

■ **One of our employees is on maternity leave and just advised us that she will definitely not be returning to work at the conclusion of her FMLA leave. Can we accept her resignation immediately and cease holding her job open?**

Yes. The FMLA, in part, provides eligible employees with a maximum of 12 weeks of leave. Employees generally are entitled to be restored to the same or equivalent position upon return from FMLA leave. However, in this fact scenario, one important exception applies. Under the FMLA regulations, if an employee provides the employer with unequivocal notice of her intent not to return to work, the employer's obligations under the FMLA to maintain her job and to restore the employee cease. Be careful, however, because these obligations would continue if the employee indicates he or she may be unable to return to work but expresses a continuing desire to do so. Therefore, the employer, should obtain, in writing, the employee's decision not to return to work to avoid uncertainty and to document the file. Employers are encouraged to consult with legal counsel when confronted with an FMLA leave request. Connell Foley LLP would welcome the opportunity to be of assistance to your organization. Our focus is to assist employers in making employment-related decisions to avoid or reduce the risks of litigation, while maintaining a productive and well-managed work force. We accomplish this by providing employers with proactive and preventative counseling and training on every facet of the employment relationship.

This is not intended to be legal advice, which can only be given after an understanding of the facts of a particular matter. Additionally, employers should consult the law in the state(s) which they operate to determine if any state law addresses the above issue, and whether any such law provides greater rights, responsibilities and/or protection to the employer and employee.

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