

How the Pandemic Changed Parental-Leave Policies

Knowledge workers are more comfortable combining leave and some work

By Lin Gensing-Pophal

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Remote and hybrid work during the pandemic uprooted many policies and procedures that companies had long held to, such as requiring employees working from home to ensure they weren't also caring for others while doing so. During the pandemic, as employees became responsible for home-schooling children or caring for immediate or extended family members, they and their employers discovered that they *could* be productive while juggling work and home responsibilities.

Employers are now weighing changes to their company policies to reflect what they've learned.

Follow the Law

Despite massive changes to the work/life experience during the past two years, employers with 50 or more employees still must make sure their leave policies comply with the Family and Medical Leave Act (FMLA).

"The basis for the FMLA is that you get to take protected leave" with the promise that your job will be there for you when you return, said Phillip J. Strach, a partner with law firm Nelson Mullins in Raleigh, N.C. Employers that allow employees to say, "I can work from home, so I'm not going to take any maternity leave" are taking a risk, he warned.

In addition to governing how much leave time employers must allow, policies should not be limited to new mothers, said Orlando-based Stefanie Camfield, assistant general counsel and HR consultant with Engage PEO, a professional employer organization providing HR outsourcing services. "Leave to care for a newborn is no longer just for mothers giving birth," she noted. "Fathers and non-birthing parents are increasingly taking on a caregiving role for their children, and studies show that both fathers and non-birthing parents and children benefit from early bonding."

As a result, it is important to have an inclusive parental-leave policy that also accounts for fathers as well as adoptive parents, she advised.

Beyond doing what's required by federal and state law, employers today are focusing on offering more flexibility and choice for new parents in an effort to compete in a tight labor market.

Growing Flexibility

"Working from home provides a unique opportunity for employers to offer more flexibility when it comes to parental-leave policies," Camfield said. "The key here is for employers to allow the employee to take the lead on returning to work before the expiration of any protected leave, such as that provided under the [FMLA] and the California Family Rights Act," she said.

Once the leave is expired, the employee is expected to return to work full time, she noted, and "keeping an active dialogue and making sure the employee is integrating back into work well is vital for success."

For example, a new parent may request to work a flexible schedule or to work from home, Camfield explained. The employer could offer the option for the parent to gradually return to the physical workplace once the federally- or state-mandated leave has ended. This kind of flexibility and ongoing dialogue "can lead to increased employee morale and retention," Camfield said.

Deborah Hanus, CEO of Sparrow, a leave management software firm in San Francisco, said the most notable shifts she's seen in parental-leave policies "are less about the technical aspects of the policy—such as how many weeks of pay, length of time off, forms to complete, etc.—and more focused on supporting employee wellness and destigmatizing caregiving responsibilities."

Vermont-based Bobbie, an organic baby formula company, is a case in point. The company recently announced a new policy that provides up to a year of leave for birthing and non-birthing parents. This includes four months of paid and eight months of unpaid leave.

The policy was created by co-founder and chief operating officer Sarah Hardy and is, the firm says, the first of its kind for a company with fewer than 60 employees. To encourage others to follow their lead, it has posted a playbook (<https://www.hibobbie.com/pages/take-our-leave>) explaining the policy.

Strach said employers are becoming more flexible about leave time in general. "They've broadened their leave policies, and not only in terms of the amount of time that they're letting people take but by being more flexible about when they can take it."

Employers are also, he said, being more flexible about telework, having realized during the pandemic that working from home—or somewhere else—can work.

Employers don't really need to be concerned about *where* employees are working from, Strach said, "as long as they have access to the equipment they need to do their jobs, including Wi-Fi, and are accessible during the hours that the employers need them to be accessible."

What that can mean for employees is the ability to take what has come to be called a "workation"—taking the computer to a tropical location, for instance, and working from the beach.

Of course, working while on maternity leave or vacation only "works" if you're a knowledge worker whose job is typically done on a computer, which excludes salespeople, warehouse workers, onsite service people and anyone else who, by necessity, must be physically present at a worksite.

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Policy Considerations

Having a written policy or individualized work agreement in place is crucial, Camfield said. These, she advised, should address:

- The establishment of working hours.
- The employee's responsibility to document working hours and leave hours.
- A schedule for transitioning back to the office, or to regular working hours for remote work.
- Reasons to terminate the agreement.

"The agreement should outline the expectations for work hours and having reliable child care during those hours so that work is not impacted by the employee providing child care," she said.

As with all leave policies, Camfield cautioned, "it is crucial that employees are treated equally when it comes to being approved to work a flexible schedule." Not approving a flexible schedule for one employee but doing so for another who is similarly situated may lead to a claim of discrimination.

"The pressure is on for companies to learn what benefits matter most to their people and balance that with what is aligned to the goals of the business," Camfield advised.

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