Does the Birth of a Grandchild Entitle an Employee to FMLA Leave?

Many members ask whether an employee may take protected FMLA leave for the birth of a grandchild. While the impulse may be to immediately respond in the negative, it is important to carefully examine the circumstances of each event.

The federal FMLA regulations lead to several pertinent questions that may be used to analyze such requests.

1. Is the person giving birth a child of the employee, either a biological, adopted, or foster child, a stepchild, a legal ward, or someone the employee had day-to-day responsibilities to care for when the person was under 18?
2. Is the person giving birth a minor under the age of 18?
3. If the person giving birth is age 18 or over, is she incapable of self-care because of a mental or physical disability that substantially limits one or more of the major life activities of the individual?

If the person giving birth has the appropriate relationship to the employee, then the age of the individual must be considered. Pregnancy and incapacity due to childbirth is considered a serious health condition, which leads to the conclusion that an employee would be allowed FMLA leave to care for a minor child who is pregnant or incapacitated due to childbirth. Entitlement to leave, however, ends when the child no longer has a serious health condition, usually six to eight weeks after an uncomplicated delivery.

When the child is age 18 or over, an employer is required to look at the circumstances more critically and ask whether the child has a long-term physical or mental impairment other than the short-term incapacity childbirth may bring. If an impairment does exist, and the person is also incapable of performing at least three activities of self-care including grooming, bathing, dressing, eating or cooking, cleaning, shopping, or paying bills because of the impairment and NOT because of giving birth, leave for the employee is also protected by FMLA.

Wisconsin throws a curve at the employer because its leave law defines "child" age 18 or older differently than federal law does. The Wisconsin regulations state that a child includes someone who is "18 years of age or older and cannot care for himself or herself because of a serious health condition." This is a much broader definition and might include incapacity due to delivery by cesarean section. In this case the employee might be covered by Wisconsin FMLA for up to two weeks, but would not be entitled to federal FMLA leave.

Employers are encouraged to consider requests for leave based on the merits of the situation at hand. Determine if any of the above circumstances apply and proper notice has been given before making a judgment as to whether the employee requesting leave is entitled to protected leave. Many times it is in the best interest of the organization and the employee to assist with finding an alternative means of time off such as use of vacation, PTO time, or approved personal leave.

Still have questions regarding FMLA?
Contact the HR Hotline at 866-HR-Hotline (866.474.6854) or email at infonow@mranet.org.

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