

Employers Labor to Understand Pregnancy and Parental Leave in Oregon

True or False?

1. Even if an employee has a normal and healthy pregnancy, she is still eligible for “pregnancy disability leave” under the Oregon Family Leave Act (OFLA) and the Federal Family and Medical Leave Act (FMLA).

TRUE. Although the phrase is confusing, pregnancy “disability” leave is available to a woman for any medical purpose related to her pregnancy. This includes routine prenatal doctor appointments, periods of morning sickness, and birthing classes.

2. If an eligible employee takes any amount of OFLA pregnancy leave, she is automatically entitled to another 12 weeks of leave for any qualifying OFLA event. This could include parental leave, more pregnancy leave or a leave completely unrelated to the pregnancy, such as leave to care for a sick family member.

TRUE.

3. Once an employee gives birth, her pregnancy leave ends and her parental leave automatically begins.

FALSE. Although this was the case under the old Oregon Parental Leave Act, that law was repealed when OFLA was enacted in 1990. Currently, neither OFLA nor FMLA provide any specific time when parental leave must begin – other than that it must be completed within a year of the birth, adoption or placement of the child.

4. If an employee gives birth and the doctor tells her not to return to work for six weeks, she has the option to take those six weeks as either pregnancy or parental leave.

TRUE. This is understandably one of the most confusing areas for both employers and employees. Here’s a summary of how it works:

If an employee has given birth, she is of course eligible to take parental leave immediately. However, since she has not yet been medically released to return to work, she is also entitled to take that same six weeks as more pregnancy leave (if she has any left), since she is still “disabled” due to pregnancy or childbirth.

How should the employee decide which leave to use? If she is covered by OFLA, it probably depends upon how much time she can afford to take off after the birth. (Remember, family medical leave is unpaid.) Here are a couple of possible scenarios:

Option A. She has 3 weeks of pregnancy leave left, and she decides to deplete them during the first three weeks after the birth. Because she wants to continue to bond with

the baby for as long as possible, she uses the next 12 weeks as parental leave and then returns to work. In addition, because she has used a complete 12 weeks of parental leave, she is entitled to take up to 12 weeks of OFLA “sick child leave” if she requires it.

Option B. Although she has 3 weeks of pregnancy leave left, she cannot afford to miss the next 15 weeks of work (as in the example above). She also wants to preserve her right to take sick child leave later in the leave year. Thus, she decides to let the rest of her pregnancy leave lapse, and take the next 12 weeks as parental leave.

5. This is very complicated! Are we required to explain all of this in detail to our employees?

No, you are not. But if you are having trouble understanding it, it’s a pretty safe bet that your employees are at least as confused as you are. And if you take the time to explain this to them now, the odds are that they will return the favor in the form of increased loyalty.

For more information on the Oregon Family Leave Act and the Federal Family and Medical Leave Act, join Technical Assistance for Employers at an upcoming seminar: October 21 and 22 in Medford; October 23 and November 13 in Portland; November 5 in Bend; and November 12 in Salem. Visit www.oregon.gov/BOLI/TA for registration information.

The 24th Annual Employment Law Conference is scheduled for December 9 and 10 at the Oregon Convention Center. Check the website for details.