

Calculating Time Off for a Pregnant Employee under Wisconsin and Federal Rules



Deciding which absences qualify for the Family and Medical Leave Act (FMLA)—whether federal or Wisconsin or both—can be complicated. Federal FMLA is available for the birth of a child, measured from the date of the birth; leave for prenatal visits of the mother is also covered. Wisconsin FMLA is available for the birth of a child from a period of time 16 weeks prior to the date of birth to 16 weeks following the birth.

Consider the following scenario: A female employee informs her employer that she is pregnant, and would like to take time off prior to the delivery. She meets the eligibility requirements for both federal and Wisconsin FMLA. Is this time considered FMLA leave under either federal or Wisconsin law?

Analysis: The employer will need additional information regarding the reason for leave to make the determination. Is the employee merely taking time for personal reasons or is she declared medically disabled by her physician?

Under federal FMLA, leave may be taken by the mother prior to the birth of the child for prenatal visits and for any serious health condition related to the pregnancy, such as severe morning sickness or if her treating physician certifies that she is disabled prior to the date of delivery. Any FMLA leave taken prior to the birth will impact the amount of leave the employee will have available after the birth. In the situation described above, the employer needs to find out whether the employee has been declared disabled by her physician. If so, she is eligible for FMLA. Were the employee taking off work before the delivery for preparing the baby's room, relaxing, etc., the employee's leave would not qualify for federal FMLA.

Wisconsin FMLA allows family leave to be taken within 16 weeks prior to or following the birth of a child. There is no requirement, however, that the individual be medically unable to work. Therefore, if this employee requests time off within 16 weeks prior to the delivery date, she would be eligible for Wisconsin FMLA (for a period of up to six weeks). Leave prior to the birth can be taken by the mother or father, even if the mother is not disabled. Taking the leave before the birth will reduce the time available for bonding under Wisconsin after the birth.


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If the employee is declared disabled by her doctor prior to the birth, this is leave due to the employee's own serious health condition and counts both against the two weeks available under Wisconsin and counts under Federal. This is illustrated in the following two examples:

Example 1: Jane is due September 1 but wants to take 2 weeks off prior to the birth to prepare for the baby. These two weeks count toward Wisconsin but not Federal. After the birth, Jane will still have 12 weeks of federal FMLA but only 2 weeks for her own serious health condition and 4 weeks of birth leave under Wisconsin.

Example 2: Jane is due September 1 but her doctor tells her she must stop working 2 weeks prior to the birth due to pregnancy complications. These 2 weeks count both towards Wisconsin and Federal as leave for her own serious health condition. After the birth, Jane has 6 weeks of Wisconsin birth leave and 10 weeks of Federal leave remaining.

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