

Client Alert

Parental Leave Policies

Given the attention currently on women's rights, and specifically women's rights and equality in the workplace, it is no wonder that many companies are implementing new policies and programs designed to attract and retain women. Offering paid parental leave has become an easy way for companies to set themselves apart from the pack.

Interestingly, paid parental leave is one area where women have traditionally fared better than their male colleagues. Many companies offer separate maternity and paternity leave policies, with the former often providing several additional weeks of paid leave than the latter.

Although this type of differential treatment based upon gender has always been a form of discrimination prohibited by federal and state law, it has been a common and largely uncontested practice. As attitudes about parenting responsibilities are shifting, and more men expect -- and take -- paid parental leave, those companies continuing to offer differential benefits to men and women do so at considerable legal risk.

The Equal Employment Opportunity Commission issued high-level guidance in 2015 regarding paid parental leave policies, but given the complexity of this area, employers who likely thought their policies were lawful are now facing scrutiny. In the last few months alone, lawsuits filed against J.P. Morgan Chase (by a male employee) and Estee Lauder (by the EEOC) allege the companies' paid parental leave policies discriminate against male employees. Although both policies provide for differential benefits based upon "primary" and "secondary" caregiver status (and not gender), they are alleged to presumptively treat women as the primary caregivers and men as the secondary caregivers (meaning that they are not truly gender neutral).

The law requires employers to offer paid parental leave on the same terms to women and men. Although this seems like a straightforward requirement, navigating issues such as birth mothers' short term disability entitlements and differential benefits based upon primary versus secondary caregiver status can lead to unintentional non-compliance.

If your company offers paid parental leave, we recommend you review your policies and make any necessary updates.



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