

Massachusetts Extends Parental Leave Rights to Men

On January 7, Massachusetts Governor Deval Patrick signed into law the parental leave bill, amending and replacing the Massachusetts Maternity Leave Act. The new gender-neutral law, which takes effect on April 7, 2015, will extend the right to job-protected leave for the birth or adoption of a child to male and female employees alike. Massachusetts employers should carefully review their employee handbooks and leave policies to ensure compliance with the new state law as well as with the federal Family and Medical Leave Act.

Background

The [Massachusetts Maternity Leave Act](#) (MMLA) requires employers with six or more employees to provide eight weeks of job-protected leave to eligible female employees for the birth or adoption of a child. By contrast, the federal Family and Medical Leave Act (FMLA) requires employers with 50 or more employees to provide all eligible employees, regardless of gender, with up to 12 weeks of job-protected leave in a 12-month period for those purposes.

Under the MMLA, every full-time female employee is entitled to job-protected leave if she: (1) has completed her employer's initial probationary period (which cannot exceed six months) or, if the employer does not use a probationary period, has been employed for at least three consecutive months; and (2) gives at least two weeks' notice of her expected departure date and her intent to return.

With certain limited exceptions, the law requires employers to restore an employee who satisfies these requirements and ends her maternity leave within eight weeks to her previous or to a similar position without any loss of employment benefits. Accrued sick leave benefits must be provided for maternity leave purposes under the same terms and conditions applicable to other temporary medical disabilities. However, an employer policy or collective bargaining agreement that provides for greater or additional benefits than required by the MMLA applies.

Comment. The Massachusetts Commission Against Discrimination (MCAD) has long maintained that providing leave only to female employees under the MMLA would likely violate other state and federal



nondiscrimination laws. Notably, recent EEOC [enforcement guidance](#) says that “parental leave must be provided to similarly situated men and women on the same terms.” (See our [September 4, 2014 For Your Information](#).)

The New Parental Leave Law

Just before leaving office, Governor Deval Patrick signed into law [An Act Relative to Parental Leave](#), extending coverage of the MMLA to male employees, effective April 7. The new law requires employers with at least six employees to provide leave that was previously available only to women to biological and adoptive parents, regardless of gender. Leave may be paid or unpaid at the employer's discretion.

Eligibility

Employees are leave-eligible once they have completed the employers' initial probationary period — not to exceed three months — or have been employed by the same employer for at least three consecutive months as a full-time employee if there is no probationary period.

Expanded Eligibility

The new law shortens the maximum probationary period employees must complete before becoming leave-eligible from six to three months.

Qualifying Reasons for Leave. Eligible employees may take job-protected leave for the birth or adoption of a child under age 18 or under the age of 23 if the child is physically or mentally disabled.

Two Parents/Same Employer. Like the FMLA, the law limits the amount of leave that two parents who work for the same employer are entitled to take for the birth or adoption of the same child. In these circumstances, the employees would be limited to eight weeks of parental leave between them.

Reinstatement and Other Benefits. The new law requires employers to restore the employee to his or her previous, or to a similar, position with the same status, pay, service credit, and seniority (if applicable) as of the date of the leave — unless there are intervening layoffs. If other employees with equal length of service were laid off from the same or similar jobs due to economic conditions or other changes in operating conditions during the employee's leave, reinstatement will not be required. However, the employee on leave would still retain preferential consideration for any other position to which the employee may be entitled as of the date of the leave.

The employer must offer the same benefits to employees on parental leave for the adoption of a child as for the birth of a child. Leave will not affect the employee's right to vacation time, sick leave, bonuses, advancement, seniority, service credit, benefits, plans, or programs for which the employee was eligible at the date of the leave. However, the leave will not be included in computing benefits. The employer will not be required to pay for any benefits, plans, or programs during the leave unless the employer does so for all employees on a leave of absence. The new law does not affect collective bargaining agreements or company policies that provide for greater or additional benefits than it requires.

Notice Requirement

Employees are generally required to provide at least two weeks' notice of their anticipated date of departure and intention to return. However, the new law will allow an employee to provide notice “as soon as practicable if the delay is for reasons beyond the individual's control.”

Additional Protections for Longer Leaves

If the employer provides parental leave for longer than eight weeks, an employee may continue to be protected for the duration of the leave under certain circumstances. The employer must restore the employee to his or her previous position, or to a similar position, with the same status, pay, length of service credit, and seniority (if applicable) as of the date of the leave unless the employer clearly informs the employee, in writing, prior to the commencement of leave (and any extension of leave) that taking more than eight weeks leave will result in the denial of reinstatement or the loss of other rights and benefits.

In Closing

The new gender-neutral parental leave law, effective April 7, 2015, will extend eligibility for job-protected leave for the birth or adoption of a child to male and female employees alike. Massachusetts employers should make needed changes to their employee handbooks and leave policies to ensure compliance with the new state leave law.

Authors

Nancy Vary, JD
Abe Dubin, JD

Produced by the Knowledge Resource Center of Buck Consultants at Xerox

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@xerox.com.

You are welcome to distribute FYI® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.