

**Client Alert: Massachusetts Employers Now Required
to Grant Parental Leave to Men and Women**

Massachusetts has revised the state's maternity leave law, giving men and women the same rights to take 8 weeks of parental leave after the birth or adoption of a child. The [amended law](#), *An Act Relative to Parental Leave*, expands the scope of the Massachusetts maternity leave law, M.G.L. c. 149, Sec. 105D, and changes language in the state's antidiscrimination law, M.G.L. c. 151B sec. 4(11A), making both laws gender neutral. Governor Deval Patrick signed the new law the day before he left office. The law will take effect on April 7, 2015, 90 days after its enactment. The basic provisions of the law are discussed below.

Covered Employers

Employers with 6 or more employees will now be required to offer the same parental leave to male and female employees. Employers with 50 or more employees covered under the FMLA must also continue to comply with the federal law's requirements.

Employee Probationary Period

The new parental leave requirement applies to full-time employees who have completed a probationary period, which cannot be longer than 3 months, or who have worked full-time for the employer for at least 3 consecutive months, whichever is shorter.

Expanded Circumstances for Leave - for Birth, Adoption, or Placement of a Child

In addition to requiring leaves for births and adoptions, the new law also covers employees intending to adopt a child who is placed with them, or who are caring for a child through a court order, for example as foster parents.

The new law explicitly states that an "employee on parental leave for the adoption of a child shall be entitled to the same benefits offered by the employer to an employee on parental leave for the birth of a child." So, for example, if an employer provides paid parental leave for employees who give birth, such paid leave must now also be provided to employees who adopt. A more complicated question is whether or not an employer can still offer a short term disability (STD) plan that includes birth -- but not adoption -- as a covered disability. In our view, an employer can still do so, provided that all employees are given equal access to the STD plan, and that the grant of benefits is tied solely to disability, rather than the fact that the employee has become a parent.

The law keeps the original provisions requiring leave for employees adopting a child under the age of 18, or under the age of 23 if the child is mentally or physically disabled.

Leave Longer than 8 Weeks

Employers are of course free to grant leaves of longer than 8 weeks. The new law, however, in response to a Supreme Judicial Court case, requires employers who grant leave longer than 8 weeks to inform employees “clearly” in writing before the leave begins if the employer will *not* grant the same right to reinstatement or other benefits required for leaves of 8 weeks.

Paid or Unpaid

The law did not and still does not require employers to pay for parental leave. As noted above, however, if an employer chooses to provide paid parental leave, it must also offer such paid leave to employees who adopt. Note also that, under the federal law, women affected by childbirth or related medical conditions must be treated the same as other persons who are similar in their ability or inability to work. So, for example, if the employer offers paid time off to employees who are disabled, they may have to offer the same benefit to a female employee who is disabled due to childbirth.

Notice by Employees

Employees are still required to give at least two weeks’ notice to their employees of the expected date the leave will begin and end. The amended law additionally states that the employee shall notify their employer “as soon as practicable” if the date of return is delayed “for reasons beyond the individual’s control.”

Two Employees Taking Leave for the Same Child

The new law states that two employees who take leave to care for the same child are only entitled to a total of 8 weeks of parental leave between them.

Posting Notice of the New Leave Law

Employers must post and “keep posted” a notice describing the Parental Leave law “in a conspicuous place or places upon its premises.” The notice must explain the law’s requirements and the employer’s policies related to the law.

The Same Rights to Job Protection and Restoration

The Parental Leave law retains the provisions stating that employees returning from leave shall be given their same or a similar job, with the same status, seniority, pay, and length of service credit, wherever applicable, from the date the leave began.

An employer will *not* be required to restore an employee to the same or a similar position if other employees in the same or similar position have been laid off during the employee’s leave

because of economic circumstances or other operating conditions. An employee on parental leave under such circumstances, however, will still retain preferential consideration for another position to which he or she may be entitled as of the date of the leave.

In addition, as under the previous law, parental leave will not affect an employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, benefits, credit for length of service, benefits, or other programs or plans that he or she was eligible for when the leave began.

Employers, however, need not include parental leave, when applicable, in computing an employee's benefits, rights, and advantages. Employers are not required to cover the cost of any benefit, plan, or program during parental leave, *unless* the same costs are covered for all employees who take other leaves, such as medical or personal leaves of absence.

The parental leave law also retains the provision stating that nothing in the law will affect any bargaining agreement or company policy that gives greater or additional benefits than the parental leave law requires.

Recommended for Employers

Employers should review their maternity/paternity leave policy to make sure that the policy meets the requirements of the Parental Leave law and is gender-neutral.

Employers should prepare to post the required notices explaining the Parental Leave law and any company policies related to the law.