

Parenting Leave

What do the state and federal laws do?

Both the Minnesota Parenting Leave Law and the federal Family and Medical Leave Act (FMLA) require certain employers to provide qualifying employees with a minimum amount of job-protected leave when they have a newborn or newly adopted child. The federal FMLA also provides leave in other situations, such as the illness of a family member or the illness of the employee.

These laws do not necessarily provide additional leave to be added to all the leave that the employer voluntarily provides. Instead, they require that a minimum amount of job-protected leave (meaning leave after which an employee has the right to his or her job back) be made available. For instance, if an employer provides 12 weeks of paid parental leave for employees as a part of its normal benefit package, that leave would qualify as the leave required by law, so the employee could not take the 12 paid weeks and then claim another 12 weeks of unpaid but job-protected "FMLA leave." In other words, these laws do not create a grant of a block of special set-aside leave so much as they provide a minimum amount of time an employee may be absent from work after a birth or adoption without endangering the employee's job.

What employees are covered by the state law?

An employee is covered by the state law if: (1) the employee works for an employer that has at least 21 employees at any site (whether or not it is the site where the employee works); and (2) the employee has worked for the employer at least half-time for the 12 consecutive months preceding the request for leave.

What employees are covered by the federal Family and Medical Leave Act?

An employee is covered by FMLA if: (1) the employee works for a public employer, or for a private employer that has at least 50 employees within 75 miles of where the employee works; and (2) the employee has worked for the employer for at least 12 months (not necessarily consecutively); and (3) the employee has worked for the employer for at least 1,250 hours in the 12 consecutive months preceding the request for leave.

What if an employee is covered by both statutes?

If an employee is covered by both statutes, then the employer must comply with both. The effect of this is that the employee receives the benefit guaranteed by the more generous provision of state or federal law.

How much leave can the employee receive?

When an employee either has a newborn biological child or a newly adopted child, federal law provides for a minimum of 12 weeks of leave, and state law provides for a minimum of six weeks of leave.

When does the leave start? Under state law, the employee can choose to start the leave at any time up to six weeks after the child is adopted or born, except that if a newborn has to spend more time in the hospital than the mother spends, then the leave can begin up to six weeks after the child comes home from the hospital.

Under federal law, the employee can begin the leave up to 12 months after the birth or adoption of the child.

Does the leave have to be paid? Neither the federal nor the state law requires that the leave be paid. Under state law, the employer can reduce the six weeks of leave by any amount of paid parental or disability leave, but not by sick leave, so that the total leave does not exceed six weeks. Under the FMLA, either the employer or the employee can decide to substitute any paid leave available to the employee for any part of the unpaid leave. Therefore, either the employer or the employee can decide that the employee will exhaust vacation or other paid leave as part of the 12 weeks.

What about the employee's health insurance during the leave? Both state and federal law require that the employee be permitted to continue existing health insurance through the employer during the leave period. State law allows an employer to require the employee to pay the entire premium during his or her leave, but the FMLA requires that the employer continue to pay whatever portion of the premium it was paying prior to the leave. This difference in provisions is one reason why it may be important to determine whether the employee is covered by the state law, the federal law, or both. The FMLA further provides that if the employee chooses not to return to work after the leave, the employer can require the employee to pay back any insurance premiums the employer paid during the leave.

What happens when the employee returns? Under both state and federal law, the employee is entitled to be returned to the same position or a comparable position (in hours, duties, and pay) at the end of the leave, unless the employee otherwise would have been laid off during the leave. The FMLA has an exception to reinstatement for an employer's most highly paid employees, if reinstatement would cause "grievous economic injury" to the employer.

Does state or federal law provide parental leave other than when a child is first born or adopted? Minnesota law provides that an employee is entitled to 16 hours of unpaid leave per year to attend school conferences and activities relating to the employee's child, provided those activities cannot be scheduled outside of work time. This law also covers foster parents.

Minnesota law also allows an employee to use the sick leave granted to him or her by his or her employer to care for an ill child. Both of these are in addition to the six weeks of leave provided for the birth or adoption of a child. Coverage by these laws is the same as for the six-week leave discussed above, except that the school activities leave is available without regard to the number of employees that the employer has.

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