



Question #1

We have an employee who will be returning from non-FMLA maternity leave. I have two questions regarding breast feeding breaks:

1. How much time should be allotted, in terms of frequency and length of time, to accommodate the employee to breast feed?
2. Would a doctor's note be required for breast feeding breaks?

Answer

Below is the email communication that was sent by one of our HR Professionals to address the above question:

This email is in response to your email and confirms our conversation today where we discussed an employer's obligation to provide a nursing mother with a "lactation break" (break time where a nursing mother can, in a private location, express breast milk) As we discussed, the Federal Fair Labor Standards Act (FLSA) requires employers provide break time as frequently as needed by the nursing mother for this purpose.

We recommend that you engage in the interactive process with the employee to understand the employee's needs and try to determine what accommodations would be best for her. Please remember that, under the circumstances, individual employees' needs for this type of break will vary not only from employee to employee, but also over time. The employee should just be asked to let her immediate supervisor know of her day to day needs so there is an open line of communication and appropriate accommodations are made.

With respect to your second question, as we discussed, no, an employee is not required to provide a doctor's note in order to obtain lactation breaks.

If you have any further questions or concerns, please feel free to contact me directly.

Question #2

My employee has been out of work since February 9, 2017. Yesterday, she brought me a doctor's note stating that she will need to be off work for another 4 weeks at least, which will be around May 10, 2017 at the earliest. At this point we need someone to do her job. This employee is not eligible for FMLA, what are our options?

Answer

Below is the email communication that was sent by one of our HR Professionals to address the above question:

This email is in response to your email and confirms our conversation today where we discussed an employer's obligations when a non-FMLA eligible employee needs extended time off work for medical purposes.

Based on the information you provided, it appears the employee may have protection under the Americans with Disabilities Act (ADA) and your related state disability statute.

The Americans with Disabilities Act (ADA) covers employers with 15 or more employees, including state and local governments, employment agencies and labor organizations. Under the ADA, employers are prohibited from discriminating against a qualified individual with a disability in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such impairment.

Under the ADA and your state's disability law, employers have a duty to provide a "reasonable accommodation" to an employee with a physical or mental disability in order to enable the employee to perform the essential functions of his/her position.

A reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. In some cases, like here, a leave of absence is an appropriate reasonable accommodation for an employee with a disability.

Under the circumstances, especially since you have already been providing the employee with a leave of absence as an accommodation for her disability, you will be required to continue to provide the leave through the date indicated by her doctor. At that time, if the employee has not returned (or is unable to return to work), you will need

to engage in the interactive process with the employee to determine what accommodations she will need. If the requested accommodation is an extension of leave, please contact me to discuss the steps moving forward.

In the interim (i.e. while the employee remains on leave), you are able to assign this employee's duties to other members of your staff or hire a temporary employee to perform these duties. However, when the employee is released to return to work, you will be required to reinstate this employee to the exact same terms and conditions of employment she had prior to her leave of absence in order to avoid any retaliation (or discrimination) claim upon the employee's return to work. This includes, but is not limited to returning the employee to the same position, pay, shift, hours, benefits, etc.

If you have any further questions or concerns, please feel free to contact me directly.