and Medical Leave Act nor the Massachusetts Parental Leave Law entitles you to accrue additional seniority during your leave. That is, if you take a one-year parental leave, the law does not require your employer to give you seniority credit for that year. However, your contract may allow such accrual, especially for those portions of your leave that are taken with pay.

Will MPLL or FMLA leave affect my PTS?

If you have Professional Teacher Status at the time you take leave under the Massachusetts Parental Leave Law or Family and Medical Leave Act, the leave will not affect your status.

If you do not have PTS, it is uncertain whether MPLL or FMLA leave will affect you. The law provides that you acquire PTS after you have worked three consecutive school years for the same school district. The courts have interpreted this requirement to mean three "complete" school years. It is unlikely that exercise of paid leave time would make the school year "incomplete." However, it is possible that a significant period of ***unpaid*** leave would make a school year incomplete and therefore ***not*** count toward PTS.

Even if a school year is deemed incomplete because you have taken significant unpaid parental leave, you will not have to start over again in order to meet the "three consecutive years" requirement. For example, if you have two years of service and then take unpaid leave during your third year, you should have to work only one additional complete school year after you return in order to acquire PTS.

Can I be laid off or dismissed during my FMLA, MPLL or other contractual parental leave?

The leave laws are designed to place you in the same position that you would have been in had you not taken the leave. You cannot be laid off or dismissed because you took your lawfully entitled leave.

However, if your employer can prove that you would have been laid off or dismissed even if you had not taken leave, you can be laid off or dismissed during your leave. You retain the same bumping, transfer and recall rights that you would have had if you had not taken leave.

If I am laid off while on parental leave, may I collect unemployment compensation?

Yes, provided you meet the general requirements for unemployment compensation. Among those requirements are that you are able to work and available for work and that you have unsuccessfully sought work.

Will my leave count as "creditable service" for retirement?

Under the Massachusetts retirement statute, you receive creditable service for paid leave. But any period of time in excess of one month you are on an unpaid leave for any reason does not count as creditable service. A retirement system has discretion to allow creditable service for an unpaid leave of less than one month and the Massachusetts Teachers' Retirement System allows such credit. Thus, if you are a teacher and normally work a 10-month school year, you will lose one-tenth of a year of creditable service for the period of time you are on an unpaid leave in excess of one month.

However, your membership in the Massachusetts Teachers' Retirement System (or other public employee retirement system) will not be affected by your authorized leave of absence. You will also retain the service credit or other rights that you have earned at the time the leave commenced.

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