

# Massachusetts Maternity Leave Act

## Frequently Asked Questions

### **NEW MATERNITY LEAVE GUIDELINES ISSUED BY THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION**

The Massachusetts Maternity Leave Act (MMLA) requires employers with six or more employees to provide full-time female employees with up to eight weeks of unpaid, job-protected leave for the birth or adoption of a child. The Massachusetts Commission Against Discrimination (MCAD), which enforces the statute, has recently issued new guidelines interpreting the MMLA. These Guidelines clarify some previously ambiguous sections of the law and create new obligations, which may require employers to revise their maternity leave and related policies. Highlights of these changes are discussed below.

#### **Question: Who is eligible for leave under the MMLA?**

**Answer:** Full-time female employees who have completed their initial probationary period or, in the absence of a defined probationary period, three months of employment.

**Tip:** Many employers have an introductory, or probationary, period for new employees. Employers can limit maternity leave to employees who have at least six months of service by defining their introductory period as the first six months of employment, provided that maternity is not singled out for an introductory period of this length. In the absence of a defined introductory period, new employees will be eligible for maternity leave after three months.

#### **Question: Can't men take a leave of absence for the birth of a child?**

**Answer:** The MMLA applies only to women. However, if an employer provides greater maternity leave benefits than the MMLA requires to women but not men, that policy would be discriminatory, and thus illegal. (The federal Family and Medical Leave Act (FMLA), which applies to employers with 50 or more employees, permits both men and women to take time off due to the birth, adoption or foster care placement of a child.)

**Tip:** If an employer's family-related leave policies and benefits provide any more rights or benefits than the minimum required by the MMLA, the employer should review those policies to be sure that they are available to men and women on a non-discriminatory basis.

#### **Question: Can employers require employees to use accrued time off (e.g. vacation, sick, personal days) during a maternity leave?**

**Answer:** No! Employees can elect to use accrued time off to continue their pay during a maternity leave, but employers cannot require them to do so.

**Tip:** This is a significant difference from the FMLA and from the practice followed by many employers. Employers who require employees to use accrued time off during maternity leave should revise their FMLA policies or other leave policies to be sure they are not in violation of this new interpretation.

Employers should also review their vacation policies. The MCAD has suggested that an employee may be permitted to “stack” their maternity leave and vacation under the MMLA by requesting eight weeks of maternity leave, and then using any accrued vacation. Employers should specify in their vacation policies that vacation requests may not be granted at the end of any type of extended leave of absence.

**Question: What if a woman experiences complications or illness during her pregnancy that requires her to miss work? Is that time off protected by the MMLA?**

**Answer:** Maternity leave under the MMLA is available “at the time of” the birth or adoption, but not “substantially earlier or substantially later.” Thus, time off due to pregnancy-related complications or illness would not count against an employee’s eight-week maternity leave entitlement.

**Tip:** Employers may still be obligated to provide employees who experience complications or illness during pregnancy with job-protected time off. Even if the woman’s incapacity does not rise to the level of a “disability”, the MCAD has noted that “an employer must treat such employee in the same manner as it treats employees who are temporarily incapacitated or disabled for other medical reasons.” Policies and practices should be reviewed to be sure that pregnant employees who experience complications are entitled to the same considerations, and the same restrictions, as employees who are absent for other reasons.

**Question: Can employers allow employees to take more than eight weeks of maternity leave?**

**Answer:** Yes. However, if an employer does not want to extend all of the protections of the MMLA to that extra time off (e.g. job restoration), it must “clearly inform the employee in writing prior to the commencement of the leave.”

**Tip:** Many employers provide greater benefits than the MMLA requires. Leave policies and communications to employees on leave should be reviewed to be sure that the employer is not unwittingly providing greater benefits than it intends.

**Question: Are part-time employees eligible for leave under the MMLA?**

**Answer:** Not generally. However, if the employer provides leave for other reasons to part-time employees, it may be required to provide maternity leave to part-time employees also.

**Tip:** Employers should review their leave policies and practices to determine whether part-time employees are eligible for leaves of absence in circumstances other than childbirth. If so, the employer should decide as a matter of policy how it wants to treat part-time employees with respect to all leaves.

**Question: What about multiple births?**

**Answer:** The MCAD has stated that a woman is entitled to eight weeks of leave for every child born or adopted. Thus, delivering twins would entitle a woman to 16 weeks of leave.

**Tip:** As multiple births become more common, more employers may be faced with lengthy maternity leaves for twins, triplets, etc.

**Question: I am adopting. What is the District stance on paid leave and the relationships with other leaves available.**

**Answer:**

1. You are eligible for up to eight weeks of Maternity leave for adoption. This leave would start upon arrival of the adopted child. Please request this leave at least 6 weeks in advance and cite your intention to return to work.
2. The maternity leave for adoption is an **unpaid** leave *unless* you provide a certification from your physician that you are disabled and unable to work. This certification would require a diagnosis and treatment plans. The form to be used can be provided upon request from the District office. This is in accordance with the contract, Article 19-5, Section E.1.a. and with past practice of the District. This leave would enable you to participate in the District's insurance program and you would be required to continue to pay your **current** share of insurance premiums.
3. Upon completion of the maternity leave, you are eligible for 12 weeks of FMLA leave for child rearing. This is an **unpaid** leave. This leave would enable you to participate in the District's insurance program and you would be required to continue to pay your **current** share of insurance premiums. The District will need 30 days notice prior to the FMLA beginning date.
4. You may also request a child rearing leave in accordance with the contract for the balance of the school year. This leave is unpaid. See Article 19-5, Section E.2. This leave is subject to the Superintendent's approval. This leave would also enable you to participate in the District's insurance program but you would be required to pay **100%** of all insurance premiums.
5. You may also ask for an unpaid leave of absence in accordance with Article 19-7, Section H. This leave would also enable you to participate in the District's insurance program but you would be required to pay 100% payment of all insurance premiums.

**Question: Would Maternity leave impact the ability for a teacher to gain professional status?**

**Answer:**

The existence of a maternity leave would not negatively impact the ability for a teacher to gain professional status. If there were other leaves of absences not related to regulation or statute, then it would.