



Massachusetts Expanded Parental Leave Law Goes Into Effect April 2015

Effective April 7, 2015, the Massachusetts Maternity Leave Act (MMLA) is amended to extend coverage to male employees. The essential provisions of the new law are discussed below.

Background

Under pre-existing law, Massachusetts employers with six or more employees are required to provide female employees with eight weeks of leave for the birth or adoption of a child. In light of the fact that the applicable federal law, the Family and Medical Leave Act (FMLA), generally applies only to employers with 50 or more employees, the MMLA is of critical importance to employees of companies in Massachusetts with fewer than 50 employees. Under the newly passed Parental Leave Law, the benefits and protections afforded by the MMLA are extended to both male and female employees.

Covered Employers and Expanded Protections for Male Employees

Employers with six or more employees are now required to provide male employees, as well as female employees, eight weeks of job-protected leave for adoption or birth of a child. The law also covers placement of a child with an employee pursuant to a court order. The new law states that if both parents work for the same company, they are only entitled to a combined eight weeks of leave. All private sector employers in Massachusetts with at least six employees are subject to the Parental Leave Law, and those employers with 50 or more employees are subject to the obligations of both the state Parental Leave Law and the federal FMLA.

Eligibility

The new law makes employees eligible for parental leave if they have completed the initial probationary period set by the terms of employment, not to exceed three months. If there is no such probationary period, an employee must have been employed by the same employer for at least three consecutive months as a full-time employee in order to be eligible.

Changes to Right to Reinstatement and Benefits

The new law also clarifies employees' job protection rights while on parental leave. The law overrides a 2010 Supreme Judicial Court decision in *Global NAPs, Inc. v. Awiszus* which held that the job protection rights under the MMLA applied only during the first eight weeks of leave. Under the new law, if an employer permits an employee to take parental leave for a period longer than the statutorily required eight weeks, the employee retains his or her right to reinstatement for the full duration of the leave, unless the employer clearly informs the employee in writing, prior to the commencement of the leave and prior to any subsequent extension of the leave, that a leave longer than eight weeks will result in denial of reinstatement or a loss of other rights and benefits. In addition, the law provides that the taking of parental leave will not affect the employee's rights to receive vacation time, sick leave, bonuses, advancement, seniority, and other benefits for which the employee was eligible as of the date of the leave, although the period of the parental leave need not be included in the computation of any benefits.

Paid or Unpaid

The Parental Leave Law allows for employers to provide paid or unpaid parental leave. However, the new law expressly states that an "employee on parental leave for the adoption of a child shall be entitled to the same benefits offered by the employer to an employee on parental leave for the birth of a child." Therefore, an employer who provides paid parental leave for employees for the birth of a child, must now provide such paid leave for adoptions.

Notice of Leave by Employees

The new law continues to require employees to provide at least two weeks' notice to the employer of the employee's anticipated date of departure and the employee's intention to return, but it now allows an employee to provide notice "as soon as practicable" if the delay in providing notice is "for reasons beyond the individual's control."

Employer's Obligation to Post Notice

Another change is that while the MMLA required employees to post a notice of the law "in every establishment in which females are employed," the Parental Leave Law requires employers to post "in a conspicuous place" both notice of the law as well as the employer's policies related to the law.

Amendments to Fair Employment Practices Act

The new law also amends the Massachusetts workplace anti-discrimination statute, Mass. G.L. c. 151B, to extend coverage of the discrimination law to employees who take parental leave.

Action Steps for Employers

Employers should consult with counsel in order to:

- > review their maternity/paternity leave policies to make sure that their policies are gender-neutral and meet the requirements of the new Parental Leave Law;
- > draft and post the required notices explaining the Parental Leave Law and any company policies related to the law;
- > update company handbooks/manuals especially where such materials contain outdated references to the MMLA; and

- > Massachusetts employers with 50 or more employees should consider their obligations under the FMLA in addition to the new Parental Leave Law.

The Parental Leave Law amends Mass. G.L. c. 149, § 105D, and Mass. G.L. c. 151B, § 4 (11A). The law takes effect April 7, 2015.

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