



Understanding the Intersection of the FMLA and the PWFA

When an employee becomes pregnant, experiences a pregnancy-related disability, takes leave due to pregnancy or care and bond with a newborn, they may be entitled to legal protections under the Family Medical Leave Act (FMLA), the Pregnant Workers Fairness Act (PWFA), or both, in some situations. However, determining which laws apply to an employee's circumstances can often be complicated, and mistakes can be costly for employers, resulting in penalties, fines and legal fees.

While the FMLA and the PWFA support pregnant workers, they have different requirements. Employers must evaluate them carefully to correctly determine which legal protections extend to an employee's situation. This article outlines the FMLA and the PWFA and explores the intersection of these laws to help employers navigate difficult compliance situations.

Overview of the FMLA

The FMLA is a federal law that provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons. A private-sector employer is considered a covered employer under the FMLA if they employ 50 or more employees in 20 or more workweeks in the current or previous calendar year. In general, eligible employees may take up to 12 weeks of leave each year for FMLA-qualifying reasons, including the treatment of a serious health condition.

Employee Eligibility Requirements

To be eligible for FMLA leave, an employee must:

- Be employed by a covered employer
- Have worked for their employer for at least 12 months as of the start date of the leave
- Have accrued at least 1,250 hours of service for their employer during the 12-month period before the leave
- Work at a location where their employer has at least 50 employees in a 75-mile radius

Qualifying Reasons for FMLA Leave

An eligible employee may take up to 12 weeks of leave in a 12-month period for any of the following FMLA-qualifying reasons:

- The birth of a child or placement of a child with the employee for adoption or foster care, as well as the need to bond with the child within one year of birth or placement
- The treatment of a serious health condition that results in the employee being unable to perform the essential functions of their job
- The employee's need to care for an immediate family member who has a serious health condition
- Any qualifying exigency arising out of the fact that the employee has an immediate family member who is a military member on covered active duty or has been called to covered active duty status

A "serious health condition" is an illness, injury, impairment or physical or medical condition that involves inpatient care or continuing treatment by a health care provider. The FMLA does not apply to routine medical examinations (e.g., an annual physical) or common conditions (e.g., an upset stomach) unless complications develop.

Overview of the PWFA

The PWFA amends the Americans with Disabilities Act (ADA) to require reasonable accommodations for a qualified individual's limitations related to pregnancy, childbirth or related medical conditions. This law only applies to accommodations since existing laws the U.S. Equal Employment Opportunity Commission (EEOC) enforces make it illegal to terminate or otherwise discriminate against workers on the basis of pregnancy, childbirth or related medical conditions.

Notably, the PWFA does not replace federal, state or local laws that are more protective of workers affected by pregnancy, childbirth or related medical conditions. The law protects employees and applications of covered employers with known limitations related to pregnancy, childbirth or other related medical conditions. Covered employers include private- and public-sector employers with at least 15 employees, including federal agencies, employment agencies and labor organizations.

Additionally, covered employers cannot:

- Require an employee to accept an accommodation without a discussion between the worker and the employer about the accommodation
- Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation
- Require an employee to take leave if another reasonable accommodation can be provided that would let the employee continue working
- Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding, such as an investigation
- Interfere with any individual's right under the PWFA

How the FMLA and the PWFA Overlap

The FMLA and the PFWA can overlap in some situations, entitling employees to legal protections under both laws. When an employee is covered by the FMLA and the PWFA, a covered employer must provide the employee with the rights afforded by both laws: 12 weeks of unpaid, job-protected leave (FMLA) and a reasonable accommodation related to pregnancy, childbirth or associated medical conditions (PFWA). As a result, these laws can work together and be used in tandem.

These laws can overlap because they provide legal protections that address childbirth, preparations for childbirth and caregiving afterward. Due to their requirements, the FMLA and ADA intersect when an employer has 50 or more employees. For example, an employee may be entitled to intermittent FMLA leave for a pregnancy-related medical condition. Under the PWFA, a covered employer would be required to reasonably accommodate that employee for their medical condition unless doing so would create an undue hardship for the employer. Additionally, if an employee does not qualify for or has exhausted their FMLA leave, they may be entitled to pregnancy-related leave under the PWFA. Accordingly, FMLA-covered employers must consider an individual's PFWA rights when a worker attempts to exercise their FMLA rights for pregnancy-related conditions, childbirth or caregiving.

Considerations for Navigating the Overlap of the FMLA and the PWFA

Although the FMLA safeguards the rights of pregnant workers and new parents to equal employment, the PWFA mandates that employers take further steps to accommodate employees. Therefore, organizations can utilize the following strategies to help navigate the overlap of these laws:

- **Examine each law's purpose.** The FMLA and the PWFA provide distinct but similar protections. Therefore, employers can better understand how these laws intersect by considering each law's purpose. For example, the FMLA offers employees leave from work for pregnancy-related reasons, childbirth and caregiving; the PWFA mandates that employers take steps to accommodate employees for pregnancy, childbirth or related medical conditions.
- **Recognize each law's requirements.** The FMLA and the PWFA don't cover the same employers. The FMLA applies to employers with at least 50 employees within a 75-mile radius, and the PFWA covers employers with at least 15 employees. Therefore, some employers will be subject to the PWFA but not the FMLA. Further, understanding the rights and requirements of these laws can enable employers to analyze an employee's situation and respond appropriately.
- **Analyze an employee's situation under each law separately.** As FMLA and PWFA requirements differ, employers should evaluate each law individually. Since these laws and their purposes vary, they must be analyzed separately. Employers should consider an employee's specific situation when determining which law applies.

Takeaway

Understanding the overlap of the FMLA and PWFA can help employers comply with these laws and reduce the risk of costly errors. Additionally, by successfully navigating the intersection of these laws, employers can ensure that pregnant workers receive the care they need and that their rights are protected.

Employers can explore these government resources for more information:

- [The Employer's Guide to the FMLA](#), a publication from the U.S. Department of Labor's Wage and Hour Division
- The DOL's [website](#) on FMLA compliance, including links to model forms
- The EEOC's [website](#) on the PWFA
- [What You Should Know About the Pregnant Workers Fairness Act](#), a publication from the EEOC

For more workplace resources, contact MST Insurance Solutions, Inc. today.

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