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Maternity leave on H-1, FMLA and status

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Submitted by Chief Editor on Oct 22nd 2015

My wife is on H-1B visa and went on Maternity Leave (normal delivery) starting 8-Sep-2015 and will be completing 6 weeks of allowed vacation on 16-Oct-2015 (We have 6 Weeks letter from doctor). However, she would like to extend the leave till 15-Dec-2015 (Total Duration 3 Months 10 Days) as we do not have the required support for the baby. Her Employer is willing to provide her with a leave/vacation letter and she can continue to work with the same employer post her vacation. Pay stubs (\$0) will not be provided by the employer.

Also, we are trying to have the pediatrician provide a letter suggesting 4 months of leave but not sure if we can get the same or will it be helpful?

State - New Jersey

Visa Type - H-1B

Question 1 - Will a \$0 pay stub from employer be helpful to keep her in status while on leave?

Question 2 - Will letter from pediatrician suggesting 4 months of leave be helpful to keep her in status while on leave?

Question 3 - Request you to suggest if she will be in valid status if she continues to be on leave till Dec-15 and have a vacation letter from the employer without pay stubs ?

We do have an option of moving her to H4 starting 30 Oct but would like to avoid the same.

If she changes her status to H-4,

Question 4 - Will her current employer have to file a new H1B or a simple COS from H-4-H-1B would be required once she is ready to work?

Question 5 - Can COS from H-4 to H-1B be filed in premium processing ? If not, what are the timeline for processing of the same.

ANSWER:

See clip from Attorney Rajiv S. Khanna's conference call video that addresses this question.

<https://youtu.be/ZvUVIGTM-Kk?t=2334>[2]

FAQ Transcript:

If you go to this website - <http://www.dol.gov/whd/fmla/> [3] on Family and Medical Leave Act the website explains a lot to you that you can go 12 weeks easily and USCIS will honor that and they will still consider you to be in status. So even if you don't get paid for that time and you don't get a pay stub that's fine. Now if there is a medical

reason for eg: a pediatrician saying she needs to have x number of months of leave. I think she will be in status. We had a case where one of our friends had to be hospitalized for extended period of time and then she was out of work on H-1 for almost a year but we were able to convert her to H-4 because the government realized she was not out of work because she didn't have a job it was because she had a medical necessity.

As for the question if she changes her status to H4, and file premium processing, she is not subject to the quota if she changes into H-4. But the employer will have to file H-1B change of status which is almost like doing a new H-1. Also COS from H-4 to H-1B be filed in premium processing can be done.

Nonimmigrant Visas:

[H-1 Visa](#) [4]

[H-4 Visa](#) [5]

[Change of status](#) [6]

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [7] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [8]

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[2] <https://youtu.be/ZvUVIGTM-Kk?t=2334>

[3] <http://www.dol.gov/whd/fmla/>

[4] <https://immigration.com/visa/nonimmigrant-visas/h-visa/h-1-visa>

[5] <https://immigration.com/visa/nonimmigrant-visas/h-visa/h-4-visa>

[6] <https://immigration.com/visa/nonimmigrant-visas/change-status>

[7] <http://www.immigration.com/law-offices-rajiv-s-khanna-pc>

[8] <http://www.immigration.com>

[9] <https://immigration.com/JavaScript%3Aavoid%280%29%3B>