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Mass. parental leave protection extended to male employees

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With the passage of Senate Bill 865 (An Act Relative to Parental Leave) on January 7, Mass. made significant changes to its laws concerning parental leaves of absence. Most notably, the new law clarifies that male employees are entitled to receive eight weeks of parental leave and harmonizes the parental leave law with state and federal anti-discrimination laws.

Who is affected by these changes? The law applies to all Mass. employers with six or more employees. Because companies with fifty or more employees are already subject to the Family and Medical Leave Act (FMLA), which provides parental leave for both genders, small businesses will be most affected by these changes.

What are the requirements for parental leave? All full-time employees are eligible for leave if they have completed their employer's initial probationary period or been employed for three consecutive months, whichever is shorter. Eligible employees are entitled to eight weeks of leave for: (1) the birth of a child; (2) the placement of a child under age eighteen, or under age twenty-three if the child is mentally or physically disabled (e.g., fostering a child or by court order); or (3) adoption, or the intent to adopt, a child. Parental leave may be paid or unpaid. Employees may opt to use accrued PTO or sick leave, but employers cannot require them to do so. If two employees of the same employer seek parental leave regarding the same child, they are only entitled to a combined total of eight weeks of leave.

Employees must give at least two weeks' notice to their employer of their anticipated departure date and their intention to return to work following leave. Employees who, for reasons beyond their control, cannot give two weeks' notice are required to provide notice as soon as practicable.

What protections are mandated for employees? Employees returning from parental leave must be reinstated to their same (or similar) position, with no change to status, pay, length of service credit, and seniority as of the date of their leave. The law provides an exception to this requirement if similarly situated employees have been laid off due to changed economic or operating conditions. Leave must not affect vacation or sick leave, bonuses, benefits, or any other rights of employment. Employers may, however, exclude the leave period from the computation of any benefits or rights. Additionally, employers who generally cover costs of benefits, plans, and programs during leaves of absence (which would include all FMLA-covered employers) must also cover these costs for employees on parental leave.

Employers may choose to provide employees with additional parental leave beyond the mandated eight weeks. Importantly, the new law also extends the above protections to this additional leave unless employers inform employees in writing prior to parental leave (and again prior to any extended leave) that taking leave beyond eight weeks may result in denial of reinstatement or loss of other rights and benefits.

How does the law interact with the FMLA? In some circumstances, FMLA leave may overlap with

Mass. parental leave. For example, an employee on leave for the birth of a child is entitled to eight weeks of leave under Mass. law and twelve weeks under the FMLA, which would run concurrently. Moreover, the FMLA allows employers to require that employees use accrued PTO during the twelve week leave period. In other instances, however, employees are entitled to leave in addition to leave taken under the FMLA. For example, an employee could take twelve weeks of FMLA leave for another covered purpose, and then be entitled to eight weeks of parental leave under the Mass. law. Employers should act now to revise their parental leave policies to reflect these changes, which go into effect on April 7, 2015.

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