

## **NEW PARENTAL LEAVE ACT EFFECTIVE April 7, 2015**

### **What You Need to Know**

**Both male and female employees in Massachusetts will be entitled to parental leave effective **April 7, 2015**.**

One of Governor Patrick's final official acts was to sign into law, on January 7, 2015, the Parental Leave Law ("PLL"), which replaces the Massachusetts Maternity Leave Law ("MMLL").

In a nutshell, the new PLL makes the old MMLL gender neutral by providing (unpaid) parental leave to both males and females. Before the enactment of the new PLL, the MMLL applied specifically and exclusively to female employees. This meant that smaller employers who were not covered by the federal Family and Medical Leave Act ("FMLA"), which applies to both males and females with respect to leave for the birth or adoption of a child of the employee, were not required to offer parental leave to males. However, in spite of the specific application to only females under the old MMLL, since 2008, the Massachusetts Commission Against Discrimination ("MCAD") has taken the contrary position in its guidance -- that an employer's failure to provide leave to a male for the birth or adoption of a male employee's child violates the Commonwealth of Massachusetts's anti-discrimination laws. The new PLL provides certainty; employers *must* provide leave for the birth or adoption of an employee's child to males and females.

### **Employees entitled to parental leave are those who:**

- Work for employers with 6 or more employees; and
- Have completed their employer's initial probationary period (which is not to exceed three months) or have been employed by the same employer for at least 3 consecutive months (whichever is shorter); and
- Work full-time.

The leave remains at 8 weeks (although the MCAD has taken the position in its guidance that the leave is 8 weeks *per child*).

If two employees are employed by the same employer, and otherwise qualify for parental leave for the birth or adoption of the same child, they shall only be entitled to 8 weeks of

leave in the aggregate. This means that they could divide the 8 weeks of leave between them, as they see fit.

As under the old MMLL, the employer may not *require* the employee taking parental leave to use his or her vacation time during parental leave, but the employee may *choose* to do so. In addition, if the employer is covered under the FMLA, and an employee has used up all of his or her FMLA leave (being 12 weeks) before the birth or adoption of the employee's child, the employee *must* be provided with 8 weeks of parental leave under the PLL. However, if the employee did not take any FMLA leave, or took no more than 4 weeks of leave under the FMLA, his or her parental leave under the PLL will run concurrently with his or her FMLA leave.

As before, employees must provide two-weeks' notice before the date they intend to take leave; if two weeks' notice is not possible for reasons beyond the employee's control, the employee must provide notice as soon as practicable; *and* employees must indicate to the employer their intention to return to work at the end of their parental leave. As under the old MMLL, the new PLL permits parental leave for "the purpose of giving birth;" or placement of a child under the age of 18, or under the age of 23, if the child is mentally or physically disabled, for adoption with the employee adopting or intending to adopt, or for the placement with the employee of a child pursuant to a court order.

As under the old MMLL, the employer must restore the employee who timely returns from parental leave to his/her previous, or a similar, position with the same status, pay, length of service credit and seniority as of the date of the leave.

Another change effected by the PLL concerns employers who permit employees *greater* parental leave than the 8 weeks mandated. This change was the result of a case decided under the old MMLL, where the employer did not provide restoration rights to a female employee who took leave for longer than 8 weeks, with the employer's permission. The employer argued that the job protection benefits of the MMLL only lasted for 8 weeks.

The new PLL provides that if an employer offers longer than an 8 week parental leave, the employer shall not deny the employee restoration rights under the PLL unless the employer clearly informs the employee *in writing* prior to the commencement of the parental leave, and prior to any subsequent extension of that leave, that taking longer than 8 weeks of leave will result in the denial of reinstatement or loss of other rights and benefits.

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