

Is Time to Transition from Breast-Feeding to Bottle-Feeding Legally Protected?

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In a recent [blog post](#), an attorney who represents employers declares that time spent “transitioning a child from breast-feeding to bottle-feeding is not legally protected.”

Is that so? What about Family and Medical Leave Act birth and bonding provisions? Under the Family and Medical Leave Act (FMLA), eligible employees are entitled to up to 12 work-weeks of leave “because of the birth of a son or daughter ... and in order to care for such son or daughter” during “a 12-month period beginning on the date of ... birth.” 29 U.S.C. § 2612 (a)(1)(A) and (a)(2).

According to Department of Labor regulations, both mothers and fathers are entitled to FMLA leave for the “birth of their child” and “to be with the healthy newborn child (*i.e.* bonding time) during [those 12-months].” 29 C.F.R. § 825.120 (a)(1) and (a)(2). If both parents work for the same employer, they are entitled to a combined total of 12 weeks of leave for that purpose. 29 U.S.C. § 2612(f)(1); 29 C.F.R. § 825.120(3).

So, is time off to transition a healthy infant from breast-feeding to bottle-feeding always FMLA protected leave? No, not always; such leave is protected only if an employee is FMLA-eligible, has not yet taken off 12 weeks of FMLA leave that year, and if baby is less than a year old. 29 U.S.C. § 2611(2), § 2612(1)(A) and (2).

Let’s say this is the usual situation where mom is out for 6 weeks after baby’s birth. Can she work half-time for the following 3 weeks, *i.e.* use FMLA reduced-hour-leave to work part-time for the next 3 weeks, to transition baby to a bottle? That depends on whether mom’s employer will allow it. Using intermittent or reduced hour leave to take care of a healthy infant is not permitted unless the employee and the employer agree otherwise. See 29 U.S.C. § 2612(b)(1).

So let’s say unsympathetic employer says no- we will not consent to you working part-time to transition your baby to bottle-feeding. Does mom have any other options? Well, she could quit her job. Or, if she has enough remaining FMLA leave time, she could choose not to work at all for the following 3 (or 6) weeks to transition to bottles.

Instead of granting an FMLA-eligible mom any birth and baby bonding leave, can mom’s employer instead require her to continue to work full-time flexible hours from home? Yes, but only if mom agrees. While mom has the right to 12 weeks of FMLA leave for bonding after birth, she can agree not to take it.

Allowing flexible telework may sometimes be best for mom, baby and boss. Mom and baby bond without any loss in pay and boss retains a full-time experienced employee without any loss in coverage. Should we applaud the boss for being flexible? Sure—but let’s give mom a little credit too.