

New Parental Leave Law Expands the Massachusetts Maternity Leave Act

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On January 7, 2015, one day prior to leaving office, Governor Deval Patrick signed into law the Parental Leave bill, which expands the scope of the Massachusetts Maternity Leave Act (“MLA”). The MLA provides female employees with eight weeks of job-protected leave in connection with the birth or adoption of a child. The new Parental Leave law extends this right in two key respects. First, male employees are also entitled to eight weeks of job protected leave in connection with the birth or adoption of a child. However, the Parental Leave law makes clear that if both parents work for the same employer, the employees are entitled to only eight weeks of leave in the aggregate for the same child. Second, an employee may take leave in the event of the placement of a child with the employee pursuant to a court order.

The Parental Leave law also clarifies employees’ job protection rights. Under the MLA, an employer must restore a female employee to her previous or a similar position upon her return from leave. In 2010, the Supreme Judicial Court held in *Global NAPs, Inc. v. Awiszus*, that the MLA’s job protections only applied to the first eight weeks of leave. Effectively reversing that decision, the Parental Leave law creates a presumption that leaves exceeding eight weeks are also job-protected. This presumption can be overcome only if the employer clearly informs the employee in writing prior to his or her leave, and prior to any subsequent extension of that leave, that taking a leave in excess of eight weeks will result in the denial of reinstatement or loss of other rights and benefits.

Many employers already provide some leave to men in connection with the birth or adoption of a child. Oftentimes, though, that leave is shorter or different than what is provided to female employees. Thus, employers may need to revise their leave policies to reflect the requirements of the Parental Leave law. Further, the enactment of the Parental Leave law is a reminder that employers may run afoul of state and federal discrimination laws if they treat male and female employees differently in connection with parental leave rights. For example, the U.S. Equal Employment Opportunity Commission has explained in guidance regarding pregnancy discrimination that new fathers must have the opportunity to take any parental leave that an employer extends to new mothers beyond the period of recuperation from childbirth. In revising their leave policies, larger employers need to keep in mind their obligations under the federal Family and Medical Leave Act. The new Parental Leave law will take effect on April 7, 2015.

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