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What to Expect When Your Male Employee Is Expecting: Massachusetts Replaces Maternity Leave Act with Parental Leave Act

By Adam Forman and Shannon Berube

Effective April 7, 2015, the Massachusetts Maternity Leave Act will be replaced by the Parental Leave Act ("PLA"). The new law expands the scope of the Maternity Leave Act by extending parental leave rights to men.

The new law requires employers to provide both women and men with time off "for the purpose of giving birth" or adopting a child. While the new statute does not define how the phrase "giving birth" applies to men, it is clear that the Massachusetts legislature intended to provide equally protected time off for men and women when they are having or adopting a child.

The PLA requires an employer with six or more employees to provide a minimum of eight weeks of job-protected leave for:

- The birth of a child;
- The adoption of a child under the age of 18; or
- The adoption of a child with a mental or physical disability under the age of 23.

Key Provisions

New Requirements

While the language of the new PLA is nearly identical to the former Maternity Leave Act, the amended law differs in a few important ways.

First, male employees are now entitled to receive eight weeks of job-protected leave in connection with the birth or adoption of a child. In the event both parents are employed by the same employer, the parents are entitled to eight weeks in the aggregate for the same child.

Second, an employee is entitled to eight weeks of job-protected leave if a child is placed with the employee pursuant to a court order. This basis for taking a protected leave was not covered by the Maternity Leave Act.

Third, and oddly, the PLA presumes that an employee with an approved extension of parental leave beyond the statutory period of eight weeks still has job protection. An employer can defeat this presumption by informing the employee in writing prior to granting the leave, and again at the time of granting the extension beyond eight weeks, that he or she no longer has job protection or benefits beyond the eight-week, statutorily required period. Employers should remember, however, that if the employee is entitled to federal Family and Medical Leave Act (“FMLA”) leave, job protection will be for twelve weeks, not eight.

Eligibility

For an employee to be eligible for leave under the PLA, an employee must be employed by the company on a full-time basis for three months. If the employee was hired subject to a probationary period, and this status is for less than three months, the employee becomes eligible for leave under the PLA when the initial probationary period is complete.

When Parental Leave Can Be Taken

The PLA provides leave “for the purpose of giving birth” or adopting a child. It is available at the time of the birth or adoption, but not significantly before or significantly after. Thus, if a female employee experiences pregnancy-related complications and is placed on bed rest for the last eight weeks of her pregnancy, this time off from work is not covered or protected by the PLA.

Employees Returning from Leave

The PLA requires that an employer restore an employee to his or her previous or similar position upon return to employment following leave. That position must have the same status, pay, length of service credit and seniority as the position the employee held prior to the leave. However, the statute provides that employees on parental leave are not shielded from reductions-in-force that take place during the ordinary course of business. The PLA states that the job of an employee on leave is not protected where economic conditions have caused the employer to lay off employees in the same or similar position.

Compensation and Accrued Vacation, Personal and Sick Time

The PLA provides that leave may be paid or unpaid at the employer’s discretion. However, unlike FMLA leave, an employer cannot require an employee to use accrued vacation time or paid time off while on leave. Instead, under the PLA, employees taking parental leave have the option to choose whether to use accrued vacation, sick or other forms of paid time off.

Posting Requirements

Employers must post a notice “in a conspicuous place” describing the PLA as well as the employer’s policies regarding parental leave.

Notice Requirements

An employee is required to provide his or her employer with at least two weeks’ notice of his or her intention to take parental leave. While this requirement mirrors the requirement under the former Maternity Leave Act, the amended law now allows for an exception to this requirement if “the delay is for reasons beyond the individual’s control.” Notice still must be provided to the employer “as soon as practicable.”

Fair Employment Practices

The amended law adds the use of parental leave as a protected activity under the Massachusetts Fair Employment Practices statute. Thus, employers are prohibited from discriminating or retaliating against an employee for exercising his or her rights under the PLA.

The Relationship Between the PLA and FMLA

Employees who meet the eligibility requirements under the FMLA are already entitled to 12 weeks of unpaid leave to bond with a newborn or a newly adopted child. The Massachusetts PLA and the FMLA run concurrently. Thus, in the cases of a healthy pregnancy and a standard adoption, employees will exhaust their PLA leave at the same time they are taking their FMLA leave and will be entitled, in total, to 12 weeks

of leave. However, in those situations where employees are not yet eligible for leave under the FMLA, or where employees have exhausted their FMLA entitlement prior to delivering the newborn or adopting a child, the PLA guarantees these employees eight weeks of job-protected parental leave. In addition, while taking PLA and FMLA leave concurrently, the FMLA's rules regarding the use of accrued paid time off will control since it is a federal statute. As a result, in these circumstances, employers can require employees to exhaust available vacation time and other accrued paid time off while on a parental leave.

Next Steps for Employers

While the PLA does not become effective until April 7, 2015, employers should begin to do the following:

- Review and revise policies and procedures connected with providing leave for the birth or placement of a child;
- Review, revise, and re-post workplace postings regarding parental leave to reflect the amended law; and
- Train HR and staff responsible for reviewing leave requests concerning the amended law.

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