

CALIFORNIA

EMPLOYMENT LAW LETTER

Part of your California Employment Law Service

Vol. 26, No. 14
April 25, 2016

EMPLOYEE BENEFITS

Paid parental leave gains momentum

by Michael Futterman and Jaime Touchstone
Futterman Dupree Dodd Croley Maier LLP

America's lack of government-sponsored paid parental leave has become regular front-page news, and politicians are paying attention—especially in an election year. Recently, New York state and San Francisco passed paid leave legislation to assist working families at the state and local level. And in an increasingly competitive job market, large technology companies recognize that offering generous amounts of paid leave to new parents is a valuable tool in attracting and retaining employees.

State legislators increase benefits for working families

America lags behind the rest of the developed world when it comes to parental leave. While most countries

mandate paid parental leave, the majority of U.S. leave laws do not require paid leave, making it financially difficult for parents to take time off to bond with a new child. Legislators have begun to respond to voter concerns about this issue. Slowly but surely, the tide appears to be changing.

On a national level, working parents have only the federal Family and Medical Leave Act (FMLA) to rely on for protection. The FMLA requires covered companies with 50 or more employees to provide 12 weeks of unpaid job-protected leave to eligible employees who miss work because of the birth of a child or the placement of a child for adoption or foster care. The FMLA provides no wage replacement and no protection for parents who work for small businesses or employers.

At the state level, California enacted the California Family Rights Act (CFRA), which also requires covered large employers to provide unpaid job-protected parental leave. California then went one step further and became the first state in the country to establish a paid family leave (PFL) insurance program, which provides for partial income replacement to parents who opt to take time off.

Specifically, workers who contribute to the California state disability insurance (SDI) fund are entitled to six weeks of partial pay each year while they take time off from work to bond with a newborn baby or adopted or foster child. SDI is funded by employee contributions collected through payroll deductions, so the size of the employer is irrelevant to an employee's benefit eligibility. California's PFL program provides partial wage replacement, but it does not guarantee that workers can return to their same jobs.

Other states are moving in the direction of enhanced parental leave benefits. New Jersey and Rhode Island have enacted their own systems of PFL insurance. Washington has passed legislation requiring family leave insurance, which is not yet in effect. And New York recently passed a budget that includes a landmark PFL policy granting workers 12 weeks of paid parental leave, which will be fully phased in by 2021.

San Francisco takes the initiative

Recognizing that state parental leave laws do not fully address the financial dilemma associated with parental leave, San Francisco is advancing the issue at the local level. Certain city employees are already entitled to 12 weeks of fully paid parental leave. And just this month, San Francisco became the first U.S. city to mandate six weeks of fully paid parental leave for couples in the private sector who bear or adopt a child.

San Francisco's Board of Supervisors unanimously approved six weeks of paid leave for mothers and fathers who work for companies with 20 or more employees. To qualify for the benefit, a worker must be employed with the company for at least 180 days. The law goes into effect in 2017 for businesses with 35 or more employees and in 2018 for businesses with 20 or more employees. The program requires employers to pay 45 percent of the employee's wages for up to six weeks. The remaining 55 percent of the employee's wages will be paid by PFL.

San Francisco's program far exceeds the federal and state benefit rules for private-sector employees and eliminates the necessity of workers having to decide between a full paycheck and baby bonding. Opponents argue that the new law will hurt small businesses, forcing them to maintain a smaller workforce to avoid triggering the paid parental leave obligation or move out of San Francisco, thus cutting jobs. Supporters counter that San Francisco's new policy will work to reduce income inequality by benefiting low-wage workers, many of whom do not work for large companies offering generous leave benefits.

Tech companies continue to blaze trails in parental leave arena

Generous paid parental leave policies benefit families by allowing mothers time to heal and breastfeed after childbirth, decreasing postpartum depression, and encouraging more involvement in the family by both parents. And businesses benefit from improved employee loyalty and morale and increased workforce success and continuity.

Large technology companies have recognized that paid parental leave is integral to attracting and retaining skilled talent and are therefore incentivized to offer these benefits. Amazon, Apple, Facebook, Google, Microsoft, and Netflix all offer relatively long periods of paid parental leave, and Twitter recently announced that it would soon offer full-time employees 20 weeks of paid parental leave. However, even well-defined and well-intentioned leave policies can be difficult to implement.

Workers often do not take advantage of available benefits, and when they do, their colleagues may resent them for it. Technology companies are increasingly finding themselves in the position of not just needing to offer paid parental leave to attract skilled workers but also needing to craft programs designed to retain all employees affected by such leave. Enter Etsy.

Etsy is an online shopping marketplace connecting sellers and buyers of goods. On March 15, 2016, its director of culture and engagement, Juliet Gorman, announced via the company blog that Etsy would implement a companywide policy under which eligible employees would be entitled to 26 weeks of fully paid leave when they become parents through birth or adoption, regardless of their gender, country of residence, or family circumstances.

Etsy is simultaneously piloting a new program to complement its parental leave policy. The program includes personal coaching to transition employees back into the office after parental leave and management training in softer skills, including handling the stress teammates may experience when they cover for parents on leave. Etsy employees have also published a guide to using the pump room in hopes of increasing company

support for nursing women returning to work. It would not be surprising if other companies take note of Etsy's groundbreaking new program and offer their own generous policies to better attract and retain employees.

Bottom line

Local and state governments and progressive private enterprises are increasingly developing paid parental leave policies. Nevertheless, many of the country's workers still lack basic protections or pay when it comes to parental leave. Legislators and employees are faced with the policy choice of offering needed benefits to working families while recognizing that such benefits impose economic and financial burdens on employers. The trend is moving toward increased support for working families, a direction in which other developed countries have led the way.

HR professionals and office administrators should keep a careful eye on the news and confer with legal counsel to ensure compliance with newly enacted paid leave laws

The authors can be reached at Futterman Dupree Dodd Crolley Maier LLP in San Francisco, mfutterman@fddcm.com and jtouchstone@fddcm.com.