Introduction

If you are working and pregnant or planning a family, you need to know your rights under the Massachusetts Maternity Leave Law (MMLL), the federal Family and Medical Leave Act (FMLA), the federal Pregnancy Discrimination Act (PDA), and the state Small Necessities Leave Act (SNLA). You also may have rights under the state’s anti-discrimination laws. You may have additional rights under your collective bargaining agreement. To the extent any of the provisions conflict, you are entitled to the most generous of the benefits provided.

The following Q’s and A’s are designed to address some of the common issues. However, since these laws can be quite complex, we recommend that you consult with your Association representatives if you have specific concerns. Association presidents can obtain legal opinions regarding specific issues from the Division of Legal Services.

1. What is the Massachusetts’ Maternity Leave Law ("MMLL")?

This is a state law (G. L. c. 149, § 105D), allowing female employees eight weeks of consecutive leave for childbirth or adoption. You are eligible if you have worked full time for your employer for three months. Under the MMLL, unlike the FMLA, you are entitled to eight additional weeks immediately following your child’s birth or adoption whether or not you have taken leave prior to your child’s arrival.

2. What is the Family and Medical Leave Act ("FMLA")?

This is a federal law (5 U.S.C. §§ 6381-6387) providing a total of 12 weeks in each 12-month period for any combination of the following reasons: (1) the birth, adoption, or foster care of a child, (2) the employee’s own serious health condition; and (3) to care for a parent, spouse, or dependent who has a serious health condition. (“Serious health condition” is described in Question No. 6, below). Generally, for parental leave purposes, the FMLA leave would also have to be taken in consecutive weeks. Parental leave under the FMLA is only available for 12 months after the birth or adoption of the child.
3. **What is the Pregnancy Discrimination Act (PDA)?**

This is a federal law, amending Title VII of the Civil Rights Act of 1964, that makes it illegal to discharge or otherwise adversely affect an employee because she is pregnant, has an abortion, or gives birth to a child. It also requires employers to treat pregnancy related disabilities and illnesses the same as any other illness or temporary disability, for purposes of medical verification, availability of pay, accrual of seniority and other benefits, insurance coverage, entitlement to promotions, etc. The state’s anti-discrimination statute (M. G. L. c. 151B) contains similar protection.

4. **What is the Small Necessities Leave Act (SNLA)?**

The SNLA is a state law that allows eligible employees up to 24 hours of leave every year, in addition to the 12 weeks allowed under the FMLA, for the following purposes:

1. to accompany their child to routine medical or dental appointments, such as check-ups or vaccinations;

2. to participate in school activities directly related to the educational advancement of their child, such as parent-teacher conferences;

3. to accompany an elderly relative to routine medical or dental appointments or for other professional services related to the elder’s care.

To be eligible for SNLA leave, you must meet the same criteria as for FMLA leave (see Question No. 5, below).

5. **Who is eligible for leave under the FMLA and SNLA?**

This leave is available to male and female employees who have worked for the employer for at least 12 months (not necessarily consecutive) and who have worked at least 1,250 hours during the immediately prior 12 months. “Hours worked” includes actual work time that your employer has required of you, including time correcting homework, preparing lessons, correcting tests, and attending training – even if those hours are spent at home or elsewhere. “Hours worked” does not include time off the job, such as sick leave and personal leave.

Some higher education personnel, especially adjuncts, may not meet the 1,250 hour threshold.
6. **What is a serious health condition for the purposes of the FMLA?**

A serious health condition for FMLA purposes is an illness, injury, impairment, or physical or mental condition that meets at least one of the following criteria:

1. in-patient care
2. lasts more than 3 consecutive calendar days and involves continuing medical treatment
3. is related to pregnancy or childbirth
4. is a chronic serious condition
5. is a long-term or permanent disability
6. requires multiple treatments in order to prevent long-term incapacity.

7. **Will I get paid during my MMLL, FMLA, and SNLA leave?**

None of these laws in and of themselves require the employer to pay you during your leave. However, these laws and the PDA would require the employer to pay you if they would pay other similarly situated employees. Therefore, you would be entitled to use your accrued paid sick leave during any period of time in which you are sick or disabled during your pregnancy and after childbirth. Usually doctors will certify that you are disabled from childbirth for six to eight weeks afterwards. Similarly, if you generally would be permitted to use accrued vacation days for absences due to other reasons, then you must be permitted to do so for absences related to pregnancy or child-rearing.

If you remain on maternity or parental leave after you are no longer sick or disabled, or after you have used up your sick or vacation leave, the law allows but does not require your employer to pay you. At that point, your entitlement to pay would depend upon your collective bargaining agreement or other employer policies.

**Note regarding adoption:** The law generally would not entitle you to use paid sick leave, since you have not experienced an illness or disability from pregnancy or childbirth. Of course, if you are actually ill or you are caring for a family member (such as your adopted child) who has a serious illness, you would be entitled to medical leave under the FMLA. You would be entitled to paid sick leave to the same extent it would be available to other employees who are sick or caring for a sick family member. Moreover, your contract might provide for extended paid parental leave regardless of illness or disability.
8. **May my employer force me to use up my sick or vacation days during my FMLA leave, if I would rather take unpaid leave?**

During the eight weeks of MMLL leave following your child’s arrival (by birth or adoption), your employer cannot force you to use up your sick leave or your vacation leave if you do not wish to do so.

The FMLA and the SNLA permit your employer to force you to use up available paid leave under some circumstances. However, the employer could not impose this on you without first bargaining with the Association. Even then, you cannot be forced to use up your paid leave unless the time would qualify for paid leave under the employer’s usual rules. For example, if your contract allows you to use sick leave only for your own personal illness, your employer could not force you to use up your sick leave on days on which you are caring for your newborn child. As another example, if your employer or your contract would not permit you to use paid sick or vacation leave to care for a sick child, then the employer cannot force you to use that leave if you take FMLA to care for a sick child.

9. **Am I entitled to extended sick leave after the six or eight weeks of “normal” childbirth-related disability?**

If you have an extended period of illness or disability related to your pregnancy or childbirth, you would be entitled to use FMLA leave for that purpose, assuming you have not exceeded the 12 weeks per year. Also, under the PDA, your employer must treat your extended illness the same as it would treat any other extended illness or disability. If extended leave is available for other illnesses, it must be available to you. If employees with other illnesses are entitled to paid sick leave for extended periods of time, then so are you.

10. **May I use the sick leave bank for pregnancy and childbirth-related illnesses?**

The criteria for access to a sick leave bank are often quite stringent and may not apply to short periods of absence such as the normal six to eight weeks following childbirth. However, under the PDA, the criteria for access to the sick leave bank cannot discriminate against pregnancy or childbirth-related illnesses.

11. **What notice must I give my employer for MMLL or FMLA leave?**

For the eight weeks of maternity leave under the MMLL, you must provide two weeks’ notice of your anticipated date of departure and date of return.
For FMLA leave, you must give at least 30 days’ notice if the leave is foreseeable, otherwise “as soon as practicable.”

For SNLA leave, you must give at least 7 days’ notice if the leave is foreseeable, and otherwise whatever notice is “practicable.”

In giving notice, you are not required to refer to the specific law or use any magic words. While we generally recommend that you submit your request in writing, that is also not required. Whether oral or written, the notice should give your employer enough information about the reasons for your leave so the employer can see that it is covered under the FMLA or SNLA.

12. **Am I entitled to 12 weeks of FMLA leave in addition to the eight weeks of MMLL leave and/or any contractual leave?**

Usually these leave entitlements run “concurrently,” that is, they overlap. If you have not used any of your 12 weeks of FMLA leave, then you would have 12 weeks of leave after your child arrives, not 20. If your contract allows you a year of parental leave, you generally would be entitled to a maximum of one year, not to a year plus 12 weeks.

Remember, however, that the MMLL gives women eight consecutive weeks of maternity leave (not necessarily with pay) after their child arrives, regardless of how much FMLA or contractual leave they may have left. Thus, you are always entitled to at least eight weeks.

The amount of time to which you are entitled **beyond eight weeks** depends on how much of your 12 weeks of annual FMLA leave you have used up before your child arrived and upon how much parental leave your contract gives you.

If you are ill as a result of your pregnancy or childbirth, you may be entitled to additional leave under your contractual sick leave provisions. If your illness is disabling, you may also be entitled to accommodations under the state’s handicap discrimination law (M. G. L. c. 151B).

13. **Is it legal for my contract to give me a longer parental leave or more paid leave than I would get under these laws?**

Yes, your contract can and often does give you more than the law gives you. You are always entitled to the best of the benefits provided to you under the FMLA, the MMLL, the SNLA, or your contract. For example, many contracts guarantee employees a year or more of parental leave, even though the FMLA only gives you 12 weeks. If so, you would be entitled to the full amount set forth in your contract.
14. **What if my contract seems to give me less than the law gives me?**

Your contract cannot take away any of your rights under the FMLA, the MMLL, the SNLA, the PDA, or the employment discrimination laws. If your contract seems to give you less than what the law gives you, you are entitled to the full benefits provided under the law.

15. **May I take parental leave in small portions or part-time?**

Under the state SNLA (see Question No. 4, above), you may take up to 24 hours of leave per year in small increments as needed. The employer may choose to limit the increments to one hour or more, subject to collective bargaining.

Under the FMLA, *parental* leave is only available on a full time basis and in consecutive weeks. However, FMLA leave for your own or a family member’s serious illness is available intermittently or through a reduced schedule. Intermittent leave involves taking separate blocks of time, ranging from an hour to several weeks --for example, for regular doctor visits or periodic ultra-sound tests. A “reduced schedule” means shortening your workday or workweek to accommodate a serious medical condition.

A female employee may take FMLA leave in increments or part-time for pregnancy complications and/or for recovery from childbirth. Any eligible employee may take FMLA leave in increments or part-time in order to care for a seriously ill child or other close family member. However, *parental* leave to care for a healthy child must be taken on a full time basis in consecutive weeks. As always, your contract could permit intermittent or part time parental leave even though it is not required under the law.

16. **Must parenting leave and other benefits be available to men as well as women?**

FMLA leave is available to both men and women. State and federal employment discrimination laws also require that benefits, such as those in a collective bargaining agreement, must be equally available to men and women. Thus, if your contract allows female employees a full year of maternity leave, then it must allow male employees parenting leave on the same terms and conditions and with the same benefits that are given to females.

On the other hand, since only women experience pregnancy and childbirth, only women are entitled to sick leave and disability leave in connection with childbirth. The eight weeks of leave under the state
MMLL seems designed to cover the normal period of disability following childbirth which may explain why it is only available to women.¹

17. **May my employer require me to begin or end my parental leave at a certain time?**

Generally the answer is no. The PDA prohibits your employer from requiring you to leave your job before you want to, and the FMLA similarly leaves the timing of your leave up to you. Under no circumstances may the employer force you to begin your leave sooner than you wish – such as the beginning of a term.

18. **If vacation weeks or periods between terms occur during my leave, do those weeks count against my MMLL, FMLA, or contractual entitlements? What about paid sick leave?**

Under the FMLA, vacation weeks and periods between academic terms do not count against your 12 week entitlement. If you use three weeks of FMLA leave at the end of one academic year, you will have nine weeks left at the beginning of the next academic year. In fact, if your employer uses the academic year rather than the calendar year as the 12-month period, you may be entitled to an additional 12 weeks at the beginning of the following academic year (if you have fulfilled the 1,250 hours requirement). Under the MMLL the issue is not settled. An argument can be made that vacation weeks also should not count against the eight weeks of MMLL maternity leave.

Regarding sick leave, however, the answer is generally different. You cannot claim FMLA leave for your own illness (such as complications of pregnancy or recovery from childbirth) for a period of time in which you are not actually sick or disabled. Therefore, any FMLA or MMLL leave you take after you are no longer disabled from pregnancy or childbirth would be parental leave rather than medical leave. As noted in Question No. 7, the FMLA generally does not require your employer to provide you paid sick leave during parental leave.

**Example:** If a faculty member gives birth without complications in May, her period of disability would normally end six to eight weeks later, in mid-summer. The summer weeks would not count against her unpaid FMLA leave entitlement and she would still have some weeks remaining in September. However, since she would no longer be sick or disabled in September, she would not be entitled to use her

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¹ Some have argued, although it has not yet been the subject of any published court decision, that the MMLL should be interpreted to apply to men, as well, in order to comply with the Equal Protection clause of the Fourteenth Amendment to the U. S. Constitution. This argument is enhanced by the fact that the MMLL applies to women who may not actually be disabled for eight weeks and to women who have adopted children and hence have experienced no childbirth-related disability at all.
paid sick leave at that time – unless her contract gives her that right.

19. **Does it matter whether or not I’m married?**

No.

20. **If I can’t do all the things that I usually do on the job because of my pregnancy, can I get an alternative assignment? Do disability discrimination laws apply to pregnancy?**

Under the PDA, your employer must treat you the same as it treats other temporarily disabled employees. If the employer (or the collective bargaining agreement) provides light duty, part time work, or alternative assignments to other temporarily disabled employees, then you cannot be denied the same treatment.

In addition, the state’s handicap discrimination law applies to pregnancy-related disabilities. Under that law, if your condition impairs your ability to perform major life activities, then your employer must accommodate your disability through light duty, alternative assignments, room changes, etc. Whether such accommodations are reasonable or necessary depends upon the circumstances of each individual case.

21. **Under what circumstances may my employer require me to supply medical certification in order to get leave?**

No medical documentation or certification is required in order to obtain parental leave under the FMLA, MMLL, or SNLA. Your employer cannot require you to submit any medical documentation in order to get the eight weeks of maternity leave under the MMLL.

For other periods of illness or disability relating to your pregnancy (beyond the eight MMLL weeks), your employer may request that you submit medical verification of your need for leave only if the employer normally requires a doctor’s statement for other kinds of medical leave. The U. S. Department of Labor has published a recommended form (Form WH 380) for purposes of medical documentation for FMLA leave.

22. **What medical documentation can my employer require when I return from leave?**

When you return from leave, your employer may require you to submit a medical verification of “fitness for duty” (i.e., a doctor’s note) only if the following factors are present:
(1) you are returning from a medical leave related to your own personal illness that made you incapable of performing your job;

(2) the employer has a uniform policy of requiring similarly-situated employees to submit fitness for duty certifications when returning from medical leave;

(3) the medical verification is limited to the illness for which you took your leave;

(4) the employer has a specific, job-related, business necessity for requiring the verification.

The certification itself need only be a simple statement of your ability to return to work. With your permission, the employer could ask its own health care provider to contact your doctor to get clarification.

If your contract does not allow fitness-for-duty certifications or otherwise gives you more rights than the FMLA does, then your employer must follow the contract.

23. **Am I eligible for short or long-term disability insurance benefits for my pregnancy or childbirth?**

If your employer provides such benefits, the PDA requires that they be made available for pregnancy and childbirth on the same basis as any other disability.

24. **Must my health insurance cover pregnancy, childbirth, and abortion?**

Your health insurance must cover pregnancy and childbirth-related illnesses and disabilities. It must also cover abortion, except for “partial-birth abortions after viability, defined as an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.”

25. **If my employer offers different health insurance plans, must coverage for pregnancy-related conditions be offered in all of the plans?**

Yes. Each of the plans must cover pregnancy-related conditions. For example, if you have a single coverage policy, you cannot be forced to purchase a more expensive family coverage policy in order to receive coverage for your pregnancy-related conditions.
26. **Am I entitled to health insurance coverage while on parental leave? Must the employer continue to pay its portion of the premium?**

While you are on FMLA leave (whether parental leave or medical leave) and during your eight-week MMLL leave, your employer must continue your group insurance coverage. Under the FMLA, your employer must also continue to pay its portion of your health insurance premiums, even if the leave is without pay.

If you remain on leave beyond your FMLA or MMLL entitlement, the state employee health insurance law (G. L. c. 32A) allows you to remain within the group insurance plans. However, whether the employer must continue to contribute toward your premiums would depend upon whether your leave was parental leave or medical leave.

If you are on **paid** parental leave, your employer must continue to contribute toward your health insurance premiums. If you are on **unpaid** parental leave, your employer generally is not required to continue contributing toward your health insurance premiums.

If you are on paid or unpaid medical leave (for example, because you have experienced prolonged complications from your pregnancy or childbirth), the health insurance law requires your employer to continue its normal contributions toward your health insurance.

27. **If I do not go back to work after taking parental leave, could I be required to pay back any insurance premiums that were paid by my employer during my leave?**

The employer cannot require you to return premium contributions for any portion of your leave that was MMLL leave or for medical reasons, whether for your own personal illness or to care for an ill family member. For portions of your leave that are FMLA leave, your employer is allowed (but not required) to demand return of premium contributions for any period of your leave that was **parental**, if you do not return to work. Since the FMLA does not require this, the issue would be a mandatory subject of bargaining.

28. **What rights do I have if I am pregnant and am exposed at work to a dangerous contagious disease?**

You should discuss your concerns with your Association representatives, who may be able to assist you in approaching your college administrators to work out a solution. It may be that the only practical way for the employer to help you avoid exposure would be to give you a leave of absence while the period of contagion lasts. We believe that the employer
would have an obligation to give you such leave, under the state handicap discrimination law. You should explore with your Association whether your contract permits you to use your accumulated paid sick leave in order to remain on the payroll during such leave.

29. Will my job be kept open for me while I’m on MMLL or FMLA leave?

When you return from FMLA and/or MMLL leave, your employer must restore you to your previous position or a position that is equivalent in benefits, pay, seniority, and other terms and conditions of employment. An employer may follow “established practices” and collective bargaining agreements in determining what is an “equivalent” position. It cannot impose requirements that effectively preclude your return to work.

30. What effect will parental leave have on my seniority?

Your seniority cannot be broken during a period of lawfully required leave. This means that, if you have seven years of seniority at the time you begin your leave, you will return to work with a minimum of seven years of seniority when you return. Neither the FMLA nor the MMLL entitle you to accrue additional seniority during your leave. That is, if you take a one-year parental leave, the law does not require your employer to give you seniority credit for that year. However, your contract may allow such accrual, especially for those portions of your leave that are taken with pay.

31. Can I be laid off or dismissed during my FMLA, MMLL, or other contractual parental leave?

The leave laws are designed to place you in the same position that you would have been in had you not taken the leave. You cannot be laid off or dismissed because you took your lawfully entitled leave.

However, if your employer can prove that you would have been laid off or dismissed even if you had not taken leave, you can be laid off or dismissed during your leave. You retain the same bumping, transfer and recall rights that you would have had if you had not taken leave.

32. If I am laid off while on parental leave, may I collect unemployment compensation?

Yes, provided you meet the general requirements for unemployment compensation. Among those requirements are that you are able and available for work and that you have been unsuccessfully sought work.
33. **Will my leave count as “creditable service” for retirement?**

No. Under the retirement statute you will not receive service credit for any month in which you are on an unpaid leave of absence for any reason. If you normally work a 10-month academic year, you will lose 1/10 of a year of creditable service for each month during some portion of which you are on an unpaid leave.

However, your membership in the State Retirement System will not be affected by your authorized leave of absence. You will retain the service credit or other rights that you have earned at the time you begin your leave.

34. **Can I be fired for having or contemplating an abortion?**

No. Firing or otherwise discriminating against an employee for having or contemplating an abortion is prohibited under the PDA.

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*Please note: The information in this document is intended to provide general guidance based on current law. The principles discussed herein do not necessarily apply to all specific fact situations. Changes in the law after the date this information was published may affect its accuracy. If questions or situations arise pertaining to the subject matter of this document, please contact your local Association president or MTA consultant.*

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