

A Husband and Wife Team on Family Leave

My business is large enough to have to comply with the Oregon Family Leave Act (OFLA) and the Federal Family and Medical Leave Act (FMLA). My company has a dynamic duo in the Accounting Department. The wife and husband have been working for my company for five years and are both eligible for the OFLA leave and FMLA leave.

The wife recently submitted an Employee's Request for Family Leave. She is pregnant. She plans on taking six weeks of pregnancy disability leave after delivery and 12 weeks of parental leave, a total of 18 weeks after giving birth. The husband also submitted a request seeking 12 weeks of family leave following the arrival of their newborn.

Does my company have to allow the wife 18 week off after delivery? Does my company have to grant the husband 12 weeks off following his wife's delivery when she is home taking care of the newborn?

Under OFLA, the wife may take up to 12 weeks of pregnancy disability leave in addition to 12 weeks of OFLA leave for any leave purpose.

In your example, if the wife has not used more than six weeks of OFLA pregnancy disability leave prior to delivery, your company must allow her to take six weeks of post-delivery pregnancy disability leave with the proper medical certification. At the completion of her 6 weeks of post-delivery pregnancy disability leave, the wife will commence her 12 weeks of parental leave. She will thus be entitled to 18 weeks of family leave after delivery. Your company is not allowed to require medical certification for the parental leave.

While the wife is off for six weeks of post-delivery pregnancy disability leave, the husband is entitled to take family leave to care for her. Following six weeks of family leave to care for the wife, the husband may also go on parental leave to bond with their newborn.

FMLA says a husband and wife who are eligible for FMLA leave and are employed by the same employer may be limited to a combined total of 12 weeks of leave during any 12-month period for birth of the employee's son or daughter or to care for the child after birth. In this case the husband and wife have not gone over the combined total of 12 weeks of parental leave.

Therefore, your company has to grant the husband 12 weeks of family leave simultaneously while the wife is home. She will spend the last 6 weeks of parental leave at home while the husband will be back at work following the expiration of his 12 weeks of family leave.

If you would like to learn more about Oregon leave laws, join Technical Assistance for Employers will be conducting seminars on this topic on November 12 in Salem, and November 13 in Portland. Please go to our website www.oregon.gov/BOLI for registration information. BOLI's 24th Annual Employment Law Conference will be held December 9 and 10 at the Oregon Convention Center. Visit the website for details.