



Parental Leave Act Strengthens Maryland Employee Leave Protections

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Effective October 1, 2014, small employers in Maryland will be required to provide employees with unpaid leave for the birth or adoption of a child under the Maryland Parental Leave Act ("PLA" or "Act"), a new law passed by the Maryland General Assembly.

Covered Employers

The PLA covers small employers that employ at least 15, but not more than 49, employees in Maryland. Regional and national employers with a total workforce of at least 50 employees and between 15 and 49 employees in Maryland will be covered by both the PLA and the federal Family and Medical Leave ("FMLA"), which also provides job-protected, unpaid leave for the birth or adoption of a child.

Eligibility and Leave Entitlements

To be eligible for leave under the PLA, an employee must have been employed for at least 12 months and have worked 1,250 hours prior to the start of the leave. Additionally, the employee must be employed at a work location in Maryland at which at least 15 employees work within a 75-mile radius in Maryland. Employees eligible for leave under the PLA also may be eligible for leave under the FMLA when their Maryland worksite is within 75 miles of a work location outside of Maryland, and the FMLA threshold of 50 employees is met between the two locations. In such a case, it is likely that the employee's PLA leave and FMLA leave for the birth or adoption of a child would run concurrently, although the question is not expressly answered by the new law.

The PLA provides that eligible employees are entitled to six workweeks of *unpaid parental leave* during any 12-month period for the birth of the employee's child or the placement of a child with the employee for adoption or foster care. The law does not define the 12-month period, so it is unclear if an employer can select the 12-month period, as employers may under the FMLA. Unlike the FMLA, the PLA does not provide employees with leave rights for one's own or a family's members' serious health condition.

Employee and Employer Notice Requirements

An employer may require an employee give at least 30 days' notice of the need for leave; however, such notice is not required in the case of a premature birth or an unexpected adoption or placement for foster care. An employer may deny requested leave only if the denial is necessary to prevent "substantial and grievous economic injury" to its operations, provided that the employer notifies the employee of the denial before the leave begins. Unlike the FMLA, an employer is not required to notify an employee that his or her leave has been approved.

Documentation to Support Need for Leave

The PLA does not require an employer to or prohibit an employer from requesting documentation to support the need for leave. As discussed below, the Maryland Department of Licensing, Labor and Regulation ("DLLR") is required to adopt regulations to implement the provisions of the PLA. The regulations may address the form of documentation that an employer may or may not be able to require at the time an employee requests leave.

Substitution of Paid Time Off and Group Health Plan Coverage

The PLA, like the FMLA, provides that an employer may require an employee to substitute any accrued, paid time

off for unpaid parental leave. Under the Maryland Flexible Leave Act, however, to the extent an employee has more than one form of paid time off available, he or she may elect the type and amount of leave to be used. For example, if a male employee requests parental leave for the birth of a child, he would be entitled to select any available, accrued company-provided leave, such as vacation or sick leave, to substitute for the unpaid parental leave. (For more information, see our article, *Amendments to Maryland Flexible Leave Act Take Effect Immediately*.) Although leave under the PLA is unpaid, if an eligible employee works on a commission basis, the employer must pay the employee during the leave any commission amounts that become due because of work the employee performed before taking leave.

Provided an employee is enrolled in the employer's group health plan, employers must maintain group health plan coverage for the duration of the leave, up to six weeks. The PLA does not require that an employer retain group health coverage beyond six weeks of leave. Additionally, as under the FMLA, the employee must pay his or her share of any group health plan premiums while on leave, and if an employee fails to return from leave, the employer may recover the premiums paid on behalf of the employee.

Job Restoration Rights

At the conclusion of PLA leave, the employee must be restored to his or her previous position or to an equivalent position with equivalent benefits, pay, and "other terms and conditions of employment." An employer may deny job restoration rights only if:

- the denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
- the employer notifies the employee of the intent to deny restoration at the time it determines that economic injury would occur; and
- where the leave has already begun, the employee elects not to return to employment after receiving notice.

Further, an employer may only terminate an employee on leave "for cause," which is not defined under the PLA.

Regulations Forthcoming, Enforcement, Private Cause of Action, and No Retaliation

The PLA mandates the DLLR to adopt regulations implementing the provisions of the PLA. The PLA also authorizes the Commissioner of the DLLR to investigate whether the PLA has been violated and to attempt to resolve the violation through mediation. The Commissioner of the DLLR also may request that the Attorney General bring an action on behalf of an aggrieved employee.

Employees also have a right to bring a private cause of action against an employer for alleged violations of the PLA. (The PLA provides that supervisory employees may not be held personally liable for any violations.) If successful, an employee may recover damages equal to the amount of wages, salary, employment benefits or compensation denied or lost, and the PLA *requires a court to award reasonable attorney's fees and other costs of the action*.

Finally, the PLA prohibits retaliation against an employee for exercising his or her rights under the Act or for making a complaint or participating in a proceeding related to the PLA.

Preparing for PLA

Employers with small numbers of employees in Maryland who will be covered by the PLA should review and revise their policies and practices to ensure compliance. At a minimum, employers should:

- consider implementing a central review process for approving and/or denying leaves under the PLA for consistent application of the law;
- consider developing a written policy for requesting leaves under the PLA;
- consider developing appropriate leave request forms to document leave requests, and approvals and denials of leave;

educate Human Resources and supervisory staff regarding obligations under the PLA; and

review and revise existing leave policies to ensure that those policies are not in conflict with the PLA.

Jackson Lewis attorneys are available to assist you on this and other workplace law developments. If you have questions about the PLA or need assistance with compliance, please contact Richard J. Hafets, at Richard.Hafets@jacksonlewis.com, Lynn A. Clements, at Lynn.Clements@jacksonlewis.com, or Donna M. Glover, at Donna.Glover@jacksonlewis.com, in our Baltimore office, (410) 415-2000, or the Jackson Lewis attorney with whom you regularly work.

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