

Massachusetts Employee Parental Leave Rights Expanded to Male Employees

Just before leaving office, Governor Deval Patrick signed into law the Parental Leave Act, which will become effective on April 7, 2015 and replace the current Massachusetts Maternity Leave Act (“MMLA”). The MMLA provided female employees with eight weeks of job-protected leave in connection with the birth or adoption of a child. The new Parental Leave Act establishes parental leave rights in Massachusetts for both male and female employees. This new law entitles any Massachusetts employee, male or female, who meets the applicable eligibility requirements (basically, three months of full-time employment) to eight weeks of parental leave. The new Parental Leave Act further requires employers to restore employees who take parental leave to their previous or similar positions once they return to work, with the same status, pay, length of service credit, and seniority.

The new Parental Leave Act requires employers with six or more employees to provide gender-neutral parental leave. Notably, it also protects leave beyond eight weeks in certain circumstances. Unless an employer clearly informs the employee, in writing, before the employee goes on leave and before leave is subsequently extended, that taking more than eight weeks leave will result in the denial of reinstatement or loss of other rights and benefits, the entire period of leave will be protected under the new law.

The Parental Leave Act also made a few additional changes to the MMLA, including:

- Covering employees who have a child placed with them pursuant to a court order;
- Providing that if both parents work for the same employer, the employees are entitled to only eight weeks of leave in the aggregate for the same child;
- Limiting to three months the maximum probationary period before which an employee becomes eligible for leave; and
- Retaining the MMLA’s requirement of two weeks’ notice of the anticipated dates of parental leave, but allowing an employee to give notice “as soon as practicable if the delay is for reasons beyond the individual’s control.”

The Parental Leave Act leaves some provisions of the MMLA unchanged. For example, at the employer’s option, leave can still be either paid or unpaid.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

Susan J. Baronoff

Michael Colgan Harrington

Lauren M. Hopwood

William J. Keenan, Jr.

Hugh F. Murray, III

Lissa J. Paris

Rachel Faye Smith

Barry J. Waters

Jennifer A. Corvo

Stella Szantova Giordano

Colleen O’Neill

Monica P. Snyder

Kristen L. Zaehring

Expanding parental leave to male employees is in line with the position taken by the Massachusetts Commission Against Discrimination (“MCAD”), which in its MMLA guidelines advised employers to consider providing leave to **all** members of their workforce in order to avoid potential claims of sex discrimination. This new law is also consistent with guidance from the Equal Employment Opportunity Commission, which has stated that parental leave must be provided to similarly situated men and women on the same terms.

Before the Parental Leave Act takes effect on April 7th, employers in Massachusetts should carefully review their employee handbooks and parental/maternity leave policies to make sure that they comply with the new law. Although FMLA-covered employers (those with 50 employees or more) probably already permit paternity leave, these employers should note that this new law will permit both male and female employees who have exhausted FMLA leave for reasons other than parental leave, or who have not met the FMLA’s length of service or hours requirements, to take eight weeks of parental leave.

Please contact Susan J. Baronoff at 617.457.4031, sbaronoff@murthalaw.com, Hugh F. Murray, III at 860.240.6077, hmurray@murthalaw.com, or Monica P. Snyder at 617.457.4157, msnyder@murthalaw.com if you have any questions regarding the issues addressed in this article.