
The Massachusetts Supreme Judicial Court Limits Protections of State Maternity Leave Act

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In a recent decision (*Global NAPs, Inc. v. Awiszus, et al.*), the Massachusetts Supreme Judicial Court ("SJC") held that full-time employees who take a leave under the Massachusetts Maternity Leave Act (the "MMLA") are only entitled to the statute's protections for eight weeks, regardless of any promises an employer may make about extending the maternity leave.

Under the MMLA, Mass. Gen. Laws c. 149, § 105D, a female employee of a company that has at least six employees who has either finished her employer's initial probationary period or has been employed for at least three consecutive months can take up to eight weeks of leave following the birth or adoption of a child. Once the employee returns from leave, she has a right under the statute to be restored to her previous or a similar position with the same status and pay. The statute also states that an employer can provide additional rights, including additional time off, pursuant to a collective bargaining agreement or company policy.

The plaintiff in *Global NAPs* alleged that she was terminated when she tried to return to work after a maternity leave that extended beyond eight weeks. According to the plaintiff's suit, she was fired even though her employer promised that she would be allowed to take an extended leave. After she was fired, the plaintiff filed suit, alleging that the employer violated the MMLA by terminating her while she was on her extended maternity leave.

The Massachusetts Commission Against Discrimination ("MCAD"), which is charged with enforcing the MMLA, had published Guidelines stating that, if an employer grants a longer leave than required under the MMLA, but does not intend to provide full MMLA rights beyond the initial eight-week period, the employer must inform the employee of this fact in writing before the start of the leave. The SJC in *Global NAPs* found the MCAD Guidelines to be inconsistent with the plain language of the statute and that they did not have the force of law.

The SJC's opinion also added, however, that while the statutory protections of the MMLA are no longer in force after eight weeks, an employee may have a common law claim, such as breach of contract, if an employer breaks a promise to extend leave.

In response to this decision, employers should review their current practices and policies for

compliance with the MMLA. While this decision clarifies that employees who take more than eight weeks of leave following the birth or adoption of a child are not entitled to the protections of the MMLA, employers should still be cautious about promising an extension of leave beyond the eight-week period, as employees may bring common law claims such as breach of contract to enforce a promise of extended leave. Additionally, employers with 50 or more employees are reminded that, despite the outcome in this case, they are still covered by the federal Family and Medical Leave Act and must provide up to 12 weeks of unpaid leave and job protection for the birth, adoption of a child and to care for the newborn child.

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