

# ACBA - WLD Workplace Policy Committee

## Paid Parental Leave

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The WLD promulgates this sample policy as a resource to Allegheny County law firms that may consider adopting a formal policy for paid parental leave.

### Notes on Administering a Policy

- Employers have no obligation under federal or state law to provide paid parental leave.
- The sample below includes best practices, should an employer choose to implement a parental leave policy. The sample policy leaves open the amount of time an employer offers – most employers offer between 2 and 4 weeks. Some employers choose to prorate the amount of wage replacement depending on years of service. Optional language for this is suggested below.
- Employers generally offer paid parental leave in one block of time, but give some flexibility about when it can be used. This allows for an employee to stagger leave with his or her co-parent. For example, a male employee might take his paid parental leave after his spouse has concluded leave with her employer. The sample policy leaves room for customization, but most employers allow employees to take the leave within the first year after a child joins the home. Employers should consider whether they will offer this leave to both parents if both are employees. Some employers choose to limit the FMLA leave entitlement for spouses working at the same employer to provide a combined total of 12 workweeks leave during any 12 month period for the birth and care of a newborn child, or for placement of a child with the employee for adoption or foster care. This is valid under federal law, and includes all spouses as defined under the law of the state where the marriage took place, including same-sex couples. However, there is some risk in adopting this policy because it does not apply to non-married partners working for the same employer. This can leave similarly situated employees subject to different treatment and may conflict with state law.
- Law firms should address concerns about billable hour requirements, bonus eligibility and compensation for partners expressly in the policies they publish. Firms covered under the FMLA likely already prorate these expectations when employees are eligible for FMLA leave and that policy will apply when they offer concurrent paid parental leave – but smaller firms will have to add language to the sample policy such as the following: “The firm will prorate the billable hour expectation of any attorney who uses this leave.”
- To avoid litigation risk related to discrimination laws, employers should grant parental leave to parents of both sexes based on their new status as parents. In Pennsylvania, risk of discrimination claims related to parental leave arises from the fact that sex, including pregnancy, is a protected class.<sup>1</sup> Local Governments may also provide protections for marital status, familial status, sexual orientation and gender identity that make it important to offer leave evenhandedly, based on an employee’s status as a parent alone.<sup>2</sup>

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<sup>1</sup> 16 Pa. Code §§ 41.101- 41.104.

<sup>2</sup> See Pittsburgh Code § 659.01 *et seq.*; Philadelphia Code § 9-1100 *et seq.*; and Allegheny County Ordinance 26-09-OR. {00059205.DOCX}1

- As with some other states, Pennsylvania has a regulation which requires employers that give leave for childrearing or child care to extend such leave to both male and female and adoptive parents equally.<sup>3</sup> Additionally, birth fathers and adoptive mothers are similarly situated in that both become parents without physically giving birth. A policy that would provide such similarly situated employees different levels of benefits creates risk of a disparate impact on female employees.
- Foster parents may be covered under the FMLA, but are not covered under state law at this time. This is also true of families created through surrogacy. Firms should consider including placement of an adopted or foster child or child by surrogacy in its paid parental leave policy. Including these families avoids a gap in the policy should the situation arise. However, employers may consider establishing a rule allowing only one parental leave per calendar or rolling-calendar year, which also clarifies the amount of leave available in the case of multiple births/placements.
- Pennsylvania regulations expressly require employers to treat disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery as temporary disabilities under their disability leave policies.<sup>4</sup> If an employer has a short-term disability plan, then a female employee who gives birth will take her paid parental leave at the conclusion of her period of disability. For self-funded programs, employers may need to adjust the period of time for which they presume disability after childbirth when adding a paid parental leave policy.
- Parental leave is a broader term than paternity leave, allowing for leave for same-sex couples where neither parent is male. Employers should also consider taking a public stance on their support for the use of parental leave by both male and female employees, as is modeled in the statement of purpose in the sample policy below. Studies show that messages that reinforce a public support for equality and disapproval for bias actually serve to reduce bias – which, in this case, makes it more likely that both male and female employees will feel free to take advantage of a parental leave policy.<sup>5</sup>
- Employers should consider how they will administer this type of leave in the case of stillbirth or late-term miscarriage.
- Employers should consider what class of employees is eligible (full-time, part-time) and whether the employers will exclude temporary employees or whether the employer will phase in benefits by requiring a term of service.
- Employers should consider whether they will allow an employee to use this time before the birth of a child, such as in the case of an employee caring for a spouse/partner on bed rest.

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<sup>3</sup> 16 Pa. Code § 41.104.

<sup>4</sup> 16 Pa. Code §§ 41.101, 41.103.

<sup>5</sup> See A. Grant and S. Sandberg, “When Talking About Bias Backfires,” December 6, 2014:

[http://www.nytimes.com/2014/12/07/opinion/sunday/adam-grant-and-sheryl-sandberg-on-discrimination-at-work.html?\\_r=0](http://www.nytimes.com/2014/12/07/opinion/sunday/adam-grant-and-sheryl-sandberg-on-discrimination-at-work.html?_r=0).

## Sample Policy

Purpose: The firm recognizes that the addition of a child is a significant life event and that both mothers and fathers need time to bond with their new child. Therefore, the firm provides a paid parental leave benefit to legal staff and salaried employees, including lawyers, after a child joins their family by birth, adoption, surrogacy, or through placement of a foster child.

Parental leave under this policy is a paid leave intended to provide parents bonding time with wage replacement after the birth of an employee's child, a child born to a same- or opposite-sex domestic partner or spouse, a child born via surrogacy or a child adopted or fostered by the employee. Employees may take this leave in one block of time within [\_\_\_\_ days/weeks/months] after the birth or placement of the child.

### **Eligibility Requirements**

All employees are eligible for [\_\_\_\_ days/weeks/months] of paid parental leave. This leave is in addition to any period of paid medical leave under the firm's Short-Term Disability program. [Insert if the employer has more than 50 employees in the location: "This leave runs concurrently with FMLA and/or any relevant state family and medical leave."] After the paid parental leave is exhausted, the employee may charge sick leave and/or vacation leave for additional wage replacement.

The firm will continue to provide health insurance benefits during the paid parental leave under this policy at the same rate as in effect before the leave was taken regardless of length of service [Optional: "provided the employee has at least one full year of service."]

The employee must provide 30 days' notice (or as much notice as practicable if the leave is not foreseeable) to [Human Resources] of the request for leave. Please see [Human Resources] for the proper request forms.

The firm prohibits and will not tolerate discrimination or retaliation against any employee or applicant because of that person's pregnancy or parental leave. Specifically, no one will be denied employment, reemployment, promotion or any other benefit of employment or be subjected to any adverse employment action based on that person's pregnancy or parental leave. In addition, no one will be disciplined, intimidated or otherwise retaliated against because that person exercised rights under this policy or applicable law.

[Optional if there is unpaid, non-FMLA leave: "Employees not eligible for FMLA leave should refer to the Leave of Absence Policy after the period of paid parental leave is completed regarding continuation of insurance coverage for employees on unpaid leave of absence."]

NOTE: This is a sample policy promulgated by the Allegheny County Bar Association for consideration by employers. The legal landscape in this area is evolving. Any employer intending to adopt a policy governing paid parental leave is encouraged to review the policy with their own legal counsel to be sure that it is consistent with the other policies in place and to be sure that the policy complies with all of the laws that are applicable at the time of adoption.