

# WASHINGTON STATE HUMAN RIGHTS COMMISSION

## GUIDE TO PREGNANCY RELATED LEAVE IN WASHINGTON



### **OLYMPIA HEADQUARTERS OFFICE**

711 S. Capitol Way, Suite 402  
PO Box 42490  
Olympia, WA 98504-2490  
TEL: 360-753-6770 - FAX: 360-586-2282  
Toll Free: 1-800-233-3247  
TTY: 1-800-300-7525  
Se Habla Español  
[www.hum.wa.gov](http://www.hum.wa.gov)

## **Pregnancy and the Intersection of FLA, FMLA and WLAD**

### Washington Family Leave Act (FLA)

The FLA is enforced by the Washington State Department of Labor and Industries. Washington employers that employ 50 or more employees within a 75 mile radius for at least 20 workweeks in a year, must provide FLA leave to an employee. To be eligible, the employee must have worked for at least 12 months for the employer, and for at least 1250 hours during the last 12 months. The FLA entitles the employee to 12 weeks of leave within any 12 month period.

The employee is entitled to FLA leave for birth or adoption of a child or placement of a foster child, to care for a family member with a serious health condition, and for the employee's own serious health condition that makes the employee unable to perform the functions of his or her job. These entitlements are the same as those provided under the federal FMLA. Except for pregnancy related conditions, the leave under FLA and FMLA run concurrently.

Women who take leave from work for pregnancy related conditions or childbirth, and who qualify for FMLA, are entitled to additional leave benefits under the FLA. When a woman takes leave for a pregnancy related disability under the FMLA, the FMLA leave and the FLA leave do not run concurrently. After any disability related leave is finished, the woman is entitled to 12 weeks of additional leave under the FLA for bonding with and caring for the baby.

For more information on the Washington FLA, please contact the Washington State Department of Labor and Industries, [www.lni.wa.gov](http://www.lni.wa.gov)

### Family and Medical Leave Act (FMLA)

The FMLA is a federal law enforced by the U.S. Department of Labor. Employers that employ 50 or more employees within a 75 mile radius must provide FMLA leave to an employee. To be eligible, the employee must have worked for at least 12 months for the employer, and for at least 1250 hours during the last 12 months. The FMLA entitles the employee to 12 weeks of leave within any 12 month period.

The employee is entitled to FMLA leave because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation. (Family members of injured military can take additional time.)

Under the FMLA, a woman can take up to 12 weeks of leave to take care of a newborn child (or newly adopted child or new foster child), or for serious medical conditions related to pregnancy and childbirth, or a combination of serious medical conditions related to pregnancy and childbirth and caring for a newborn.

Please contact the U.S. Department of Labor for additional information on the FMLA, [www.dol.gov](http://www.dol.gov)

### Washington State Law Against Discrimination (WLAD)

The WLAD is enforced by the Washington State Human Rights Commission. The WLAD prohibits sex discrimination. Employers must not discriminate against women; this includes a prohibition of discrimination against pregnant women. Employers cannot make assumptions about what plans pregnant women will make or about the capabilities of pregnant women. Employers must avoid making paternalistic decisions regarding work assignments for pregnant women; jobs or tasks should not be taken away from pregnant women unless there is a doctor's recommendation. In addition to the leave discussed in this guidance, employers must allow pregnant women to take the same types and amount of leave that is provided for any other employee. As an example, if employees are allowed to call in sick for the stomach flu, then a pregnant woman should be allowed to call in sick for morning sickness.

In addition, the WLAD protects persons with disabilities; any woman with a pregnancy related disability (both pre- and post- childbirth) is protected under the WLAD as long as her employer has 8 or more employees. Under the WLAD, employers are required to reasonably accommodate the disabilities of employees when the disability has a substantially limiting effect on the employee's ability to do her job.

When a female employee has a pregnancy related disability, and needs a reasonable accommodation related to that disability, the employer must enter into an interactive process with the employee. This situation could involve a female employee whose doctor has limited the amount of bending or lifting she can do because of a pregnancy-related condition. In that situation the employer must make reasonable accommodations; perhaps eliminate minor job duties or move the employee to a different job. The situation could also involve a woman whose doctor has ordered that she take leave, either due to a disabling condition before the birth or due to childbirth itself. In most situations, disability leave must be granted by the employer as a reasonable accommodation. The period of disability that results in leave includes the time immediately following the birth of the baby; there is no particular length of time for this set forth in the statute, but it is usually six to eight weeks for a birth without complications, depending on the doctor's recommendations as to that new mother.

The woman is entitled to return to work in the same job, or an equivalent job, after her pregnancy related disability leave is over.

Disability leave as a reasonable accommodation under the WLAD must be for as long as the employee's health care provider determines is appropriate. It runs concurrently with leave under the FMLA. Disability leave under WLAD could potentially run for a longer period of time than the 12 weeks allotted for leave under FMLA; for example, a doctor could order 16 weeks of leave due to complications. Leave under WLAD could also be for pregnancy related disabilities that do not meet the requirements of a serious medical condition under FMLA.

After the woman has finished with her disability leave under the WLAD (i.e. after her doctor releases her back to work), she is still entitled to the amount of leave time that remains for her under the FMLA in order to care for and bond with the baby.

Additionally, after the woman has exhausted her FMLA, and finishes with her disability leave under the WLAD (i.e. after her doctor releases her back to work), she is still entitled to additional leave under the FLA to care for and bond with her baby. WLAD leave and FLA leave do not run concurrently. The FLA provides for 12 weeks of additional leave to bond with and care for the baby, after all of the disability leave has finished.

A woman who does not qualify for FMLA or FLA because her employer has fewer than 50 employees or because she has not worked for her employer long enough, is still entitled to disability leave for pregnancy and childbirth related conditions under WLAD.

Following are some scenarios. In each, the woman qualifies for leave under the FMLA.

**Example:** A woman's doctor orders bed rest for 4 weeks prior to the birth. She is able to take these 4 weeks of leave under the FMLA, and is also able to take those 4 weeks as disability leave under the WLAD. The FMLA and the WLAD leave run concurrently. After she gives birth, her doctor advises her to take another 6 weeks off. She takes these 6 weeks off under the FMLA and under the WLAD. FMLA and the WLAD leave run concurrently. She has now had 10 weeks of leave. She is entitled to two more weeks under the FMLA. She is able to take those 2 weeks to bond with and care for the baby, even if she is no longer disabled. Those two weeks run concurrently with FLA. Once she is finished with those 2 weeks of remaining FMLA leave, she may still take her 10 remaining weeks of FLA to bond with and care for the baby.

**Example:** A woman has no complications either during the pregnancy or after delivery. She takes no time off for disability before the delivery. Per her doctor's recommendations in order to recover from the delivery, she is entitled to 6 weeks off for disability leave after the delivery. This leave would be 6 weeks of leave under the WLAD and the FMLA, which run concurrently. After this, the woman's doctor releases her as recovered. The woman is still entitled to 6 more weeks of FMLA leave for care of and bonding with her newborn. This runs concurrently with the first 6 weeks of FLA leave. After those 6 weeks are done, the woman is entitled to the balance of her FLA leave, which is now at 6 weeks. In total, she has taken 6 weeks off for disability, and then an additional 12 weeks off for bonding with and care of the baby.

**Example:** A woman has serious cramping and bleeding complications during the middle of her pregnancy. Her doctor advises that she take time off of work, and she takes 6 weeks. She is entitled to this time under WLAD and under FMLA, which run concurrently. Six weeks before she gives birth, she has additional complications and her doctor advises that she stop working and go on bed rest until the baby is born. She takes these 6 weeks of leave under WLAD and under FMLA, which run concurrently. She has now used up all of her 12 weeks of FMLA leave. She has a C-section and has complications, and her doctor advises her not to return to work for 8 weeks after the birth. She takes these 8 weeks as disability leave under WLAD. After her doctor releases her from disability leave, she is entitled to an additional 12 weeks of FLA, in order to bond with and care for her baby.

If you need additional information, have additional questions, or wish to have training for your organization related to disability discrimination law in Washington state, please contact the WSHRC at 360-753-6770 or 800-233-3247 (TTY 800-300-7525). Additional information on this and other civil rights issues can be found on our website at [www.hum.wa.gov](http://www.hum.wa.gov).

For specific questions related to compliance and enforcement of protected leave laws in Washington, please contact the Protected Leave Unit, Washington State Department of Labor and Industries at (360) 902-4930.

For questions about FMLA, contact the U.S. Department of Labor at (866) 487-9243.

This document does not constitute legal advice; if you have a particular situation about which you need legal advice, you should contact your attorney.