

LAW & POLICY GROUP**GRIST**

PARENTAL LEAVE FAVORING MOMS YIELDS \$5 MILLION CLASS-ACTION SETTLEMENT

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An employer's parental leave policies have led to a \$5 million class-action [settlement](#) of a sex discrimination [complaint](#) originally filed with the [Equal Employment Opportunity Commission](#) (EEOC) (*Rotondo v. JPMorgan Chase Bank, N.A.*, No. 1:19-cv-408 (S.D. Ohio May 30, 2019)). The settlement also requires the employer to maintain a gender-neutral parental leave policy and conduct training and monitoring to support gender-neutral implementation of that policy.

EMPLOYER'S POLICY

The case concerned a company's policy of providing 16 weeks of parental leave for a "primary" caregiver and two weeks for a "secondary" caregiver. Women were automatically deemed the primary caregiver unless a father could demonstrate that the birth mother or domestic partner had returned to work or was physically incapable of caring for the new child.

EMPLOYEE'S CLAIM

A male employee [claimed](#) that the leave policy and practices used a sex-based classification and stereotype, causing sex discrimination in employment terms and conditions that violates [Title VII of the federal Civil Rights Act](#) and similar state antidiscrimination laws. The employee's wife wasn't incapacitated and was a teacher off work for the summer. As a result, the employee could take only two weeks of parental leave.

PREGNANCY DISABILITY VS. BONDING

Employers can limit leave for pregnancy, childbirth or related medical conditions to female employees, since only women are affected by those conditions. However, employers that provide paid parental leave must make it available to similarly situated men and women on the same terms, according to an EEOC [Q&A](#). The EEOC's [enforcement guidance on caregiver discrimination](#) cautions that "employers should carefully distinguish between pregnancy-related leave and other forms of leave, ensuring that any leave specifically provided to women alone is limited to the period that women are incapacitated by pregnancy and childbirth."

While Title VII does not impose any parental-leave mandate, the federal [Family and Medical Leave Act](#) (FMLA) entitles covered employees — both men and women — to take up to 12 weeks of job-protected leave to care for and bond with a newborn or a recently adopted child, as discussed further below.

INCREASED EEOC ENFORCEMENT

This settlement far exceeds a similar \$1.1 million agreement [announced](#) last year in a separate complaint (*EEOC v. Estee Lauder Cos., Inc.*, No. 2:17-cv-3897 (E.D. Pa. Aug. 30, 2017)). The employer in that case provided fathers less paid leave than mothers could take to bond with a new child after birth, adoption or foster placement. The company agreed to revise its parental leave policies to provide the same paid bonding leave to all eligible employees, regardless of gender or caregiver status. Whether these recent EEOC actions signal increased enforcement of gender-neutral parental leave policies is unclear.

PAID VS. UNPAID PARENTAL LEAVE UNDER FEDERAL LAW

The two parental-leave cases focus on employers' paid leave practices, which are voluntary benefits not required by federal law. However, employers covered by the FMLA must let eligible employees take up to 12 weeks of job-protected unpaid leave to care for and bond with a new child within one year of birth or placement for adoption or foster care. Although FMLA leave is generally unpaid, employers that provide paid vacation, sick leave or other time-off benefits may allow or — under certain conditions — require employees to use paid leave concurrently with unpaid FMLA leave.

To qualify for FMLA leave, an employee must have worked with the same employer for at least 1,250 hours in the 12 months before starting the leave. In addition, the employee's worksite must have at least 50 employees working at or within 75 miles of that location.

STATE LAWS

Some states have unpaid leave laws that substantially mirror the FMLA. Like the FMLA, these laws are gender-neutral for parental leave purposes. As of now, only seven jurisdictions require paid parental leave:

- [California](#)
- [Massachusetts](#)
- [New Jersey](#)
- [New York](#)
- [Rhode Island](#)
- [Washington](#)
- [Washington, DC](#)

These gender-neutral leave mandates typically operate through state-run insurance programs. Employers and/or employees pay premiums, and the state (or insurer) administers the program and pays the benefit. Mandated leave under these laws generally runs concurrently with FMLA leave.

EMPLOYER CONSIDERATIONS

Outside of the states listed above, employers don't have to provide paid parental leave. Businesses that opt to offer this benefit should review existing policies and practices to ensure they are gender-neutral on their face and administered that way. Any new policies should follow this same approach.

RELATED RESOURCES

Non-Mercer Resources

- [Executed Settlement Agreement](#) in *Rotondo v. JPMorgan Chase Bank*, No. 1:19-cv-408 (S.D. Ohio May 30, 2019)
- [Class Action Complaint](#) in *Rotondo v. JPMorgan Chase Bank*, No. 1:19-cv-408 (S.D. Ohio May 30, 2019)
- [Class Action Motion](#) in *Rotondo v. JPMorgan Chase Bank*, No. 1:19-cv-408 (S.D. Ohio May 30, 2019)
- [Press Release](#) on Estee Lauder Settlement (EEOC, July 17, 2018)
- [Complaint](#) in *EEOC v. Estee Lauder Cos., Inc.*, No. 2:17-cv-3897 (E.D. Pa. Aug. 30, 2017)
- [Derek Rotondo's Discrimination Charge Filed With EEOC](#) (American Civil Liberties Union, June 14, 2017)
- [Title VII of the Civil Rights Act](#) (EEOC)
- [Questions and Answers about the EEOC's Enforcement Guidance on Pregnancy Discrimination and Related Issues](#) (EEOC, June 25, 2015)
- [Enforcement Guidance: Unlawful Disparate Treatment of Workers With Caregiving Responsibilities](#) (EEOC, June 25, 2015)

Mercer Law & Policy Resources

- [Family and Medical Leave Designations Can't Be Delayed, DOL Says](#) (May 31, 2019)
- [Massachusetts Updates Draft PFML Rules, Posts Model Notice](#) (April 23, 2019)
- [New Jersey Updates, Expands Family and Disability Benefits](#) (March 26, 2019)
- [2019 Outlook for Healthcare Legislation Beyond ACA Reforms](#) (Feb. 6, 2019)

- [2019 Outlook for State Health and Leave Initiatives](#) (Feb. 6, 2019)
- [2019 State-Mandated Short-Term Disability Contributions and Benefits](#) (Jan. 31, 2019)

Other Mercer Resources

- [Think Globally, Comply Locally: How Employers Navigate Leave Laws](#) (Nov. 15, 2018)
- [Life, Absence & Disability](#)

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