



Gallagher

# Compliance Checklist: New Dependents



This checklist helps employers understand their obligations and opportunities when an employee notifies them of a new dependent in their family. Questions often arise regarding possible election changes, beneficiary rights and organizational policies. This checklist captures common compliance issues and offers helpful suggestions to avoid complications down the road.

## FMLA rights

The federal Family and Medical Leave Act (FMLA) gives eligible employees up to 12 weeks of leave for various reasons related to acquiring a new dependent. A pregnant employee may take time related to an incapacity due to pregnancy or prenatal medical care. After birth, the employee may take time to bond with the child within one year of birth, and for adoptions or foster care, the employee may take time to bond with the new child within one year of the child's placement.

## FMLA and employee-spouses

When two spouses work for the same employer, it impacts their individual FMLA rights. Specifically, the spouses are limited to a combined total of 12 weeks in a 12-month period for bonding with a newborn or newly adopted or placed foster child. The entitlement to leave is also split when used to care for a parent or child with a serious health condition. Additionally, spouses working for the same employer have to share a combined total of 26 weeks if each spouse is a parent, spouse, son or daughter, or next of kin of a service member.

## State leave rights

States often require employers to offer protected leave to employees upon the acquisition of a new dependent through birth or adoption. If the reasons for the leave are the same, the state and federal FMLA leave can typically run concurrently. However, states often permit leave for more reasons than available under FMLA, and in those cases, the state law provides benefits in addition to FMLA.

## Newborn and Mothers' Health Protection Act

An employer's group health plan may not restrict benefits for a hospital stay in connection with childbirth to less than 48 hours following vaginal delivery or 96 hours following a delivery by C-section. For the newborn to be covered under NMHPA, the employee must enroll the child within the timeframe specified by the plan (generally, within 30 or 31 days after birth).

### **Pregnancy Discrimination Act**

The Pregnancy Discrimination Act, which amended Title VII, prohibits discrimination against women on the basis of pregnancy, childbirth or other related medical conditions. Employers with group health plans must cover pregnancy on an equal basis with other medical conditions. Employers also cannot differentiate in fringe benefits based on pregnancy or related conditions. Employers with short-term disability policies cannot exempt pregnancy and pregnancy-related conditions from coverage. Employers that allow temporarily disabled employees to assume light-duty positions also must afford the same opportunity to pregnant employees.

### **Automatic newborn medical coverage**

Some states require fully insured plans to provide coverage automatically for the first month of a child's life after birth. In such states, the coverage will typically terminate at the end of the child's first month of life. For coverage to continue after the first 30 days, the employee must notify the plan of an election to add the child to the plan.

### **Electing medical coverage for the child**

HIPAA requires group health plans to provide special enrollment rights to any newly eligible child as a result of birth, adoption or placement for adoption. The employee generally has up to 30 or 31 days to notify the plan of the new child in order to have the right to enroll. If the employer's cafeteria plan permits the midyear election, the election can be made on a pretax basis. If the election is made timely, the coverage should be made retroactive to the date of birth. The employee's pre-existing children may also be added if the cafeteria plan permits pre-existing children to tag-along with the newly gained dependents.

### **Plan coverage in dental, vision, etc.**

Most fully insured dental, vision and other welfare benefits include an election to permit the employee to add a new child to the plan. The benefits for which the employee pays a pretax salary contribution must follow cafeteria plan procedures, such as making the election to add the new dependent prospective after the election request.

### **Dependent life insurance elections**

An employee with a new dependent may also want to purchase dependent life insurance or increase the amount of life insurance on their own life. Life insurance policies typically permit midyear increases, although an increase may require evidence of insurability standards to be met. Employers sponsoring a dependent life benefit should communicate any enrollment opportunities into those plans as well.

### **Dependent Care Assistance Plans**

A Dependent Care Assistance Plan (DCAP) is a flexible spending account that allows employees to obtain reimbursement for eligible dependent day care expenses, such as childcare services that enable the employee (or the employee and their spouse) to work or look for work, by using funds set aside on a pre-tax basis. Although not required, the vast majority of DCAPs are funded solely by employee salary reductions. While historically Section 129 allowed employees to exclude up to \$5,000 per calendar year from gross income for dependent day care expenses, that amount increased to \$7,500 beginning in 2026.

### Domestic partner children

When a child is born to an employee's domestic partner, the child's relationship to the employee depends on the state's treatment of the relationship. If the employee resides in a state that treats the domestic partner's child as the stepchild of the employee, the child may be added to the plan as a child of the employee for tax purposes. If the employee resides in a state that does not treat the child as the employee's stepchild, the employee must legally adopt the child for the child to be treated as the employee's child for tax purposes.

### Breastfeeding employees

The Fair Labor Standards Act (FLSA) requires employers to provide reasonable break time(s) for nursing employees to express milk for her child for one year after the birth. Teleworking employees must also be given break times. Employers must also provide a space that may be used for pumping that is shielded from view and free from intrusion. It must be available as needed, and a bathroom cannot serve as the space. Employers with fewer than 50 employees are not subject to these requirements if it imposes an undue hardship.

### Pregnant Workers Fairness Act

The PWFA, which applies to employers with 15 or more employees, prohibits employers from failing to make a reasonable accommodation for known limitations of an employee or applicant, require an employee to accept an accommodation other than one arrived through an interactive process, deny a job or employment opportunity based on the need for accommodation, require an employee to take leave if another accommodation can be provided that would allow the employee to continue working, punish or retaliate against an employee or applicant requesting or using an accommodation, or coercing individuals from exercising or helping others assert their rights.

### Section 530A accounts

Section 530A accounts, also known as Trump Accounts, are a new tax-advantaged account for children under 18 years of age. While contributions cannot be made before July 4, 2026, the One Big Beautiful Bill Act (OBBBA) provides for establishing a Trump Account with a one-time \$1,000 contribution from the federal government for every US citizen child born on or after January 1, 2025, through December 31, 2028. A private benefactor (the Dell family) has funded their own pilot program of \$1,000 for children born before the federal government's timeframe. Employers can make contributions (up to \$2,500 annually per employee, not per child) to an account for their eligible employees or their employees' eligible dependent children. While additional guidance is expected, Notice 2025-68 clarifies that employer contributions may be offered through an employer's cafeteria plan as a salary reduction for the employee's eligible dependents under Section 128.