

State Department of Education Guidance:

Paid Maternity Reimbursement under 70 O.S. § 6-104.8 and its Application

In addressing many outstanding questions surrounding the newly passed S.B. 1121, it is helpful to place the law into its proper context. Most of the uncertainty and policy decisions will remain under local district control. For example, decisions on what constitutes a week, or whether an employee has met the 1,250 work-hours requirement are policies committed to the local district. This guidance is intended to address what SDE views as eligible employees and reimbursable expenses under the new law.

Functionally, the law does not establish a direct financial relationship or obligation between the State Board of Education (SBE), or even the State Department of Education (SDE), and a particular employee. Instead, the law mandates certain employers provide paid maternity leave to qualifying employees. This result is accomplished by shifting the additional financial burdens of doing so from the employer to direct legislative appropriations administered by SDE. As such, maternity leave is not an “employee benefit” in the traditional sense of the word. Instead, it is a State-provided employer benefit to be passed on to the employee.

Interpretive guidance from the Family and Medical Leave Act (FMLA) will prove useful to employers. Specially, the U.S. Department of Labor has provided years of guidance documents and administrative opinions that, even though non-binding on state law, can provide a valuable framework for the new law’s application. Insofar as FMLA guidance is harmonious with Oklahoma law, it will be followed by SDE.

1. For what purposes does maternity leave apply?

It is for recovering from the physical demands of pregnancy and childbirth. There are no medical verification requirements in the law. The burden of proving an employee was not entitled to the full six (6) weeks of leave would fall to the local district.

2. What are the eligibility criteria?

There are three, independent criteria—regardless of the employer—required to qualify for paid maternity leave.

One, the employee must be employed in a full-time capacity.

Two, the employee must have been employed “for at least one year.”

Three, the employee must have worked “at least one thousand two hundred fifty (1,250) hours during the preceding twelve-month period.”

3. What constitutes full-time employment?

This is largely a matter of local control. Except in unusual circumstances, exempt employees working pursuant to a collective bargaining contract (e.g., full-time classroom teachers) would qualify as full-time employees. Employees eligible to participate in the State Employees Flexible Benefits Act are presumed eligible full-time employees; however, all personnel must still meet the requisite 1,250 hours-worked requirement under the new law.

4. How does the 1,250 hours-worked requirement interact with teacher contract days and FMLA guidance?

The U.S. Department of Labor has settled the question of which hours are counted toward the hours-worked requirement for FMLA, and its approach should be followed under S.B. 1121 unless State law dictates otherwise or there is a compelling reason to count the hours differently.

For example, annual or sick leave, paid or unpaid holidays, or FMLA leave are not counted as hours worked. Summer *vacation* (whether paid or not) does not apply to the 1,250 hours-worked requirement. This does not mean that summer school instruction or facility maintenance is excluded. Any hours *actually* worked contribute to the 1,250 hours-worked requirement. This includes part-time work; however, part-time work does not contribute to the one-year employment requirement.

5. Does the law provide maternity leave for male employees meeting the work eligibility requirements?

No. Notwithstanding the gender-neutral terms “employees” and “persons,” the law is unambiguous in its use of the phrase “maternity leave,” which is commonly understood to apply to biological women.

6. Does the law provide maternity leave to care for an adopted newborn?

No. At this time, paid maternity leave does not cover time off work to care for an adopted newborn.

7. When does maternity leave begin and how is it calculated?

Immediately and continuously.

The law does not provide employees with the option to delay or utilize maternity leave intermittently. This calculation deviates from FMLA guidance. “The six (6) weeks of paid maternity leave shall be used immediately following the birth of the school district employee’s child.” 70 O.S. § 6-104.8(A).

8. How is maternity leave affected by births occurring outside of normal work hours during the workweek, or during the weekend?

Local districts should develop policies regarding the treatment of partial workdays, weekends, partial workweeks, and maternity leave calculations. These policies may not permit intermittent leave prohibited by statute.

9. How is maternity leave affected by births occurring and leave time taken during vacation periods or holidays?

To address the general concerns surrounding summer vacation, holidays, and school breaks, the new law only provides that employees “shall not be deprived of any compensation or other benefits to which the employee is otherwise entitled.” This refers to providing a financial shelter from the consequences of taking maternity leave, not additional leave compensation.

By way of example, during the summer months, many employees are not required to report to work yet continue to receive regular pay and benefits, such as healthcare, and retirement. A

common feature of an employee's schedule is being exempt from work-related duties during the summer months. This is true regardless of maternity leave status, which also serves as being excused from work-related responsibilities during the academic year.

If a qualifying employee were to take maternity leave during the school year, prior to this law's passage, then the days of leave would either be compensated by paid leave or uncompensated, yet protected, by FMLA. Now, the employee gains access to compensation without reducing other forms of paid leave. The hybrid scenario where maternity leave spans both non-work and work periods does not alter the six (6) week timeframe because intermittent leave is not permitted. "[P]aid maternity leave shall be used immediately following the birth of the school district employee's child."

10. What reimbursements are districts eligible to receive?

The general guiding principle is that districts will not be reimbursed for expenses it would otherwise be required to provide under FMLA. This is largely a matter of local control as determined by current FMLA policies.

For example, normally a district is not required to pay an employee's salary while on FMLA during the school year; however, teaching faculty receive salary during the summer months regardless of FMLA status. Therefore, salary expenses during the summer months (or holidays) are not reimbursable and salary expenses occurring during the school year are reimbursable. Likewise, absent a collective bargaining agreement to the contrary, districts are required to provide substitute teachers, so that expense is not reimbursable.

Similarly, regardless of FMLA status, districts are responsible for healthcare contributions and the district must maintain those contributions as is if the employee was reporting for work.

11. What is the process and how are districts being reimbursed for maternity leave?

Districts will be required to provide eligible staff six (6) weeks of maternity and then seek reimbursement from SDE. To accomplish this, the district will complete a **Reimbursement Application for Maternity Leave** and submit the same to the Office of State Aid.

The application must be received no later than the last workday of the month following the month that concludes the employee's maternity leave. This provides an application window roughly ranging from 30 to 60 days. If verified and approved, the reimbursement will be paid during the next scheduled monthly payment for which funds are available. Once processed through the State Aid Management System (SAMS), the district will:

- Receive a Notice of Approval emailed to the district superintendent and secondary email provided on the application.
- Locate in SAMS' District View – Code 08 – Public School Paid Maternity Leave Allocation and Payment Notices posted to Single Sign On application.
 - Source of Revenue Code – 3437
 - Project Reporting Code – 377

12. What are the reimbursement application requirements?

The single page **Reimbursement Application for Maternity Leave** mainly consists of district information, leave dates, eligibility verification attestation, and claimed expenses broken down by categories. The District Superintendent will be required to sign and certify the application. School districts are expected to maintain copies of all applications submitted.