

PREGNANCY FAQ

QUESTION: Can an employer terminate an employee for exhausting her intermittent FMLA leave and maternity leave prior to the employee giving birth?

ANSWER: It depends on the circumstances, including how an employer handles situations of exhausting FMLA leave for non-pregnant employees. Pregnancy must not be a factor in any decision to terminate an employee.

QUESTION: Could you expand on requirements to accommodate bonding time for male employees?

ANSWER: There are no set requirements, but if an employer offers bonding time to a female employee, then it should be offered for a male employee. Employees should be treated the same despite gender.

QUESTION: For THRC retaliation claims, what is the scope of the "protected acts?" Is it limited to the protected classes of discrimination? Does a claim for retaliation under the THRC include a general claim for retaliation for "other illegal acts" such as a civil code violation?

ANSWER: For EEOC and THRC retaliation claims, the employee must be involved in a protected activity. This means the employee opposed an employment practice based on a protected class or the employee participated in an EEO process (such as filing an EEOC/THRC complaint or an internal discrimination complaint, or testified or assisted in a co-worker's discrimination complaint.)

QUESTION: If an employer is worried about a pregnant employee lifting, when a lot of lifting is done on the job, can they require the employee to get a doctor's note clearing them to work?

ANSWER: Pregnant employees must be permitted to work as long as they are able to perform their jobs. Pregnancy must not be a factor in any decision with regard to an employee even if you believe it's "for her own good."

QUESTION: Is it correct that the 4 months of Tennessee parental leave applies only to employers with 100 or more employees at a single site?

ANSWER: Yes. See T.C.A. Section 4-21-408(d)(2).

QUESTION: Are state and federal maternity leave periods consecutive (12 weeks plus 4 months) or concurrent (4 months maximum)?

ANSWER: FMLA and TN maternity leaves generally run concurrently. However, there are some instances where the leaves can run consecutively because Tennessee law applies only to adoption, pregnancy, nursing an infant, and childbirth. If an employee doesn't qualify for leave under one of the 4 state law categories, the employee can take FMLA on top of TN maternity leave.

QUESTION: If an employee tells me that she is pregnant, and she works in an environment that could be harmful to her unborn child, can I lay her off until after she has had the baby?

ANSWER: An employee may not be laid off if her pregnancy is the reason for the employer's decision regardless if the employer has a safety concern.

QUESTION: Do I have to allow my employee, who is seeking fertility treatments, time off to go to these treatments?

ANSWER: This may be covered under other leaves (FMLA, annual, sick), but it is not covered under Tennessee's state parental leave laws (only covers adoption, pregnancy, childbirth and nursing your infant). Keep in mind also that depending on the circumstances, gender (pregnancy) discrimination and disability discrimination could be issues if leave is denied.

This information is provided for general informational purposes only and is not intended in any way to constitute legal advice. If you require legal advice, please consult an attorney.