

## Paid Family/Parental Leave programs for employees: top 10 considerations



Paid family and/or parental leave is an increasingly popular employee benefit. Studies suggest that all employees – and especially Millennials – are more likely to join and remain loyal to employers who offer these types of paid leave benefits. As a result, more and more employers are adopting these policies in order to attract and retain top talent. Further, as more states adopt legislation requiring employers to provide paid family leave benefits, some employers have decided to voluntarily offer these types of benefits to all of their employees, including employees working in states where such benefits are not legally mandated. This guide addresses the top 10 issues to consider as you evaluate what type of paid family and/or parental leave program may be best for your workplace.

### 1. What type of paid leave benefits should you offer?

Some employers offer paid leave benefits for new parents to take time off to bond with a newborn. Many employers also extend these paid parental leave benefits to cover leave for a newly adopted or newly placed foster child, and also permit employees to take paid leave to prepare for and complete the adoption/foster placement. Some employers have gone even further and have adopted very broad paid family leave benefits that also cover employees who need to be absent to care for a family member with a serious health condition or for a qualifying military exigency. These broader policies typically provide leave for the same situations that are covered by the federal unpaid Family and Medical Leave Act (FMLA).

### 2. Do you want to provide more leave to moms?

Some employers want to provide women greater leave benefits than men, largely based on the assumption that mothers are often the primary caregivers of a new child. It is important to be aware that gender-based policies raise serious legal issues under Title VII and state laws prohibiting sex discrimination. Some employers have attempted to avoid sex discrimination claims by creating programs that provide more leave to the “primary caregiver” or that provide greater leave to “birth mothers” than to adoptive parents or fathers of newborns. It is still possible that policies of this nature could be challenged as violating sex discrimination laws. It is possible for birth mothers to obtain longer paid leave benefits than others by structuring the

paid family/parental leave benefit to commence after the medical leave caused by childbirth. In that regard, many employers offer short-term disability (STD) benefits for six to eight weeks after childbirth (depending on, among other things, whether or not the delivery was Caesarean), and they draft their parental leave policies to provide parental leave benefits that commence after childbirth-related medical leave benefits. We recently have had inquiries about whether an employer can have an STD policy or program that pays a birth mother at 100% of pay while all other disabilities are paid at a lesser amount (such as 60%) of pay. You should consult counsel to discuss whether or not singling out a condition that affects only women for better treatment may create sex discrimination issues.

### 3. How much should you pay?

Leave programs may provide full income replacement, a portion of income replacement, or a gradient scale over set durations. Understanding the percentage of income replacement is vital to understanding the cost, the complexity of administration, the value of the program to potential and existing employees, and anticipated usage of the program.

### 4. How long should your paid leave be?

Will the duration of your program align with the FMLA applicable state leave laws (paid or unpaid), or will you provide a different duration? Leave duration may also vary based on the reason for the leave or other factors such as the employee’s length of service.

### 5. How does the leave interact with other leaves and/or PTO?

You should make certain that you evaluate and address how you want your paid family/parental leave program to interact with your PTO as well as with other federal or state leave laws – whether paid or unpaid. Evaluate whether you will require your program to run concurrently with existing state leave programs and whether any paid company program will supplement a state program or enable you to seek reimbursement from the state-mandated program. Likewise, you may design a program to provide all employees with equitable paid leave when the Company has employees both within and without a state(s) with mandatory paid family leave programs.

### 6. Will you allow intermittent leave?

You should evaluate whether or not you want to permit employees to take paid family/parental leave benefits on an intermittent basis or whether you will require that the leave be taken at one time. Further, you should evaluate whether or not employees can take paid parental leaves at any time during the first 12 months of birth or placement or whether you will require that leaves be taken immediately after birth or placement or within some other period of time (such as within six months of the birth or placement). If you permit intermittent leave, you need to consider what the minimum increment will be (e.g., one week, one day, one hour). We are aware of one employer that permits employees to take intermittent leave in minimum increments of two business days, expressly to allow employees to have long weekends with their families and take off Fridays and Mondays.

### 7. Which family members will be covered?

If you decide to offer paid leave to care for a family member with a serious health condition, you will need to decide which family members are covered. The trend in state paid sick leave and other legislation is to expand the categories of covered family members beyond those permitted under the FMLA (i.e., parent, child and spouse).

Many state and local paid sick leave laws permit employees to take leave to care for siblings, in-laws, grandparents and grandchildren. A recent trend is to permit leave for any person whom the employee identifies as a family member. Increasingly, legislatures are recognizing and protecting flexibility in defining family relationships.

### 8. Who is eligible for your leave?

You will need to consider whether you will have eligibility requirements and/or benefit variations related to tenure, position, hours worked or other factors. Some employers create two different leave policies – one for professional employees and one for staff.

### 9. What about job protection and benefits?

For voluntary policies (that are not legally mandated), you may not be legally required to guarantee job protection or reinstatement. Nevertheless, it may be advantageous from an employee relations perspective to provide at least some job protection so that employees feel comfortable taking the leave. You should evaluate which benefits you will continue during the leave. If the FMLA or other laws apply, you will need to comply with their requirements; otherwise, you can decide which benefits you want to make available.

### 10. What else can you do?

Some companies have adopted creative approaches to helping employees who are out on leave ease back into the workplace. For example, some allow employees on parental leave to return part-time or to work from home for a period of time before returning full-time, to ease the transition. You should also ensure your work spaces are equipped to support nursing mothers for breaks, pumping and milk storage. You can leverage existing Employee Assistance Programs (EAP) to support employees before, during and after leave. Some employers also enhance their parental leave policies by paying a monetary adoption, surrogacy or fertility benefit.

To learn more about paid family/parental leave programs, call your benefits broker, your local Sun Life Employee Benefits representative, or our Employee Benefits Internal Sales desk at 877-736-4739.

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