
Massachusetts Officially Provides Paternity Leave!

Description

On his last day in office, Governor Patrick signed Senate Bill 865, the so-called Parental Leave Act ("Parental Leave"), which amends the Massachusetts Maternity Leave Act ("MMLA") to provide unpaid leave to *all* eligible employees, not just women. Parental Leave applies to employers with six or more employees and goes into effect on April 15, 2015. While there are a number of additional revisions to the MMLA, it remains otherwise largely unchanged. Employers should promptly amend their Employee Handbooks and make sure the new law is conspicuously posted as required.

The MMLA infamously provided eight weeks of job-protected leave for the birth or adoption of a child only to female employees. As far back as 2008, the Massachusetts Commission Against Discrimination indicated that while the law on its face clearly provided leave only to women, any employer who chose to do so, to the exclusion of providing similar leave to men, likely would be violating state and federal anti-discrimination laws.

The Parental Leave Act remedies this uncomfortable tension by revising what was on its face a clearly discriminatory law. Additional provisions that employers should keep in mind are as follows:

- Similar to the FMLA (which allow parents working for the same employer to take a combined 12 weeks of leave), Parental Leave provides that if both parents work for the same employer they will only be entitled to a total of eight weeks leave.
- Parental Leave also clarifies some controversy on the issue of whether the MMLA job protection applied only to the first eight weeks of leave or whether it could be extended if the employer allowed a longer leave period. In 2010 the Supreme Judicial Court decided in *Global Naps, Inc. v. Awiszus* that job protection applies only during the first eight weeks of leave. Parental Leave expands this protection, and provides that where an employer allows an employee to take leave for a period longer than eight weeks, job protection continues to apply *unless* the employer clearly informs the employee *in writing* prior to the start of the leave and prior to any extension, that taking longer than eight weeks of leave will result in denial of reinstatement or a loss of other rights or benefits.
- Employees must continue to provide at least two weeks' notice of their leave date and intention to return, though Parental Leave modifies this provision slightly by adding that an employee may provide notice "as soon as practicable" if the delay is for reasons beyond the employee's control.
- Parental Leave modifies the MMLA to now cover the placement of a child pursuant to a court order.
- Employees still do not become eligible until they have completed the initial period of probation, or three months, whichever is shorter.
- Employees retain the right to use accrued sick, vacation or personal time but, unlike the FMLA, the employer may not require an employee to substitute paid leave for Parental Leave.
- Employers are still required to post a notice describing Parental Leave, though the new law slightly modifies this requirement to also *require* the posting of the employer's policies related thereto.

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