



EMPLOYEE GUIDE TO TAKING LEAVE AND RETURNING TO WORK

Moms with newborn babies need time to recover from pregnancy and to care for their newborns. This time helps their bodies to recover from childbirth and helps them to bond with the infant and establish a milk supply so they can breastfeed. This informational packet will help guide you through the process of planning for parental leave and returning to work as well as give you the resources you need to continue providing breastmilk to your child.

This information packet for employees contains:

- Resources for learning about leave benefits
- Information on policies related to breastfeeding
- Communication tools
- Tools for before leave and returning to work
 - Schedule
 - Checklist

Planning to take leave

The amount of leave you can take from work depends on a combination of federal and state laws, your employer's policies, and your financial ability to take unpaid leave. Moms traditionally use a combination of paid leave options (accrued sick and vacation time) and unpaid options (Family Medical Leave time and flex options).

Texas currently has no state law regarding parental leave, but the federal Family Medical Leave Act provides up to 12 weeks of job protection for covered employees, without compensation. One of the first things you may want to do when you learn you are going to have a baby is to find out your employer's policies with regard to parental leave. Some employers have policies that give paid parental leave, even though it is not required by law.

What is FMLA?

FMLA is the Family and Medical Leave Act. The FMLA entitles eligible employees to take up to 12 workweeks of unpaid leave in a 12-month period for specified family and medical reasons, including for the birth and care of a newborn child. The employer must maintain employee health benefits, if provided, during the period of leave and must restore the employee to her original job or equivalent upon return from the period of leave.

Am I covered under FMLA?

FMLA applies to many, but not all employers. If an employee works for an employer covered under FMLA, the employee must meet specific criteria related to length of employment, hours worked, and the number of staff in the employee's geographic area to be eligible for leave entitlements under FMLA.

Specific information about coverage and eligibility is available from the U.S. Department of Labor's Fact Sheet #28: The Family and Medical Leave Act of 1993: <http://www.dol.gov/whd/regs/compliance/whdfs28.htm>.

How do I use FMLA?

The following information is excerpted directly from the U.S. Department of Labor's fact sheet #28, referenced above. The information is current as of March 16, 2012. For the most up-to-date information, review the link above.

"Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable—generally, either the same or next business day.

"Employees must provide sufficient information for an employer reasonably to determine whether the FMLA may apply to the leave request.

"Under some circumstances, employees may take FMLA leave intermittently—taking leave in separate blocks of time for a single qualifying reason—or on a reduced leave schedule—reducing the employee's usual weekly or daily work schedule, but that is subject to the employer's approval.

"Under certain conditions, employees or employers may choose to "substitute" (run concurrently) accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

"Spouses employed by the same employer are limited in the amount of family leave they may take for the birth and care of a newborn child...to a combined total of 12 workweeks...Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement."

What is Short-Term Disability?

Short-term disability is a benefit, usually provided through private health insurance, that may pay a portion of the employee's salary for a limited amount of leave time from work for illness, injury, or childbirth. Employees with an employer-provided benefit package may already be covered or may need to ask whether that option is available through their benefit plan. Details about length and amount of salary covered vary by insurance carrier, so it may be helpful



to contact your employee benefits coordinator to learn more about what coverage may be available to you.

May I use sick or vacation time?

Many women use accrued leave time as a means to insure that at least some of their leave is paid time off. Check with your supervisor or human resources contact to see whether you can creatively use your existing sick and vacation time. Be sure to ask whether you need to submit any additional paperwork.

Transitioning back to work

Returning to work isn't easy, but it helps to be prepared and have a plan.

When should I go back to work?

This will depend on your leave options and flexibility options of your employer. Take as much time as you can afford. This time with your new baby will help your body to heal from childbirth, allow you to bond with your baby and adjust to the rhythms and responsibilities of parenthood, and help you get breastfeeding off to the best possible start.

Can I work part time when I go back?

Some employers allow an employee to return to the same or a similar job on a part-time basis. Some employers also will allow job-sharing, when two part-time employees share a full-time position.

If these options are not available, or you cannot afford to work part time, consider the possibility of a gradual return to work. If you are using FMLA leave, reduced schedules may be permitted with approval of your employer. If you want this option, consider talking with your employer before you go on leave.

Some mothers use this gradual return-to-work option to work shorter days and/or fewer days per week than their usual schedule, gradually increasing the length and/or number of days worked per week. Even though this option may reduce the overall time that you are able to be on full leave, this option can be very helpful in easing the transition back to work. This allows the mother to learn about what new challenges she will face with balancing work and the demands of parenthood, including breastfeeding. Because she is working a reduced workweek, there are breaks from work to regroup and plan how to address any challenges she's facing—all while holding and breastfeeding her baby!

If you don't use a gradual return to work, it is helpful to start back to work in the middle of your workweek. Having a short first week will help you and your baby adjust.

What other types of flexible scheduling exist?

A compressed workweek means that an employee works extra hours four days a week and has the fifth day off, or reduced hours. For a breastfeeding mother, this might allow her to spend time nursing her baby mid-week, which will help to rebuild her milk supply.

May I work from home?

Telecommuting, also known as teleworking, is an option for many settings. If you think this would work well for you, talk to your supervisor.

How can I request a flexible work schedule?

In most situations you will need to make a formal request for either gradual return to work, compressed workweek, telecommuting, or other flexible break schedule. You can use the templates in this guide to make a formal request, or ask your employer about the preferred procedure.

Breastfeeding at work

Once you have decided to continue providing breastmilk to your child, you will need to plan how to make it happen. For most mothers, breastfeeding only before and after work is not sufficient to maintain their milk supply. In order to produce enough milk to continue to fully breastfeed your baby, you will need to either breastfeed or express your milk (usually with a breast pump) each time your baby needs to eat.

What state and federal policies address breastfeeding?

Federal law provides requirements for employers of breastfeeding mothers returning to work.

Fair Labor Standards Act (FLSA)

The Patient Protection and Affordable Care Act amended Section 7 (pertaining to overtime) of the FLSA to require employers to provide reasonable break time for non-exempt employees to express breastmilk for up to one year after the child's birth. The law does not specify how often or for how long the breaks should be, only that they must be provided each time such employee has the need to express the milk.

Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breastmilk.

Equal Employment Opportunity guidelines for workers with caregiving responsibilities

The Equal Employment Opportunity Commission has established enforcement guidance on unlawful disparate treatment of workers with caregiving responsibilities at:

<http://www.eeoc.gov/policy/docs/caregiving.html>.



Texas Health and Safety Code 165, Breastfeeding

Texas law does not provide additional protections for mothers returning to work but recognizes that breastfeeding a baby is an important and basic act of nurture that must be encouraged. The legislature has recognized this by creating a “Mother-Friendly” designation for businesses that develop a policy supporting the practice of worksite breastfeeding that addresses work schedule flexibility, provision of accessible, private locations, access to a clean, safe water source, and access to hygienic storage.

This law also states that a mother is entitled to breastfeed her baby in any location in which she is authorized to be.

How to communicate with your supervisor

When you decide to continue providing breastmilk to your baby after returning to work, you will need to communicate your needs to your employer. Attached to this packet are several letter templates that you can use to communicate with your employer.

What do I say?

Consider providing written documentation that you are planning to express breastmilk during the workday when you return to work. You might mention why you have decided to do this and ask for your employer’s support.

What do I ask for?

Provide your employer with specific information about your needs. If you do not have a private office that you want to use, consider asking your employer to identify a space for you to express milk. You may also ask that the space be close to a clean water source and a clean, climate-controlled option for storing your milk. The other key thing to mention is what type of break schedule you will need. Remind your employer that you will try to stick to a schedule, but ask that it be flexible—especially in the early weeks back at work.

How do I negotiate?

There is no single way for employers to provide reasonable milk expression arrangements. It is important that you feel comfortable asking for what you need. Ideally, a good faith interactive process can occur in which you are able to contribute your opinion and also listen openly to your employer’s ideas. When you make a suggestion, try saying, “I consider this proposal the beginning of a conversation and welcome your input.”

How do I get more information about FLSA or FMLA?

The Wage and Hour Division of the U.S. Department of Labor has an information and helpline to address your questions for federal wage and hour laws, including the Fair Labor Standards

Act as well as the Family and Medical Leave Act. For additional information, visit the Wage and Hour Division website at: <http://www.wagehour.dol.gov> or call 1-866-4-USWAGE (1-866-487-9243).

Checklist for taking leave and returning to work:

- Decide how much leave you can take.
 - Does FMLA apply to you?
 - What is your employer's policy related to parental leave?
 - Do you have short-term disability benefits?
 - Do you need to request vacation time?
- File applications/requests for leave.
- Decide when you will return to work and investigate options for flexibility.
 - What policies exist about returning to work?
 - Can you return part time?
 - Will you work a compressed week?
- Investigate and decide on child-care options.
 - Will a family member care for the child? If so, can he or she bring the baby to you during the day to breastfeed?
 - Is there onsite child care?
 - Is there a child-care facility nearby?
- Inform your employer of your decision to breastfeed and ask for support.
 - Will you need coverage for your job roles during your milk-expression breaks?
 - Include a tentative break schedule.
- Do you need to formally request a flexible break schedule?
 - Will your breaks be paid or unpaid?
- Ask what accommodations are available for breastfeeding moms.
 - Is a pump available?
 - If so, what brand? What type of kit do you need in order to use it?
 - Is there a procedure to request use?



- Is there a designated lactation space?
 - If not, how do you request space be made available?
- Are there any classes available through your employer, related to either breastfeeding or parenting?
 - Do you need to register?
- Is there a lactation consultant service provided by your employer or through your health plan?

Sample Letter A

Date

Organization Name

Organization Address

Dear Supervisor Name:

First, I want to thank you for your support during my number of years with Organization Name. As you know, I take great pride in my performance and quality of work for Organization Name. Based on advice from my doctor and other health professionals, I have made the decision to provide breastmilk to my baby. Just as I want to continue to give my best to the company, I also want to give the best I can to my baby. Breastfeeding is the optimal way to promote health for mothers and babies, and the benefits are well documented by the Surgeon General and the American Academy of Pediatrics. I am seeking your support in my efforts as a new mother returning to work.

Your support is not only key to my success as a breastfeeding mother, but studies have shown that employers who support breastfeeding gain important benefits for themselves, including:

- Improved staff morale
- Increased productivity
- Reduced staff turnover
- Decreased insurance claims
- Reduced absenteeism due to a sick child

Effective March 23, 2010, Section 7 of the Fair Labor Standards Act was amended to include the “Reasonable Break Time For Nursing Mothers” provision. This provision, which applies to non-exempt employees, requires that employers **provide reasonable, unpaid break time and a private place, other than a bathroom, for an employee to express breastmilk for her nursing child for one year after the child’s birth.**

In order to continue breastfeeding, I need:

- Adequate time to pump: For example, two 20- to 30-minute breaks each day as well as a regular lunch break.
- A clean, private location to pump or express breastmilk. (Please note that restroom facilities are not considered to be a clean place for preparation of a baby’s food and are not in



compliance with the “reasonable break time for nursing mothers” provision of the U.S. Fair Labor Standards Act).

- Support of my decision to breastfeed my child and to address my physical needs related to breastfeeding.

To ensure my job responsibilities will be managed during the few periods I will be away from my workstation during the day, I am making the following proposal for work coverage during those periods.

Work Needing Coverage

The following projects or job duties will need to be covered during the periods I am away from my workstation to pump/breastfeed my baby:

- Project or duty 1
- Project or duty 2
- Project or duty 3 or more

For planning purposes, a sample of my tentative work schedule is attached, and though I will try to adhere to it, your flexibility is greatly appreciated.

You may want to recommend a specific coworker (or two) with the skills and experience to take over your projects. Or, inquire about whether the company might hire a temporary employee whom you could train well ahead of your due date.

If you would like more information on supporting breastfeeding in the workplace, please visit the Texas Department of State Health Services Texas Mother-Friendly Worksite program website at: www.TexasMotherFriendly.org. This site offers detailed information on the benefits of breastfeeding and how to establish a breastfeeding-friendly workplace.

I consider this proposal the beginning of a conversation and welcome your input. I appreciate the efforts that you are making to support me, my family, and especially my newborn child, Child’s First Name.

Sincerely,

Your Name

Your Title

Sample Letter B

Date

Organization Name

Organization Address

Dear Supervisor Name:

First, I want to thank you for your support during my number of years with Organization Name. As you know, I take great pride in my performance and quality of work for Organization Name. Based on advice from my doctor and other health professionals, I have made the decision to provide breastmilk to my baby. Just as I want to continue to give my best to the company, I also want to give the best I can to my baby. Breastfeeding is the best way to promote health for mothers and babies, and the benefits are well documented by the Surgeon General and the American Academy of Pediatrics. I am seeking your support in my efforts as a new mother returning to work.

Your support is not only key to my success as a breastfeeding mother, but studies have shown that employers who support breastfeeding gain important benefits for themselves, including:

- Improved staff morale
- Increased productivity
- Reduced staff turnover
- Decreased insurance claims
- Reduced absenteeism due to a sick child

In order to continue breastfeeding, I need:

- Adequate time to pump: For example, two 20- to 30-minute breaks each day as well as a regular lunch break.
- A clean, private location to pump or express breastmilk. (Please note that restroom facilities are not considered to be a clean place for preparation of a baby's food and are not in compliance with the "reasonable break time for nursing mothers" provision of the U.S. Fair Labor Standards Act).
- Support of my decision to breastfeed my child and to address my physical needs related to breastfeeding.



For planning purposes, a sample of my tentative workday schedule is attached, and though I will try to adhere to it, your flexibility is greatly appreciated. If you would like more information on supporting breastfeeding in the workplace, please visit the Texas Department of State Health Services Texas Mother-Friendly Worksite program website at: www.TexasMotherFriendly.org. This site offers detailed information on the benefits of breastfeeding and how to establish a breastfeeding-friendly workplace.

I appreciate the efforts that you are making to support me, my family, and especially my newborn child, Child's First Name.

Sincerely,

Your Name

Your Title

Sample Break Schedule

Time	Activity
8:00 to 10:00 AM	At workstation/able to attend meetings
10:00 to 10:20 AM	Lactation break
10:20 AM to 12:10 PM	At workstation/able to attend meetings
12:10 to 1:00 PM	Lunch, lactation break
1:00 to 3:30 PM	At workstation/able to attend meetings
3:30 to 3:50 PM	Lactation break
3:50 to 5:00 PM	At workstation/able to attend meetings