

HR QUESTION ? of the month



Does surrogacy affect FMLA and short-term disability?

Question: We have an employee inquiring about her rights under FMLA and Short-Term Disability if she becomes a surrogate mother. This would be a voluntary election. The employee has worked over 1250 hours and been with the company over a year. Would surrogacy be treated as any other disability/pregnancy as defined by FMLA and short-term disability?

Response: An employee who is eligible to take leave under the federal Family and Medical Leave Act (FMLA) is entitled to take up to 12 weeks of leave if he or she needs it for one of the specified family or medical reasons in the Act. We are not aware of any exception from FMLA for surrogate mothers. In other words, whether the employee is pregnant with her own biological child or is pregnant as a surrogate, the same protections would apply. Thus, if the subject employee otherwise meets the eligibility criteria, then she is entitled to take up to 12 weeks of FMLA leave for her own serious health condition (which could be related to the pregnancy), prenatal care, and/or for the birth of the baby.

With regard to short-term disability benefits, this would be governed by the terms and conditions of your policy (which we cannot review within the format of our service). We recommend that you review your policy and consult directly with the carrier to determine whether a surrogate pregnancy would be a qualifying condition for benefits under the policy.

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