



MANCHEL BRENNAN

COUNSELLORS AT LAW

CLIENT ALERT

(JULY, 2008)

UPDATE: MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION CLARIFIES POSITION ON MATERNITY LEAVE FOR MEN

As discussed in the June Client Alert, Massachusetts Commission Against Discrimination (“MCAD”) Commissioner Martin Ebel recently caused some controversy by publicly stating that the MCAD may reinterpret the Massachusetts Maternity Leave Act (“MMLA”) to apply to men. According to Commissioner Ebel at that time, Massachusetts employers must provide maternity leave under the MMLA to men as well as women, even though the statute specifically applies to “female employees” only.

However, the MCAD’s three Commissioners, including Commissioner Ebel, recently submitted a Letter to the Editor to the Massachusetts Lawyers Weekly newspaper which sought to clarify the MCAD’s position on this issue. The Letter to the Editor restated the MCAD’s longstanding position that “while the Commission has discussed this issue, it has made no determination that the MMLA, as currently written, requires employers to provide paternity leave.” Thus, it appears that the MCAD may be “backtracking” somewhat from Commissioner Ebel’s recent public statements.

The Letter did, however, provide some problematic hypothetical scenarios that have been identified by the MCAD in the past. The Letter stated, “[p]roviding maternity benefits in excess of eight weeks required by the MMLA to female employees only, and not to males, would in most circumstances constitute sex discrimination in

violation of Chapter 151B. . . . Furthermore, the commission has discussed the concern that refusal to grant an adopting father leave commensurate with the requirements of the MMLA may, in some instances, be problematic.”

Where does this leave Massachusetts employers? The Letter confirms that the MCAD has not officially changed its longstanding position on this issue. Specifically, the MMLA technically only applies to female employees. However, in certain scenarios, such as where the employer provides more generous leave or benefits than required by the MMLA to women only, and not men, the employer could be deemed to engage in gender discrimination. Thus, at this point, employers would be wise to review their leave policies to determine whether any adjustments are necessary. Where an employer only provides the leave and benefits required by the MMLA to eligible female employees, and no more, the employer would be justified in not offering the same leave and benefits to male employees. Where the employer provides leave or benefits which are greater or more generous than required by the MMLA to eligible female employees, the employer should consider providing such leave and benefits to eligible male employees as well (to avoid any potential gender discrimination claims).

Please feel free to contact us if you have any questions or require assistance in reviewing your leave policies.