

The Massachusetts Parental Leave Act (“MPLA”) applies to employers with six (6) or more employees. Eligible employees are entitled to up to eight (8) full weeks of unpaid leave for giving birth or for adopting a child. An employee who gives birth to twins is entitled to sixteen (16) weeks, and multiple adoptions should be treated the same as multiple births. The MPLA leave may be with or without pay at the discretion of the employer.

### Posting Requirements

Employers are required to post and keep posted in a conspicuous place or places upon their premises a notice describing the MPLA and the employer's policies related to the MPLA.

### Eligibility and Notice Requirements

To be eligible for MPLA leave, an employee must:

1. Complete the “initial probationary period,” if any, set by the terms of the employer; or, if there is no such probationary period, must be employed by the same employer for at least three (3) consecutive months as a full-time employee.
2. Be absent from such employment for the purpose of:
  - giving birth; or
  - adopting a child under the age of eighteen (18); or adopting a child under the age of twenty-three (23), if the child is mentally or physically disabled; or for the placement of a child with an employee pursuant to a court order.
3. Give his/her employer at least two (2) weeks’ notice of his/her anticipated date of departure and intention to return. If an employee meets these eligibility requirements, the employer must grant eight (8) weeks of unpaid maternity leave under the MPLA. An employer cannot refuse to grant MPLA leave on the grounds that doing so would constitute a hardship.
4. Any two employees of the same employer shall only be entitled to eight (8) weeks of parental leave in aggregate for the birth or adoption of the same child.

### Compensation and Benefits during Leave

Employers are not required to provide compensation during MPLA leave nor are they required to pay for any benefits during MPLA leave. However, if an employer generally provides pay, benefits or the costs of such benefits to employees on non-MPLA leaves, the employer must provide the same such pay, benefits or costs to employees on MPLA leave.

### Use of Vacation, Personal and Sick Time

Employers cannot require employees to use accrued paid vacation or personal time off (PTO) concurrently with all or part of MPLA leave. The employee may voluntarily choose to use eligible accrued PTO or vacation time at the employer’s discretion.

### Leave Longer than 8 Weeks

If the employer agrees to provide parental leave for longer than 8 weeks, the employer shall

The contents of this document are for illustrative purposes and only for clients of HR Knowledge, Inc. This material is provided as general information and is not a substitute for legal advice. Copyright © 2016 HR Knowledge, Inc. All Rights Reserved.

**not** deny the employee the rights under this section unless the employer clearly informs the employee in writing prior to the commencement of the parental leave, and **prior** to any subsequent extension of that leave, that taking longer than 8 weeks of leave will result in the denial of reinstatement or loss of other rights and benefits.

### **Job Restoration**

Upon return from MPLA leave, the employee must be “restored to their previous position, or similar position, with the same status, pay, length of service credit and seniority” as the date the leave began.

### **Relationship between MPLA and FMLA**

Employers with fifty (50) or more employees must provide up to twelve (12) weeks of Family and Medical Leave Act (FMLA) leave for eligible employees. Employees in Massachusetts giving birth or adopting a child may be entitled to leave under both the MPLA and the FMLA. While FMLA and MPLA leaves typically run concurrently, there are times when they do not. For example, a pregnant employee might be entitled to twelve (12) weeks of FMLA leave due to pregnancy-related complications and still be entitled to eight (8) additional weeks of leave under the MPLA after giving birth.

### **Parental Leave Checklist**

*\*Please note that these guidelines are for Massachusetts-based leave that is non-FMLA leave.*

#### **Step 1. Notification Prior to Leave**

The employee must notify his/her direct manager and/or human resources department of the need for maternity/paternity leave as soon as is practical but no less than two (2) weeks prior to the date of departure. The employer may request written notification via a “Maternity/Paternity Leave Request Form.” If you need a sample form to use, please contact your Client Account Manager at HR Knowledge.

The employer must notify the employee as to whether he/she is eligible for parental leave as soon as possible after an employee has informed the employer of the need for leave. If the employee is eligible for leave, continue to Step 2. If the employee is NOT eligible for leave, stop the process and inform the employee that he/she is not eligible.

#### **Step 2. Important Dates and Paperwork Prior to Leave Beginning**

The employer and employee both have responsibilities to make sure there is an understanding of key dates related to the leave in order to ensure the employee understands his/her rights and responsibilities and for the employer to ensure a smooth handover process, allowing the business to continue running smoothly.

### A. Employer Responsibilities:

The employer should provide the employee with a copy of the company maternity/paternity leave policy.

The employer should meet with the employee to discuss how the leave will be managed and how to best prepare for their absence. For example, if another employee will be covering the employee's duties during the leave, the employer should arrange appropriate handover/transfer of information meetings prior to the leave.

The employer should discuss the benefits of a "Keep in Touch" plan during the leave and determine the employee's preferred method of communication while on leave.

The employer should inform the employee as to whether the leave will be paid or unpaid and his/her entitlement to benefits.

- The MPLA does not require that leave be paid or that an employer pay for the costs of any benefits during the maternity leave. However, if an employer generally provides pay, benefits or the costs of such benefits to employees on non-MPLA leaves of absence, the employer must provide the same such pay, benefits or costs to employees on MPLA leave. HR Knowledge suggests employers have a clear policy on how they handle pay and benefits for parental leave in their employee handbook.

If the employee is required to pay for his/her portion of the benefits, the employer must inform the employee of the process to submit payments.

The employer must inform the employee of his/her options for flexible working arrangements, if any, when returning from leave. The employee should be aware that if he/she wishes to make any requests for an alternative work arrangement that he/she will need to do so well in advance of his/her return-to-work date.

### B. Employee Responsibilities:

The employee must review the company's maternity/paternity leave policy.

If the employer has a short-term disability (STD) plan and the employee believes he/she is eligible:

- The employee must contact the disability provider to obtain an STD claim form at least thirty (30) days prior to delivery.
- If HR Knowledge is your benefit provider, you can obtain the STD claim form by emailing [benefitssupport@hrknowledge.com](mailto:benefitssupport@hrknowledge.com).
- The employee must submit the completed STD claim to the insurance carrier no later than fifteen (15) days prior to the expected delivery to ensure timely payout of benefits after the elimination period has been fulfilled.

### Step 3. Keeping in Contact and Recordkeeping

While on leave, ongoing communication between the employee and employer will make the process run much more smoothly.

### A. Employer Responsibilities:

The employer should advise the employee that a human resources manager will be in touch shortly before the employee is due to return to work to discuss the arrangements of his/her return. This would include a discussion regarding his/her intent to return and whether he/she is requesting an alternative work arrangement.

The employer should be tracking the leave dates via the company's time and attendance tracking systems.

The employer must keep all leave-related records are to be kept confidential and should be accessed by authorized human resources personnel only; this includes requests for leave and responses to the employee.

If the employee will be receiving pay/partial pay during the leave period, the employer must provide the pay amounts to the payroll department/provider each week.

- This includes if the employee will be utilizing accrued and unused paid time off during leave.

### B. Employee Responsibilities:

The employee must confirm with the HR department the last day worked and approximate return-to-work date.

If the employee has been approved for an STD claim during leave, the employee should notify the STD carrier on the first day of leave.

The employee must notify the HR department of the birth or adoption date of the child as soon as it is known in order to process any requested changes in medical coverage.

### Step 4. When the Employee Returns to Work, the Employer Must Return the Employee to the Same or Nearly Identical Position

The employee must notify the HR department of his/her return-to-work date.

The employer should inform the employee of approval/denial of flexible work arrangement requests.

If the employee has been on unpaid leave, the employer must inform payroll of the date the employee is due to return from leave to ensure their pay is reactivated.

The employer should schedule a handover meeting between the employee-on-leave and the employee that has been maintaining the employee-on-leave's day-to-day responsibilities and identify if any training and/or re-induction needs to take place following the employee-on-leave's return.

If the employee is breastfeeding, the employer must advise her of the company's "Nursing Mothers Accommodation" policy and ensure appropriate facilities are made available to her if necessary.

The employer should have weekly meetings with the employee on his/her initial return from leave to encourage discussion around any issues that may have arisen since returning from leave.



## MPLA Compliance Guidelines

For more information and resources related to Massachusetts maternity/paternity leave not covered under FMLA, visit the Massachusetts Commission Against Discrimination website. Answers to Frequently Asked Questions can be accessed here: <http://www.mass.gov/mcad/faq.html>.

Every company should have a formal maternity leave or parental leave policy. By establishing such a policy, employers improve employee retention, increase productivity and help protect the company from discrimination lawsuits. We are available to assist you in developing a maternity leave policy for your company.

Thank you for choosing HR Knowledge. We are ready to help you meet your HR objectives.