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LEGAL ALERT

New Massachusetts Parental Leave Law Extends Protections to Male Employees

With very little fanfare or media attention, Massachusetts Governor Patrick signed a bill into law the day before he left office that establishes parental leave in Massachusetts for both female and male employees. Effective April 7, 2015, the new law will replace the current Massachusetts Maternity Leave Act (MLA), which provides only female employees with eight weeks of job-protected maternity leave for the birth or adoption of a child. Extending parental leave to male employees will require significant policy changes for Massachusetts employers with less than 50 employees, as they are not already covered by the Family and Medical Leave Act (FMLA) which applies to both male and female employees.



Parental Leave Law Now Consistent With Agency Guidance

The new law provides that any Massachusetts employee who meets the eligibility requirements of the MLA is entitled to eight weeks of parental leave and must be reinstated to the same or similar position he or she held before the leave. This expansion of the MLA is consistent with the position of the Massachusetts Commission Against Discrimination (MCAD), whose guidelines have long-advised Massachusetts employers to consider providing leave to *all* members of their workforce to avoid treating male employees differently from female employees, risking a potential sex discrimination claim. The new law is also consistent with guidance from the federal Equal Employment Opportunity Commission, which has declared that “parental leave must be provided to similarly situated men and women on the same terms.”

Leave Beyond Eight Weeks Could Also Be Job-Protected

In addition to expanding the MLA to apply to male employees, the parental leave act makes another key change to the current law. Under the new law, if an employer agrees to provide an employee with *more* than eight weeks of parental leave, the employer cannot deny the employee rights under the law (such as reinstatement) *unless* the employer: 1) clearly informs the employee in writing that taking longer than eight weeks of parental leave will result in a denial of reinstatement or loss of other rights and benefits, and 2) does so prior to the beginning of the parental leave *and* again prior to extension of that leave. If an employer does not take these affirmative steps but agrees to extend an employee’s parental leave beyond eight weeks, the entire period of leave will be job-protected under the new law.

This expansion of the MLA parallels the MCAD’s existing guidelines on the impact of allowing an employee to take an extended leave. That part of the guidelines had been rejected by the Supreme Judicial Court (SJC) in 2010 as being contrary to the statutory language of the MLA. In

effect, the new law overturned the 2010 SJC decision and corroborated the MCAD guidelines on this point.

Additional Changes

The new parental leave act made a few additional changes to the MLA:

- It covers employees who have a child placed with them pursuant to a court order
- It clarifies that any two employees of the same employer shall only be entitled to a total of eight weeks of parental leave
- If an employer requires an employee to complete an initial probationary period as a term of employment, the period cannot exceed three months for purposes of eligibility under the parental leave act
- An employee is allowed to provide notice “as soon as practicable if the delay is for reasons beyond the individual’s control,” rather than the previous requirement of at least two weeks’ notice

Prepare Now For Changes in Parental Leave

To prepare for the April 7th effective date, review and revise your leave policies to be consistent with the new parental leave act. If you are covered by the FMLA, be aware that Massachusetts employees who have exhausted their FMLA leave for reasons other than those covered by the Massachusetts statute are still entitled to parental leave under the new law.

If you have any questions about this new law, please contact your regular Fisher & Phillips attorney or our Boston office at (617) 722-0044.

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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