

LEGAL UPDATE



HIGHLIGHTS

- The 11th Circuit Court of Appeals held that an unmarried father was not entitled to FMLA leave to await the birth of his child.
- The decision, issued in *Tanner v. Stryker Corp.*, noted that FMLA leave for childbirth and care of a newly born child begins with the child's birth.
- Exceptions in the FMLA regulations allowing pre-birth leave do not include leave for unmarried expectant parents to await their child's birth.

Court Denies FMLA Leave for Unmarried Father Before Child's Birth

The 11th Circuit Court of Appeals recently held in [*Tanner v. Stryker Corp.*](#) that an unmarried employee who traveled to be with his pregnant ex-girlfriend for the birth of their baby was not entitled to leave before the child's birth under the federal Family and Medical Leave Act (FMLA). The 11th Circuit has jurisdiction over Alabama, Florida and Georgia, and its rulings must be followed by employers in those states.

FMLA Leave for Birth of a Child

The FMLA provides up to 12 weeks of unpaid, job-protected leave annually for eligible employees for a variety of reasons, including for the birth of a child and to care for the child during the first 12 months after birth.

Tanner v. Stryker Corp.

In the weeks leading up to the birth of his child, Tanner, the plaintiff, used all his accrued time off from his employer, Stryker Corp., to pack and move from Florida to Connecticut, where his ex-girlfriend was living and planned to give birth to their child. That left four days of unexcused leave before the eventual birth, which Tanner asked to have covered as FMLA leave, despite having been told previously by Stryker that FMLA leave would begin only when the child was born. Tanner accumulated enough "occurrence" points for these four absences to trigger termination under Stryker's attendance policy, and he was fired.

Tanner sued Stryker for unlawful interference with FMLA rights and retaliation for exercising those rights. The lower court granted summary judgment for the employer, and Tanner appealed to the 11th Circuit.

In denying the appeal, the court stated, "The text of the FMLA plainly provides that the birth of a child triggers leave and job protection." The court noted that FMLA regulations allow exceptions for pre-birth leave in certain circumstances, such as:

- A pregnant mother's incapacity due to pregnancy;
- A pregnant mother's prenatal care;
- The need to care for a pregnant, incapacitated spouse; and
- The need to care for a pregnant spouse during prenatal care.

In certain circumstances, the FMLA regulations also allow leave for parents before an adoption or foster care placement. The court found that the exceptions in the regulations allowing pre-birth leave do not include leave for an expectant parent who is neither pregnant nor married to a pregnant spouse to await the child's birth. The court held that the regulations' inclusion of exceptions for pre-birth leave under certain circumstances meant that pre-birth leave for other circumstances is not allowed.