

How should we count FMLA leave when both parents work for the same company?

Q. Our company employs a husband and his wife in different departments. Their daughter has been diagnosed with a serious medical condition that requires hospitalization for extended periods of time. The couple wants to know how much time they are entitled to under the FMLA to care for their child. Our company policy provides that spouses employed by the company can get only a combined total of 12 weeks to care for a sick child. Is that a correct application of the law, or does the FMLA prevent us from implementing such a policy?

A. No, that's not a correct application of the law. And, yes, implementing such a policy will contravene the FMLA.

The new FMLA regulations require that spouses who work for the same employer get a combined total of 12 weeks for birth/adoption/foster care placement and to care for a parent with a serious health condition. Notice that this limitation of a combined 12 weeks total does not extend to the care for a child with a serious health condition.

In your situation, the mother and father should each get 12 weeks to care for their daughter, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.