

Labor & Employment Alert
January 2015

Governor Patrick Signs Parental Leave Law

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On January 7, 2015, Governor Patrick signed “An Act Relative to Parental Leave” into law (the “Act”). This Act replaces the Massachusetts Maternity Leave Act (“MMLA”), and extends parental leave rights to both men and women. While similar to the MMLA in many respects, there are important differences of which employers need to be aware when updating policies and procedures in light of this new law.

When Does this Law go into Effect?

The Act goes into effect on April 7, 2015.

To Whom Does this Law Apply?

The Act applies to public and private employers with six or more employees.

Who Enforces this Law?

The Act is enforced by the Massachusetts Commission Against Discrimination (MCAD).

What Does this Law Require?

The Act creates certain parental leave rights for covered employees. Covered employees are defined as employees who have completed their initial probationary period, not to exceed three months, or if there is no such probationary period, employees who have been employed for at least 3 consecutive months as a full time employee.

Note: Unlike the MMLA, the new Act specifically limits the length of a probationary period prior to which an employee is entitled to protections under the Act to a period of three months.

Leave for Qualifying Events

Specifically, the Act requires that covered employees are provided up to eight (8) weeks of leave for the purpose of:

- giving birth

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- adoption of a child under the age of 18
- adoption of a child under the age of 23 if the child is mentally or physically disabled
- placement of a child with an employee pursuant to a court order.

Note: The new Act adds placement of a child pursuant to a court order to its list of qualifying events that trigger a right for parental leave.

The Act provides that 2 employees of the same employer shall only be entitled to eight weeks of leave in the aggregate for the birth or adoption of the same child.

Job and Benefit Protections

Upon completion of parental leave, an employer is required to restore the employee to his/her previous position, or a similar position, with the same status, pay, length of service credit and seniority as of the date of the leave.

The Act provides that parental leave shall not affect an employee's rights to receive vacation time, sick leave, bonuses, seniority, and other benefits for which the employee was eligible at the date of the leave. However, such leave of absence does not have to be included, where applicable, in the computation of benefits. In addition, an employer is not required to provide for the cost of any benefits, plans, or programs during the period of leave, unless provided for all employees who are on leaves of absence.

Leave Offered Greater than Required

The Act does not prohibit employers from offering leave or benefits greater than required by law. However, the new Act states that employee on leave for the adoption of a child shall be entitled to the same benefits offered to employees on leave for the birth of a child. In addition, if an employer agrees to provide more than 8 weeks of leave, or extend the leave beyond eight weeks, the Act prohibits the employer from denying the employee the rights provided under the Act (including reinstatement or benefit protections) 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 eight weeks of leave will result in the denial of reinstatement or loss of other rights and benefits.

Note: Under the MMLA, the Supreme Judicial Court had held that leave greater than eight weeks is not protected under the statute. The specific language in the new parental leave act effectively overturns this decision for purposes of the new law. Unless clearly

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informed in writing to the contrary *prior* to the commencement of the leave or extension of leave, an employee who is on approved leave of greater than eight weeks will be entitled to the protections provided by the Act, including job and benefit protection.

Is the Leave Paid?

The leave may be paid or unpaid, at the discretion of the employer.

Must an Employee Provide Advance Notice of Leave?

The Act requires an employee give at least two weeks' notice to the employer of the anticipated leave date and intention to return, or provide notice "as soon as practicable" if the reason for the delay is "beyond the individual's control."

Notice of Rights

The Act requires that employers shall post and keep posted in a conspicuous place on its premises a notice describing the new law and the employer's policies related to it.

Next Steps for Employers

Although many employers in Massachusetts already provide parental leave to both men and women, and may provide leave greater than that required by the new parental leave act, it is important that all employers take this opportunity to carefully review their current policies and postings to ensure compliance with the Act prior to April 7, 2015. Employers should be aware that parental leave policies can implicate both federal and state discrimination laws. In addition, many employers have obligations under the federal Family Medical Leave Act to provide up to 12 weeks of leave concurrent with or in addition to that required by the Act for overlapping purposes. Consultation with legal counsel is strongly advised when reviewing and updating policies for compliance, and in administering parental leave under federal and state law.

If you have any questions about this issue, please contact Kier Wachterhauser or the attorney responsible for your account, or call (617) 479-5000.

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