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## Parental Leave Policies: A Few Things to Consider

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In addition to time off for pregnancy-related medical conditions, most states also impose obligations on employers regarding time off for "parental" leave—leave related to the birth or adoption of a child. "Maternity" leave is a disfavored term, because it pertains only to women, of course, and suggests that men are discriminated against when it comes to the employer's policies pertaining to the birth, adoption, or care of a child.

A large, very well respected, "white shoe" law firm (the "Firm") in California recently was sued by a group of female attorneys. The women allege that the Firm discriminated against pregnant attorneys and working mothers in pay and promotions. Many of the allegations stem from how the women were treated upon return from leave associated with childbirth—"maternity" leave. Some of the issues raised involve comparisons to the treatment of the women's male counterparts at the Firm. So, even lawyers can have a difficult time getting it right.

By now, everyone knows that at the federal level, the Family and Medical Leave Act provides unpaid leave rights to parents (mother and father) for the birth or adoption of a child. In addition to the FMLA, the following states have laws that touch upon the issue of "parental" rights, though the states vary dramatically in the rights provided:

Arkansas	Maine	Oregon
California	Maryland	Pennsylvania
Colorado	Massachusetts	Rhode Island
Connecticut	Minnesota	Tennessee
District of Columbia	Nebraska	Vermont
Hawaii	New Jersey	Washington
Illinois	New York	Wisconsin
Kentucky		

So, if you have operations in any of these states, you should be sure your policies pertaining to childbirth and adoption comply with state law.

### Compliance Tips

#### 1. Communicate.

The founder of my law firm, Lou Jackson, used to say "just talk to the people"—that was his answer to most workplace issues our clients had. And it was a good answer. It pertains to issues related to employees' families, too. When you know that an employee (or the employee's spouse or partner) will need time off for childbirth, adoption, or other family issues, engage them in a conversation about it. How much time will they need? When were they looking to take the time off? Might they need an accommodation either before the leave begins or upon return from leave? What expectations does the employee have about the leave or



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returning from it? What expectations does the company have? Iron out as many of the details as reasonably can be accomplished, and then follow up as time and circumstances change.

Of course, be sure to keep the conversation confidential. People (co-workers, clients) who don't need to know, should not be informed. This is part of the conversation with the employee: who needs to know, and when do they need to know it?

## **2. The Law.**

Sorting out the employee's and the company's legal rights under the FMLA and related state laws is complicated and not likely to get less complicated. In considering whether you can meet the employee's expectations, and whether the company's expectations align with the employee's legal rights, you must have a firm grasp of the relevant laws in the particular state.

## **3. Ensure Gender Neutrality.**

Many companies are more generous than the law requires. (That's probably in part what makes them an "employer of choice"!) Where your policy exceeds what the law requires, be sure the policy is applied evenhandedly to all eligible employees, without regard to gender (or any other protected characteristic). For example, if women are allowed 15 weeks of leave for "bonding" after the birth of a child, men should not receive less.

## **4. Plan the Reintegration to Work Thoughtfully.**

After an extended leave—say, after 12 weeks of FMLA leave—it can be difficult for the returning employee to get integrated back into the flow of work. It may take some time before the employee is again at full capacity. Consideration should be given to this need to "ramp up." For example, where the employee is subject to performance quotas, consider relaxing those quotas upon return to work for a short period of time to put her or him back on a level playing field with comparable employees.

## **5. Avoid the Trap of Stereotypes.**

The paternalistic stereotype that the mother's focus is on the family and the father's focus is on the job, if it still exists in your company, must be broken. For example, if a female employee's job required extensive travel prior to her leave, don't assume that the travel will be "too much" for her as she raises her family, or that her family demands are incompatible with her job requirements. She should return to the same job with the same performance criteria (subject perhaps to a "ramp up" period as previously discussed). Other stereotypes about gender roles also have no place at work today. Those stereotypes, based on incorrect assumptions about a particular individual, are a sure-fire path to a disgruntled employee if not to a lawsuit.

Please contact BAHRA, your attorney, or Pete Bulmer (BulmerP@jacksonlewis.com) to discuss parental leave policies or related state laws.

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