

APPIC GUIDANCE FOR PREGNANCY AND FAMILY CARE ISSUES DURING INTERNSHIP AND POSTDOCTORAL RESIDENCY TRAINING

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This document does not constitute APPIC policy but, rather, is guidance. We provide this document as a service to our members, subscribers, applicants, and trainees. It is intended only to be for informational purposes and to provide general suggestions and guidance in response to frequently-asked questions from students, staff/faculty, and institutions. This document does not offer an exhaustive discussion of all situations that may arise during the course of the internship or postdoctoral training experience. Therefore, each program and trainee may want to consult their own legal counsel for guidance on specific questions or situations.

If you have questions regarding any of these matters, please contact the person responsible for APPIC's informal problem resolution process. The name of this individual can be found on the APPIC website, www.appic.org or by contacting APPIC's Central Office at (202)589-0600.

Pregnancy and family care issues arise frequently during the internship and postdoctoral training years. In this document, we begin by providing some relevant legal principles and guidelines that may impact trainees and programs as they face issues related to pregnancy and family care. We then offer a framework for considering best practices building upon relevant legal requirements; training experiences in multiple settings; and a commitment to balancing legal rights and responsibilities, institutional demands and climate, and the best interests of the family. Our goals are to help trainees balance their work and family responsibilities by taking reasonable unpaid leave for certain family and medical reasons, promote equal training opportunities for women and men, and accommodate the legitimate interests of the sites.

Legal Issues

In the United States, the Family Medical Leave Act (FMLA) is the legislation most relevant to this discussion. However, this statute applies only to employers with more than 50 employees and only after someone is employed for one year. Thus, FMLA technically would only be relevant to individuals completing their postdoctoral fellowship training at the same sites at which they completed their internship training. Another relevant statute is the Pregnancy Discrimination Act, which amends the Civil Rights Act to make discrimination based on pregnancy a form of sex discrimination. Sites do not have to treat pregnant applicants, interns, or post-docs more favorably than non-pregnant employees, but only as well as they treat non-pregnant employees. Many states have similar prohibitions against pregnancy discrimination.

Although some of these pieces of legislation may not technically apply to interns or postdoctoral fellows (e.g., FMLA), they offer useful guiding principles. For example, the FMLA provides that an employee is entitled to a total of 12 weeks unpaid, job-

protected leave during a 12-month period for the birth or adoption of a child or to care for a family member with a serious health condition. If an employer provides paid leave, the trainee may be required to substitute all or part of that leave for the FMLA-authorized leave. FMLA requires that group health benefits be maintained during the leave.

Also in the United States, specific institutional policies for both the training site and the larger institutional entity regarding parental leave and child care also may be relevant. In addition, a number of states have also enacted family and medical leave laws, some of which provide greater amounts of leave and benefits than those provided by FMLA, and/or provide benefits to individuals who are not eligible for FMLA leave. In those situations where a person is covered by both federal and state FMLA laws (e.g., has been employed at the same site for > 1 year and the site has > 50 employees), the person is entitled to the greater benefit or more generous rights provided under the different parts of each law.

In Canada, to qualify for maternal or parental benefits, regular weekly earnings must have been decreased by more than 40% and the person must have accumulated 600 insured hours in the last 52 weeks or since his/her last claim. He/she may receive a maximum of 15 weeks maternity benefits; 35 weeks of parental benefits; and 15 weeks of sickness benefits. In some situations, the person may receive a combination of benefits for a maximum of 50 weeks; and in certain limited situations a combination of benefits for a maximum of 65 weeks.

Guiding Framework

We hope that the framework we provide below will be useful in a variety of situations, including but not limited to: pregnancy and childbirth, including a complicated pregnancy; adoption; and caring for a sick family member. We recommend that decisions be negotiated between the site and the trainee, in consultation with institutional human resource personnel. To the extent possible, we encourage these negotiations to take into consideration the “best interests” of the parents/caregivers, the child, and other relevant family members. What is reasonable and good for the family should be considered seriously.

Similarly, the needs of the site should be considered including, but not limited to, institutional physical and financial resources (e.g., space, equipment, payment and benefits flexibility), supervisory resources, the nature of the training program (e.g., seminar schedule, supervision), and cohort issues. With regard to the trainee, these negotiations should consider training needs and requirements (e.g., the numbers of hours necessary for licensure), feasibility considerations, family demands and resources, and the emotional demands of the situation. In general, it is important to balance the best interests of the family, the institutional context, and the legal rights and responsibilities of all concerned.

A compassionate and creative approach is desirable to create a win-win solution. For example, we encourage programs to work with trainees so that they can take a

reasonable amount of time off to facilitate the attachment process with their newborns and in recognition of the physical demands often associated with having young infants. Sites and trainees are encouraged to work together to develop a flexible plan for leave and return to work. As a rule of thumb, interns and postdoctoral fellows typically are granted up to six weeks of childcare or other family medical leave time, although depending on the work site, they may be able to negotiate up to 12 weeks. For example, some trainees and sites may determine that it would be advantageous for all concerned if the trainee took off four weeks full time and then returned to work half time for the following four weeks. In other situations, having the trainee at home with the child for six weeks full time may be the most appropriate plan. These recommendations are relevant to primary caregivers who may be mothers or fathers, same sex partners, and persons who adopt children (hereafter parents). For secondary caregivers (as defined by the family), the typical guideline is two weeks time off. Once the trainee returns to work, the site and trainee may develop a plan of flexible work hours that allows the trainee to spend key times with her/his child.

A similarly flexible approach should be applied in instances in which there is a family member with a serious health condition. These situations may in fact require greater flexibility than pregnancy and childcare due to their inherent unpredictability.

Sometimes, in either pregnancy or childcare or caring for a family member with a serious health condition, flexibility means arranging for a part-time training experience of longer duration. Depending on the jurisdiction in which the training occurs and the expectations of the site, some individuals choose to work longer hours to assure they have the requisite number of hours for licensure.

In certain situations, to best meet the needs of the trainee and her/his family, deferral of an internship or postdoctoral fellowship may be the best plan. There are strategies that can be used for interns and intern applicants through the APPIC Match process to work with trainees and sites to facilitate the deferral process, without having either the trainee or the site violate APPIC Match Policies. Consultation should be sought from APPIC in these instances. It should be noted that in certain circumstances (e.g., maternity leave), the deferral process in Canada must comply with Canadian law. Since there is no postdoctoral match, the site and the trainee may negotiate an agreement regarding deferment.

If the trainee uses vacation time and/or sick leave time for pregnancy or family care leave, they should not be required to make that time up. However, the trainee and site must ensure that the trainee works for the requisite number of hours to ensure eligibility for licensure and the completion of the minimum number of hours required for satisfactory completion of the training program.

Questions often emerge regarding the compensation of trainees who take time off for the above purposes during their internship or postdoctoral fellowship year. Typically, it is most reasonable for sites, given budget cycles, to pay the trainee for the year she/he was contracted to work, with a written agreement between the site and the trainee about

the additional time the trainee will work after the compensation ends. In the case of sites in which it is possible to have compensation parallel the actual dates the trainee is working, this may be the optimal plan. In either case, it is useful to work toward the trainee having benefits (e.g., healthcare) while employed and while putting in the additional hours. In addition, it is essential that sites that normally provide liability coverage continue to provide such coverage during the extension period as well.

Issues may arise relating to the structure, content, and process of the training experience for those individuals who miss some of their internship or postdoctoral fellowship for family reasons. These include, but are not limited to: consideration of responsibilities upon their return, didactics, cohort issues, etc. The training staff/faculty should work with the trainee to determine the best course of action for handling each of these challenges. The handling of such matters often depends upon the timing in the training year, the nature of the training program, availability of resources, etc. APPIC is willing to consult with individual sites and trainees regarding such questions.

Many trainees ask when they need to inform sites that they may need time off or other forms of flexibility. This is a complex question, with no clear answer. Ideally, sites should be informed as early as is reasonably possible. If a trainee does not believe that a site will be flexible and understanding, it may not be the optimal site for them. Interns should remember the binding nature of the APPIC Match when submitting their rank order lists. Sites need to remember that it is not acceptable to ask prospective employees about their health, pregnancy status, or family status during the interview process. However, once the prospective trainee raises these issues, they may be open for discussion. Again, APPIC is more than willing to consult with trainees and prospective trainees regarding this issue. Some students have asked if they should inform sites if they plan to get pregnant. There is no need to discuss this ahead of time.