



**PARENTAL LEAVE POLICIES AND
PRACTICES FOR ATTORNEYS**

COMMITTEE ON WOMEN IN THE PROFESSION

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THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 WEST 44TH STREET, NEW YORK, NY 10036

REPORT OF THE NEW YORK CITY BAR'S COMMITTEE ON WOMEN IN THE PROFESSION REGARDING PARENTAL LEAVE POLICIES AND PRACTICES

I. INTRODUCTION

Parental leave policies need to balance an attorney's family needs upon the birth or adoption of a child with the employer's business needs. Recognizing the need for such balance and the lack of practical information about the parental leave practices and policies of New York City legal employers, the New York City Bar's Committee on Women in the Profession (the "Committee") decided to study this issue and release a report regarding parental leave policies and practices for attorneys.

In addition, there has been significant media attention focused on the issue of new mothers who leave the workforce and later want to rejoin it (often referred to as "re-entry"). The Committee also hopes that this report will focus attention on how supportive parental leave policies partially can address the re-entry issue. For some attorneys, a supportive parental leave policy may provide them with sufficient leave time to enable them to avoid having to exit the workforce and later reenter it.

In preparing this report, the Committee employed a three-prong approach. First, it prepared and disseminated a survey to legal employers in the New York City area about their parental leave policies and practices for attorneys and then analyzed the results of the survey. Second, it reviewed parental leave policies of other area employers, both within and outside the legal profession, and numerous articles and studies on the issue. Third, it drew on the Committee members' experiences and thoughts with the view of being practical and responsive to the needs of both attorneys and their employers.

This report includes the Committee’s survey findings and its recommendations for model parental leave policies and practices. It also contains a discussion of the business case supporting the implementation of strong parental leave policies. A “Tip Sheet” is provided at the end of the report to assist attorneys in evaluating parental leave policies and practices and negotiating for parental leave with current and prospective employers. It is the Committee’s hope that this report will provide attorneys and their employers with the necessary information and tools to advocate for and develop and implement these important policies.

A. SUMMARY OF FINDINGS

Survey responses indicate that parental leave for the birth or adoption of a child increasingly is available in some form to attorneys working in New York City. The variance among specific leave policies may be attributed to many factors, including the number of employees (and whether the employer is subject to relevant laws, such as the Family Medical Leave Act (“FMLA”))¹, the type of organization, and management commitment to strong parental leave policies. In practice, however, the Committee found that even when an employer has a supportive parental leave policy, attorneys often can be reluctant to take the entire amount of the leave due to a fear, real or perceived, that extended leaves are detrimental to career advancement.

As a general matter, large law firms responding to the survey appear to provide stronger parental leave policies than other legal employers. Some job-guaranteed leave, with at least partial pay, is offered almost universally to attorneys following the birth of a child. In contrast,

¹ 29 U.S.C. § 2612(a). Under the FMLA, eligible employees are entitled to up to a total of 12 weeks’ unpaid leave during any 12-month period for the birth and care of a newborn or adopted child.

however, benefits for adoptive and non-birth parents² – including, in particular, any significant amount of paid leave – are not as widely available. Encouragingly, though, the trend among employers in general appears to be moving toward implementing parental leave policies that offer the same parental leave to mothers who give birth and to parents who adopt children.

The Committee believes that the overall results of the survey illustrate a growing recognition among New York City legal employers of the importance of implementing strong parental leave policies. It is the Committee's hope that, following the recommendations in this report and building on existing policies, the New York City Bar will help lead the way toward the development and effective implementation of quality parental leave policies that benefit both attorneys and the organizations that employ them. In turn, the Committee hopes that these actions will result in attorneys' taking the amount of leave within the stated policies they desire rather than the amount that they perceive they can take without career damage. The Committee also hopes that the implementation of these quality parental leave policies will apply to and benefit all employees in the legal profession, not just attorneys.

B. SUMMARY OF RECOMMENDATIONS

The Committee recommends that, at a minimum, law firms and other legal employers formally implement the following policies for their attorneys:

- Three months' job-guaranteed leave with full pay for new parents, with no loss of seniority or annual salary increase.
- An additional nine months' unpaid job-guaranteed leave.
- Continuation of health insurance coverage and other benefits for the period covering both paid and unpaid job-guaranteed leave.

² The term "non-birth parent" as used herein refers to the husband or partner of a woman who gives birth.

- Reimbursement for adoption expenses.

Of course, the Committee recognizes that it may not be feasible for small law firms to fully implement some of these recommendations and that reimbursement for adoption expenses may need to be limited to a reasonable amount.

In addition to the implementation of these recommended policies, it is critical for employers to create a culture that supports these policies and ensure that parental leave practices are consistent with the formal policies. To that effect, the Committee recommends that law firms and other legal employers take the following actions:

- Develop a transparent parental leave policy and make it readily available to all employees (for example, by including the policies in the employee handbook and posting them on relevant internet/intranet sites).
- Create an environment that encourages the use of parental leave at all levels of seniority and take steps to avoid the perception by employees that they will be penalized for taking parental leave.
- Facilitate the reintegration of attorneys returning from parental leave (for example, by maintaining communication with attorneys on leave, exploring flexible work arrangements for those attorneys returning from leave, and maintaining available training and client contact throughout the leave and establishing a working parent group to assist attorneys transitioning back to work from parental leave).

C. THE BUSINESS CASE FOR STRONG PARENTAL LEAVE POLICIES

Strong parental leave policies have significant business and social benefits. For the employer, such policies favorably can impact the bottom line in the form of (1) greater employee loyalty and productivity, (2) more successful recruitment efforts, especially amongst women, (3) increased employee retention, and (4) enhanced client satisfaction and retention and business

development. Strong parental leave policies also have important social benefits including, for example, fostering parent-child bonding and promoting equality in the workplace.

Although legal employers initially may believe that parental leave policies are costly, the failure to provide strong leave policies ultimately may cost employers significant talent, money, and competitive position. Overall, these costs may outweigh the expenses associated with strong parental leave policies.

1. Productivity

Studies reveal that employees who have utilized strong parental leave policies tend to be more committed to their employer and less likely to pursue other job opportunities.³ In addition to engendering institutional loyalty, such policies promote increased productivity, employees are more engaged in workplaces that recognize the importance of time for family or other outside activities and are nearly three times as likely to report job satisfaction, which is a factor linked to productivity.⁴ Employers contemplating the implementation of a formal parental leave policy should consider such data carefully as it suggests that generous policies may increase profits and improve work product.

2. Recruitment

Strong parental leave policies enhance recruitment efforts in at least two respects. First, an increasing number of law school graduates – both men and women – are seeking employment that allows them to develop as attorneys without sacrificing their personal and family lives. In a 1998 study by the National Association for Legal Professionals Foundation (“NALP”), more

3 ABA Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice*, at 21 n.2 (Chicago: The Commission, 2001) (citing Vogt and Richards, *Keeping Good Lawyers*, at 71).

4 Bond, *et al.*, *Flexibility: A Critical Ingredient in Creating an Effective Workplace*, at 8-10, <http://www.familiesandwork.org/3w/research/3w.html>.

than 33% of men and nearly 66% of women surveyed reported that work/life balance was one of the top three reasons they chose their employer.⁵ This rising interest in work/life balance is one of the major trends now affecting attorney recruitment.⁶

Second, these policies increase retention, particularly among women, who now make up half of most graduating law school classes. At a time when the number of law school graduates is stagnating while at the same time law firms' hiring needs are increasing, an employer that does not actively seek to hire and retain women will not be able to obtain the number of top quality lawyers that it needs thus putting it at a competitive disadvantage. As a result of the increased retention of women, legal employers also will have a more diverse workplace of senior female attorneys and partners. This, in turn, will attract more women candidates, who will recognize that the employer is committed to the retention of women on a long-term basis.

3. Employee Retention

Legal employers devote significant resources to recruiting recent law school graduates and lateral hires, training these attorneys, and developing their expertise, but attorneys sometimes leave before a significant return on that investment can be realized (albeit for a variety of reasons). According to a 2005 NALP study, 77% of women associates had left their firms within five years (55 months).⁷

5 National Association for Legal Professionals Foundation, *Keeping the Keepers: Strategies for Associate Retention in Times of Attrition*, at 15 (1998) (citing Catalyst: *Making the Case*, Exec. Summary at 9 (2001)). Responding to this trend, NALP has posted on its website the Survey of Associate Parental Leave Benefits prepared by the American Bar Association Young Lawyers Division Women in the Profession Committee. This report includes a chart summarizing the parental leave policies of almost 50 firms nationwide.

6 Cherie Conrad, *Marketplace Trends: A Look at the Bigger Picture*, NALP Bulletin, at 9 (Apr. 2005).

7 National Association of Legal Placement, *Toward Effective Management of Associate Mobility: A Status Report on Attrition*, (2005).

Every one of these lawyers represents a lost investment in recruitment and training, the cost of which can amount to 150% of an attorney's annual compensation.⁸ Retention is especially critical when an individual attorney's level of skill and experience cannot readily be replaced, or when disproportionate rates of attrition impact firm culture. Although the 2005 NALP study looked at the issue in the law firm context, the conclusions the study reached apply with equal force to other legal employers.

To increase retention rates, legal employers need to respond to the increasing demand for work/life balance. Many attorneys increasingly cite work/life balance as one of the factors affecting their decision to leave a firm.⁹ Strong parental leave policies reflect an employer's view of the importance of family and a concern with work/life balance and thus are a critical component of attorney retention. In addition, strong parental leave policies allow those new parents that want more time to be with their child to have such time and thereby may avoid those parents leaving the workforce.

4. Client Satisfaction and Retention and Business Development

Strong parental leave policies can promote client satisfaction and retention as well as business development in a number of ways. While in the short term, any type of leave that is taken by an attorney can have a negative impact on a pending matter, in the long term, the benefits of supportive parental leave policies outweigh the short term disruption.

First, increased retention benefits legal employers by serving the needs of corporate and individual clients, both of which have an interest in retaining attorneys who have been working

8 ABA Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice*, at 15 (2001) (citing ABA Commission on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession*, at 23-25 (2001)).

9 National Association of Legal Placement, *Toward Effective Management of Associate Mobility: A Status Report on Attrition* (2005).

on their matters. Second, as clients increasingly demand diversity among their outside counsel, law firms that lack diversity risk losing business.¹⁰ Corporate clients are beginning to hold law firms accountable for hiring practices; beginning in 1998, more than 500 corporations pledged to give “significant weight” to outside counsels’ “commitment and progress in the area of diversity.”¹¹ These companies have signed onto the “Call to Action,” pursuant to which they agree to work with only those law firms that have “consistently taken action” to increase the number of women and minority lawyers they hire and retain.¹² Both the New York State Bar Association and the New York City Bar now support efforts to require law firms to disclose the composition of assigned legal teams.¹³ Strong parental leave policies and practices, such as those recommended by the Committee in this report, can foster such hiring and retention.

Finally, attorneys are more likely to try to bring business to their law firms if their firms’ policies encourage long-term commitment between employer and employee. Accordingly, strong parental leave policies can increase business development.

II. THE SURVEY

The survey was disseminated beginning in the summer of 2005 and continuing through January 2006 to the 118 law firms and corporate law departments that then were signatories to the New York City Bar’s Statement of Diversity Principles. It also was disseminated to approximately 49 other New York City-based law firms, 44 New York City corporate law departments, 10 area law schools, 20 government legal employers in New York City, and 10

10 Melanie Lasoff Levs, *Call to Action Sara Lee’s General Counsel: Making Diversity a Priority*; *DIVERSITY & THE BAR*, (Jan./Feb. 2005); see also Al Driver and Charles R. Morgan, *Legal General Counsel – and their Law Firms – Up the Path to Diversity*, The Metropolitan Corporate Counsel, Mar. 2006, at 47.

11 *Id.*

12 Carol Hymowitz, *High Power and High Heels*, Wall St. J., Mar. 27, 2007, at B1.

13 Thomas Adcock, *Law Firms Agree to Give Clients Diversity Data on Legal Teams*, N.Y.L.J., May 13, 2005.

legal not-for-profit corporations in New York City. The survey also was provided to legal employers of members of the Committee and entities suggested by Committee members including small, medium, and large law firms. Participants were informed that their individual responses would be kept confidential.

In addition to asking respondents for basic demographic information (*e.g.*, the type of organization, the number of attorneys employed, and whether written policies existed), the survey asked questions relating to job-guaranteed leave policies and payment policies for birth mothers, adoptive parents, and non-birth parents. The survey also asked respondents for information about policies and practices relating to attorneys returning to work following parental leave.¹⁴

Forty-three employers responded to the survey: 31 law firms (large, medium, and small), six corporations, three not-for-profit corporations, two government offices, and one university.¹⁵ A subcommittee of the Committee met through the early part of 2007 to analyze the survey responses. The results of this analysis are set forth below.¹⁶

A. PARENTAL LEAVE – BIRTH MOTHER

Virtually all legal employers responding to the survey offer parental leave to attorneys who have given birth. The length of available leave, however, varies, as do the policies regarding pay. While job-guaranteed leave and at least partial pay may be legally mandated in

14 A copy of the survey is appended to this report.

15 Although the response rate may not permit statistically significant conclusions to be drawn, the responses provide extremely useful information from which to assess and make recommendations about parental leave policies.

16 While important, parental leave policies for non-attorneys and leave policies regarding elder care and other dependents were not within the scope of the survey and, therefore, are not addressed in this report.

the case of many employers (*i.e.*, by the FMLA, the Pregnancy Discrimination Act,¹⁷ and/or state laws), certain benefits, such as additional leave and full pay for the entire leave, are not offered as frequently. In addition, the survey results indicate that employers should strengthen parental leave policies to ensure that attorneys are able, if they so desire, to take available leave, including creating a culture in which employees are not penalized (or do not perceive that they will be penalized) for taking parental leave.

1. Leave Policies

Most survey respondents have written parental leave policies and, although the specific policies vary, all generally cover leave for birth mothers.¹⁸ Many large law firms include on their websites a general description of their parental leave policies, including those for birth mothers, as part of their recruiting information.

Only three of the 43 respondents have no written policy. All three of these respondents employ fewer than 50 lawyers. In the absence of a written policy, one of these employers decides whether to grant parental leave on a case-by-case basis, another uses a “short-term illness” policy that allows for up to 12 weeks’ leave with pay and the third follows the FMLA and provides unpaid leave for up to twelve weeks.

The categories below of “job-guaranteed leave without pay” and “paid leave” track two basic questions raised by those considering parental leave. First, “will I have my job when I return?” And, second, “will I be paid while I am on leave?” The survey demonstrated that the more widely-offered leave mirrors the FMLA and is job-guaranteed leave without pay, during

¹⁷ 42 USC 2000e(k).

¹⁸ As used in the survey, the term “parental leave” encompasses paid, unpaid, or partially-paid leave.

which the employee's current position, or an equivalent position, is available to the employee when he or she returns to the employer from leave.

a. Job-guaranteed leave without pay

Almost all respondents (42 of 43) offer job-guaranteed leave to mothers after childbirth. Respondents were asked how many additional weeks of job-guaranteed leave they offer to mothers after childbirth, beyond the 12 weeks mandated by the FMLA (if applicable).¹⁹ The responses vary widely, ranging from no additional time to a maximum of nine months of leave (in addition to 12 weeks mandated by the FMLA). Twenty-five of forty-two respondents who provide leave to mothers after childbirth provide some additional time beyond the FMLA-mandated 12 weeks. The amount of time most commonly offered by those employers is an additional 12 weeks. Some respondents provide additional job-guaranteed leave to all attorneys, while others provide it on a case-by-case basis.

b. Paid leave

For birth mothers, the survey asked about the pay practices for both the short-term disability leave period (typically six weeks) and leave that extended beyond the short-term disability period. In general, the majority of law firm respondents provide 12 weeks' paid maternity leave (inclusive of short-term disability). Non-law firm respondents have more varied practices regarding paid leave.

i. Short-term disability

Respondents were asked to describe their usual pay practice for women during the period of short-term disability before and after childbirth, excluding vacation, sick, and personal time.

¹⁹ Survey questions concerning leave for childbirth assumed a normal, medically uncomplicated delivery, *i.e.*, no additional physical disability issues.

Full pay for the short-term disability period, which typically is six weeks, is offered by 29 of the 43 respondents.²⁰ Another eight respondents provide full pay for part of the short-term disability period followed by partial or pro-rated pay, and five respondents provide only the partial pay mandated by state law. Twenty-five of the 43 respondents do not consider seniority when determining the pay benefit during the period of short-term disability. For those that consider length of service, eight have a one-year minimum and the remainder require anywhere from one month to six years.

ii. Leave beyond short-term disability

Almost half of the 43 respondents provide paid leave for some period of time beyond the period of short-term disability. Of these 23 respondents, 18 employers – mostly large law firms – provide full pay for an extended period of time beyond the short-term disability leave, while five other respondents provide full pay for some more limited time beyond the short-term disability leave.

iii. Minimum length of service

The survey showed that length-of-service requirements for taking leave beyond short-term disability are similar to those requirements for short-term disability: sixteen respondents reported that they have a length-of-service requirement, and twenty-four reported that they do not. As with short-term disability, the most common length of service required to receive the maximum pay benefit for those employers that had such a requirement is one year (eight out of the 43 respondents), with minimum service ranging from one month to two years. In general,

²⁰ Under New York State law, employers must maintain short-term disability insurance for their employees under a plan that provides the employee with one-half of the employee's weekly wage, to a maximum of \$170 per week for the period of short-term disability. NY Workers' Compensation Law Section 204.

length-of-service requirements are used by respondents to trigger the leave benefits beyond short-term disability, but the length of service does not affect the amount of the benefit.

iv. Health insurance

Regardless of legal employers' pay practices, survey responses suggest that employers often continue to provide health insurance coverage during a birth mother's leave beyond the short-term disability period. Thirty-nine of 43 respondents provide health insurance coverage for the period of any leave provided to the birth mother.

2. Leave Practices

Beyond gathering information regarding formal policies, the survey sought to assess how these policies are implemented and used. Accordingly, the survey asked how many lawyers from all categories took job-guaranteed leave for childbirth or adoption during the year prior to the survey.

The amount of time taken by women attorneys at law firms after childbirth did not vary greatly. Slightly more than one third of the law firms whose female attorneys took leave for childbirth reported 12 weeks as the most common length of the leave. Approximately 20% of the law firms reported that their female attorneys took between 14 and 16 weeks' leave for childbirth. Thus, more than half of the law firm respondents reported that the most common amount of leave for women attorneys after childbirth was 16 weeks or less. The remaining law firms reported that the most common amount of leave for women attorneys after childbirth was between 17 and 26 weeks, with most of these leave periods lasting fewer than 20 weeks.²¹

21 A 2003 NALP study concluded that 95% of attorneys at law firms that had a parental leave policy were availing themselves of the leave provided by such policy, at least in part. See *New Research from the NALP Workplace Questionnaire* (Feb. 2004), <http://www.nalp.org/content/index.php?pid=194>.

Interestingly, where firms offered more than 12 weeks' leave to women after childbirth, their attorneys appear not to have taken such additional leave.²² Rather, the most common amount of leave taken by women attorneys after childbirth remained at 12 weeks, and the average amount of leave taken by women after childbirth was clustered around 16 weeks, even where the firm offered some additional leave. On the other hand, law firms that provided more than 12 weeks' leave tended to report a higher number of weeks taken by women after childbirth, although still well below the number of weeks allowed under the policies. These data suggest that there is a breaking point beyond which women either (i) do not feel comfortable taking all of the leave that is offered perhaps because of a fear that client relationships cannot be maintained or that career advancement might be adversely affected if they take an extended leave,²³ (ii) do not want to take all of the leave that is offered, or (iii) want to, but cannot, take all of the leave that is offered due to the fact that the leave would be unpaid.

Law firms were asked to break down the numbers of female associates, counsel, and partners who took parental leave after childbirth.²⁴ The most common amount of leave taken by women associates after childbirth ranged from 12 weeks to 26 weeks, with 12 weeks being the most common.

The amount of leave taken by women counsel after childbirth (of which there were only 15 reported among all respondents) varied from a low of 1.4 weeks to a high of 30 weeks. The

22 At law firms with more than 200 attorneys, parental leave for natural childbirth predominantly was taken by associates. Several factors may contribute to this distribution, including the low number of women partners and the timing of career and parenthood.

23 In a report on certain Sacramento law firms and corporate legal departments that have pledged to increase the number of women partners and counsel, it was acknowledged that "it takes a strong message from firm management to get women to take advantage of policies spelled out on paper." See Kathy Robertson, *Cracks in the Ceiling*, Sacramento Bus. J., Nov. 6, 2006.

24 The survey collected insufficient data from non-law firm respondents to draw any meaningful conclusions regarding those legal employers.

most common birth-related leave taken by women counsel was 12 weeks, with the next most common grouping between 14 and 16 weeks.

Firms responding to the survey reported 36 female partners who took parental leave after childbirth, with their leave ranging from four to 26 weeks. Once again, 12 weeks was most commonly reported amount of leave taken by women partners after childbirth.

B. ADOPTION

Legal employers are beginning to recognize the importance of providing parental leave, both paid and unpaid, for attorneys who adopt children. In addition, employers increasingly are providing adoption expense reimbursement. However, many legal employers still do not provide any adoption leave benefits or, if they do, provide fewer benefits than those they provide for attorneys who take leave for childbirth.

A reasonable leave period is equally important to attorneys who adopt children, no matter the age of the child. Moreover, there are issues specific to adoption that make a leave period particularly important to adoptive parents. These include cultural and language adjustments, attachment and bonding issues, and certain medical issues. Employers also may not realize that adoption can be a lengthy and time consuming process during which adoptive parents may incur costs as high as \$50,000.²⁵ In addition, adoption costs differ from costs that typically may be incurred by a birth parent, which generally are covered by health insurance.

²⁵ See Lynette Clemetson, *Breaking the Biology Barrier*, N.Y. Times, Aug. 31, 2006, at G1; *Working Mother* at 63 *et seq.* (Oct. 2006); U.S. Dep't of Health and Human Servs., *Costs of Adopting*, Child Welfare Information Gateway (June 2004) (finding that cost of adoption ranged from \$5,000 to more than \$40,000 for private agency, independent and facilitated adoptions), http://www.childwelfare.gov/pubs/s_cost/s_cost.cfm.

1. Leave Policies

- a. Job-guaranteed leave without pay

The survey results indicate that 39 of 43 respondents provide job-guaranteed leave without pay for adoption. Fifteen of these 39 respondents provide attorneys who adopt job-guaranteed leave without pay beyond the 12 weeks' job-guaranteed leave that entities subject to the FMLA are required to provide. The amount of additional job-guaranteed adoption leave these respondents provide, however, varies greatly, ranging from one week to 36 weeks. Two of the 39 respondents grant requests for additional leave following adoption on a case-by-case basis.

- b. Minimum length of service

More than half the respondents who provide job-guaranteed leave without pay following the adoption of a child (23 of 39 respondents) do not require a minimum length of service to be eligible to take this leave. This is similar to the lack of a minimum length-of-service requirement to qualify for unpaid childbirth-related leave. Of the remaining other respondents, eight require at least one year of service for full benefits, while others require a minimum of three or six months of employment.

- c. Paid leave

The survey responses indicated a trend toward providing leave for adoption equal to leave for women attorneys after childbirth.²⁶ With or without a written policy, 31 of 43

²⁶ The Dave Thomas Foundation for Adoption recently released its 2007 Best Adoption-Friendly Workplaces List, which identifies several law firms that provide 12 weeks' paid leave, including one firm that offers this benefit to both attorneys and non-attorneys. See http://www.davethomasfoundationforadoption.org/afw/afw_index.asp.

respondents provide paid leave for attorneys who adopt, ranging from one to 13 weeks.²⁷ Thirteen of these 31 respondents provide 12 to 13 weeks paid leave; seven respondents provide between 6 and 8 weeks; and the remaining respondents provide one to five weeks. Also, one large financial institution with a New York office offers 16 weeks paid leave at full pay and other financial institutions based in New York City provide 12-13 weeks' of paid parental leave for both natural birth and adoption.²⁸

The majority of respondents who offer paid adoption leave (26 of 31 respondents) provide full pay for the entire period of the leave. The other five respondents provide full pay for a period, followed by partial or pro-rated pay for the remainder of the leave.

d. Adoption cost reimbursement

Adoption costs can total more than \$50,000 and can include agency fees, legal fees, social worker home study fees, governmental fees, medical and living expenses for the birth mother (in certain cases), and domestic or international travel costs. Only seven of 43 respondents, however, provide any expense reimbursement for adoption costs, with one employer offering \$4,000 per child. In contrast, other New York City employers that did not participate in the survey offer greater reimbursement benefits. For example, a major pharmaceutical company with headquarters in New York City provides \$10,000 expense reimbursement.²⁹ A national law firm (with approximately 100 lawyers in its New York office)

27 Of the 31 respondents that provide paid leave, 26 have a written policy. For the five respondents that do not have formal written policies, the paid leave period is discretionary and ranges from one to 12 weeks.

28 See Lynette Clemetson, *Breaking the Biology Barrier*, N.Y. Times, Aug. 31, 2006, at G1; *Working Mother* at 63 *et seq.* (Oct. 2006); The Dave Thomas Foundation for Adoption 2007 Best Adoption-Friendly Workplaces List, http://www.davethomasfoundationforadoption.org/afw/afw_index.asp.

29 See *Working Mother* at 63 *et seq.* (Oct. 2006).

offers a \$7,000 reimbursement for medical expenses of the birth mother of the adopted child,³⁰ while two other law firms and an international bank with a New York office offer a \$5,000 reimbursement.³¹

2. Leave Practices

Six female and one male attorney took job-guaranteed leave without pay for adoption during the year preceding the survey. The six female attorneys took leave ranging from eight to 18 weeks. In two of these cases, a total of 24 weeks of job-guaranteed leave was offered by the employer. The male attorney took one week of leave even though his employer offered four to 12 weeks non-paid leave beyond the twelve weeks of FMLA mandated leave. These data suggest that, similar to leave practices for women attorneys after childbirth, even where an employer offers an extended non-paid parental leave, attorneys who adopt children also do not take such leave.

C. NON-BIRTH PARENTS

The survey responses indicated a growing trend toward providing job-guaranteed leave without pay and some paid leave to non-birth parents. Unfortunately, however, while all of the respondents offer non-birth parents job-guaranteed unpaid leave, as mandated by the FMLA, most do not offer very much paid leave. Among the employers that responded to the survey, the average job-guaranteed paid leave time provided to a non-birth parent is two to three weeks.

There are several notable and encouraging exceptions, however. For example, the New York law office of a large national firm offers the non-birth parent three months' paid leave

30 See <http://www.bfamsonline.com/article.aspx?id=278>.

31 These policies and others concerning adoption expense reimbursement are reported in The Dave Thomas Foundation for Adoption, 2007 Best Adoption-Friendly Workplaces List. See The Dave Thomas Foundation for Adoption 2007 Best Adoption-Friendly Workplaces List, http://www.davethomasfoundationforadoption.org/afw/afw_index.asp.

(provided that the employee is the “primary caretaker” of the child during the leave period). Also, one local district attorney’s office offers non-birth parents three months’ paid leave within the child’s first six months of life (again, provided that the employee is the “primary caretaker” of the child during the leave period). Another national law firm offers non-birth parents six weeks’ paid leave and a second major firm offers four weeks’ paid leave to the “secondary caregiver.” Several other large law firms with headquarters in New York City offer non-birth parents or “secondary caregivers” three to four weeks’ paid leave.

Outside the legal profession, certain other professional employers offer paid leave for non-birth parents. For example, one investment bank offers 20 weeks’ job-guaranteed leave for fathers, with up to six of those weeks paid, and a major software company offers new fathers 12 weeks’ job-guaranteed leave, with one month fully paid.³²

1. Leave Policies

Unfortunately, the majority of survey respondents do not offer anything approaching what is offered by the leaders in this area whose paid leave policies are highlighted above. While all of the respondents offer non-birth parents job-guaranteed unpaid leave, as mandated by the FMLA, most do not offer very much paid leave. Among the employers that responded to the survey, the average job-guaranteed paid leave time provided to a non-birth parent is two to three weeks.

2. Leave Practices

Sixteen out of 36 survey respondents who offer non-birth parents job-guaranteed leave without pay reported that no one had taken such leave in the year preceding the survey. Half of

³² see *working mother at 63 et seq.* (October 2006)

these respondents are small employers, with fewer than 100 lawyers. It is possible that none of the lawyers in these smaller firms had a child during the relevant time period. For example, one small firm of about 35 lawyers had three lawyers give birth in 2004, and then no new children until 2006, when two male lawyers each had a child. The remaining seven respondents reported that none of their lawyers took non-birth parent leave, including some of the largest law firms and corporate law departments in New York, which employ more than 100 lawyers. It seems unlikely that at law firms with hundreds of lawyers, none of those lawyers were non-birth parents; rather, it seems more likely that non-birth parents at these firms are using vacation time – which is not reported as parental leave – to be with their new children.

The 20 survey respondents who reported non-birth parents taking leave reported that 131 lawyers took such leave. Twelve of those survey respondents said that their 63 lawyers took only one or two weeks' leave. The remaining eight survey respondents reported 68 lawyers taking an average of three weeks' leave. No survey respondent reported any lawyer taking more than four weeks' non-birth parent leave. This indicates that although some firms offer extended leave for non-birth parents, in practice, few attorneys take the full amount of non-birth parent leave available to them. Further, as a general matter, non-birth parents tend to take leave periods that are drastically shorter than the leave periods taken by women attorneys after childbirth.

III. RECOMMENDATIONS

Based on the foregoing, the Committee makes the following recommendations to legal employers regarding parental leave policies and practices:

A. JOB-GUARANTEED PAID PARENTAL LEAVE

The Committee recommends that all legal employers provide a minimum of three months' job-guaranteed leave with full pay to all parents, including birth mothers, adoptive parents, and non-birth parents.

In addition, employers should commit themselves to ensuring that attorneys who take parental leave for three months will not forfeit seniority or annual salary increases. Job-guaranteed paid leave is at the heart of a strong parental leave program. It is only when attorneys do not suffer (or perceive that they will not suffer) severe financial consequences or career setbacks as a result of taking parental leave that they will be able to, if they so desire, fully utilize available leave during the first year following birth or adoption. Further, in order to make sure that parental leave practices are consistent with the policies, women partners and counsel and others in senior management should encourage attorneys who want to take extended parental leave to do so. Such encouragement can help establish a culture in which the employee knows that the employer fully supports parental leave and will not penalize them for utilizing available leave. While every attorney will not want to take an extended leave, it is important that all choices are equally respected.

As part of an integrated parental leave policy, legal employers also should ensure that bonuses are not treated in a way that unduly detracts from paid leave policies.³³ For instance, while pro-rating a bonus may be appropriate, especially for those bonuses that largely are calculated based on billable hours, the bonus should not be unduly reduced.

B. JOB-GUARANTEED UNPAID PARENTAL LEAVE

Beyond the three months' job-guaranteed paid leave, the Committee recommends that legal employers provide an additional nine months' unpaid job-guaranteed leave to new parents. The Committee recognizes, however, that small law firms may not be able to provide this benefit in all circumstances. For those attorneys whose want to take extended leave and whose circumstances allow them to utilize unpaid leave, this additional job-guaranteed leave can further ease the transition back to work, resulting in an increased number of attorneys returning from leave. As discussed above, (*see* Section I(C) concerning the business case for strong parental leave policies), parental leave policies, in turn, can increase loyalty to the employer, improve retention and productivity, and improve client satisfaction and retention as well as contribute to business development. In order for parental leave policies to be meaningful, employers should continue health insurance coverage and other benefits for the entire period covering both paid and unpaid job-guaranteed leave. For those employees who take unpaid leave, legal employers should consider how attorneys who take other types of extended leave are treated regarding seniority and bonuses. While seniority obviously will be affected by, for example, a one-year leave, employers should ensure that seniority is not unduly or unfairly affected.

³³ Of the 30 survey respondents that pay a bonus, 13 do not reduce the amount of the bonus due to parental leave. The other 17 respondents pro-rate the bonus based on the period of parental leave. The survey did not ask respondents to provide information on how they treat any potential salary increase during a period of parental leave.

C. PARITY OF LEAVE AND ADOPTION EXPENSE REIMBURSEMENT

The adoption process can take years and be costly for a prospective parent even before he or she takes off a single day, paid or unpaid, from work. As previously stated, employers should provide the same guaranteed and paid leave benefits to adoptive parents as they provide to birth and non-birth parents. Specifically, adoptive parents should be offered three months' job-guaranteed paid leave at full salary without loss of seniority. Further, any annual salary increase or bonus for adoptive parents should be allocated the same way as it is for women attorneys who leave after childbirth.

In addition, adoption costs can total more than \$50,000 and are not covered by health insurance while birth-related expenses typically are covered. In order to assist adoptive parents, legal employers should provide reimbursement for adoption-related costs, which may be subject to some reasonable maximum limit per adoption

* * * *

Implementation of these recommendations can best be achieved by having transparent policies relating to parental leave that are clear and easily accessible by employees. In addition, employers should ensure that they have created an environment that fosters parental leave practices that are consistent with formal leave policies, encouraging partners and other senior management to be supportive of parental leave. To further facilitate implementation of these recommendations, legal employers should communicate what is expected of attorneys prior to taking leave and work to assist the re-transition of attorneys returning from parental leave, including by maintaining communication with attorneys on leave so that they have a clear sense of what, if anything, is agreeably expected of them during leave and upon their return. Attorneys

who take leave should reach agreement as to the amount of contact and as to reasonable availability to their employer on pending legal matters. If an attorney plans to work during the leave period for any significant amount of time, arrangements should be made for extra leave or possibly some other form of compensation, especially if they are not being compensated during the leave period.

IV. CONCLUSION

The responses to the survey, together with the other information the Committee analyzed in preparing this report, provide a strong foundation for assessing parental leave policies and for developing recommended policies and practices in this area. This report illustrates that a growing number of employers have implemented parental leave policies. At the same time, the survey indicates that there is room to improve both the availability and the quality of parental leave benefits, particularly for adoptive and non-birth parents and for those attorneys who work for employers other than large law firms. It is the intention and the hope of the Committee that this report will increase the focus on parental leave, provide assistance to those attorneys seeking to persuade their employers to adopt or improve parental leave policies, and motivate legal employers to implement the strong parental leave policies and practices recommended herein.

PARENTAL LEAVE TIP SHEET

When evaluating a potential employer with respect to parental leave policies – and, for those currently employed, to aid in negotiations where no formal or adequate policy exists – the Committee recommends considering the following:³⁴

Finding an Employer of Choice

In considering a new position, do your due diligence:

- Review the organization’s website. It may provide updated comprehensive information regarding parental leave policies and other benefits.
- Enlist resources provided by your law school’s career services, such as NALP directories, alumni, and other materials.
- In addition to this report, consult external sources that list or compile “Great Places to Work,” such as The Vault, *Working Mother* magazine (and its corresponding website), The Dave Thomas Foundation for Adoption, and *American Lawyer*. In August, 2007, *Working Mother* and Flex-Time Lawyers published the 50 Best Law Firms for women and will be organizing a forum in 2008 that will report on national trends and recent research on work-life issues. In addition, NALP’s website provides access to its electronic directory of law firm employers, a helpful resource for obtaining information about a firm’s benefits. See www.nalp.org.
- Utilize your networks to locate current or former employees who might share information about the policies and actual practices of the organization, including any discrepancy between the two.
- Look at the senior leadership of the organization. Does it reflect a broad array of people in senior roles, including attorneys whom you would view as role models? Have people who have taken parental leaves advanced to partner or a comparable senior position?

34 For a more comprehensive guide to selecting an employer of choice with respect to the recruitment, training, retention, and advancement of women attorneys, please review “The Cheat Sheet” developed by the Committee in conjunction with Flex-Time Lawyers LLP. It provides questions to consider when selecting an employer, organized around multiple topics, including work/life balance, leadership accountability, mentoring, career advancement, business development, and networking. The Cheat Sheet is available at <http://www.nycbar.org/Diversity/TheCheatSheet.pdf>.

After the Interview

Once you have an offer, request a copy of the organization's written policies with respect to parental leave. Discuss the organization's parental leave policies with the Human Resources staff. Find out relevant information, such as:

- Amount of unpaid parental leave with job-guaranteed return;
- Amount of paid parental leave, if any;
- Treatment of bonus pay and any regular annual salary increase during parental leave;
- Utilization of parental leave by attorneys;
- Availability of short-term or medical disability;
- Amount of expense reimbursement, if any, for adoption costs;
- Effect of taking parental leave on timing or possibility of promotion;
- Treatment of unused vacation, sick, and personal days (are you allowed to bank unused days and add them to your parental leave?);
- Compensation or additional leave time added on if you work from home during part of your leave;
- Transition practices before leaving for and upon returning from parental leave;
- Availability of a flexible return-to-work arrangement following parental leave;³⁵ and
- Availability, if any, of on-site or back-up child care facilities.

Talking With Your Employer About Parental Leave

Before raising the subject of parental leave with your employer, do your due diligence and gather information:

- Know your organization. Check its website, office manuals and employee handbooks, as well as outside resources about existing parental leave

35 Assessing the availability of flexible work arrangements – and how to negotiate for one – is beyond the scope of this report, which focuses on parental leave. The two are often linked, however, and some law firms are beginning to institute innovative programs that ease the transition back to work following a parental leave. For resources on alternative work schedules, please consult *"In Pursuit of Attorney Work-Life Balance: Best Practices in Management"* (NALP 2005); *"Better on Balance? The Corporate Counsel Work/Life Report"* (PAR 2003); and ABA Commission on Women in the Profession, *"Balanced Lives: Changing the Culture of Legal Practice"* (2001). The www.pardc.org website also is an excellent resource.

policies and practices (including the types of information listed above under “After the Interview”).

- Gather information about parental leave policies of comparably sized firms or organizations that provide similar compensation to attorneys to use as a benchmark in your discussion. Some of the resources cited in this report may be helpful in gathering this information.
- Make an appointment to discuss your parental leave request and advise your supervisor or partners, where applicable, in advance of the subject of the meeting.
- Take a proactive, solutions-oriented approach; anticipate concerns about work distribution or client relations, for example, and suggest a plan for addressing these issues.
- Submit your proposal in writing, including information about what comparable organizations offer.
- Where applicable, emphasize your long-term value to the organization (be familiar with your past reviews, strengths, and expertise).
- Before taking parental leave, inform your organization whether you want to be available by phone or e-mail while you are on leave and discuss the organization’s expectations regarding your availability during leave.
- If you plan to work for any significant amount of time during your parental leave, ensure that you will receive extra leave or some other form of compensation.

If your organization does not have a parental leave policy or the policy does not meet your needs, the following guidelines may help you in negotiating parental leave for yourself, as well as in persuading your organization to implement or improve parental leave policies:

- Talk informally to other individuals within the organization, including a trusted mentor or colleague who may have previously negotiated a parental leave. Such colleagues can advise you of any challenges faced in such negotiations. If you have a mentor who is more senior or holds managerial responsibilities, ask him or her for advice on how the organization historically has responded to parental leave requests and on how best to craft a successful proposal. Look for precedents for the type of leave you are requesting.

- Look for statements of the organization’s values and stated commitments that might be helpful for you to use in framing your proposal.
- Cite the New York City Bar’s recommendations and the sources contained in this report.
- An important part of your proposal may be to spell out the “business case” for quality parental leave policies to your employer; it may not be obvious to your organization that paid parental leave programs and other similar policies benefit the employer, and not just the employee and the child. Advise your employer of the proven reductions in turnover cost, increased profitability/productivity and enhanced employee loyalty engendered by quality parental leave policies, discussed in Section I(C) of this report. Focusing on the business case for strong parental leave policies also will permit your discussion to transcend the individual aspect of your proposal and focus on the benefit of parental leave to the employer’s bottom line.
- Try to persuade your organization to implement a parental leave policy applicable to all attorneys, so parental leave is not determined on a case-by-case basis (this may lead to parental leave policies being available only to “stars”), but rather is treated as a business benefit akin to health insurance.

COMMITTEE ON WOMEN IN THE PROFESSOR

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G. Elaine Wood *

* *Members of the Subcommittee that drafted the report*

+ *Chair of the Subcommittee*

**NEW YORK CITY BAR
PARENTAL LEAVE SURVEY**

1

Name:

Name:			
Company:			
Address:			
City:	State:	Zip:	

2

How do you describe your organization?

- law firm
 - corporation
 - governmental agency
 - not-for-profit
 - academic institution
-

3

Please provide the approximate number of attorneys in your institution:

- 1 to 10
 - 11 to 50
 - 51 to 100
 - 101 to 150
 - 151 to 200
 - 201 plus
-

4

Do you have a WRITTEN POLICY for attorneys for any of the following child care related leaves? Please include the 12 weeks guaranteed by the Family Medical Leave Act (FMLA) if you are covered by that law as well as any additional period of disability before and after childbirth. "Job-guaranteed" refers to the ability to return to the same or equivalent position upon the conclusion of the leave. Please check all categories below that apply to your written policy.

- Job-guaranteed time off for childbirth -- Birth Mother
- Job-guaranteed time off for childbirth -- Non-birth Parent
- Job-guaranteed time off for adoption
- Paid leave for childbirth short-term disability -- Birth Mother
- Paid leave for leave beyond short-term disability -- Birth Mother
- Paid leave for Non-birth Parent
- Paid leave for adoption
- Adoption costs assistance
- No written policy

5

If your policy for any of the above is not in writing, please describe how you determine the length of job-guaranteed child care leave, as well as pay practices:

--

JOB-GUARANTEED TIME OFF FOR CHILDBIRTH -- BIRTH MOTHERS

The following questions assume a normal, medically uncomplicated delivery. Please include the 12 weeks guaranteed by FMLA, if you are covered by that law, as well as any additional period of disability before and after childbirth. Also include any additional time off you offer for parenting or childcare leave. Please do not include vacation, sick or personal time.

6

Do you offer job-guaranteed time off for birth mothers after childbirth (paid or unpaid)?

YES NO

7

How many additional weeks of job-guaranteed time off do you offer to birth mothers after childbirth beyond the 12 weeks mandated by FMLA, if applicable?

8

How many FEMALE LAWYERS took job-guaranteed time off for childbirth in the past year?

9

What was the average number of weeks of job-guaranteed time off for childbirth taken by FEMALE LAWYERS in the past year?

10

Law firms only: How many FEMALE ASSOCIATES took job-guaranteed time off for childbirth in the past year?

11

Law firms only: How many FEMALE OF COUNSELS took job-guaranteed time off for childbirth in the past year?

12

Law firms only: How many FEMALE PARTNERS took job-guaranteed time off for childbirth in the past year?

13

Law firms only: What was the average number of weeks of job-guaranteed time off for childbirth taken by FEMALE ASSOCIATES in the past year?

14

Law firms only: What was the average number of weeks of job-guaranteed time off for childbirth taken by FEMALE OF COUNSELS in the past year?

15

Law firms only: What was the average number of weeks of job-guaranteed time off for childbirth taken by FEMALE PARTNERS in the past year?

JOB-GUARANTEED TIME OFF FOR CHILDBIRTH -- NON-BIRTH PARENTS

Please include the 12 weeks guaranteed by FMLA, if you are covered by that law. Please do not include vacation, sick or personal time.

16

Do you offer job-guaranteed time off for childbirth for fathers or the non-birth parent (paid or unpaid)?

YES NO

17

How many weeks of job-guaranteed time off for childbirth for fathers or the non-birth parent do you offer beyond the 12 weeks mandated by FMLA, if applicable?

18

How many MALE LAWYERS (or non-birth parents) took job-guaranteed time off for childbirth in the past year?

19

What was the average number of weeks of job-guaranteed time off for childbirth taken by MALE LAWYERS (or non-birth parents) in the past year?

JOB-GUARANTEED TIME OFF FOR ADOPTION -- PARENTS

Please include the 12 weeks guaranteed by FMLA if you are covered by that law. Please do not include vacation, sick or personal time.

20

Do you offer job-guaranteed time off for adoption for parents (paid or unpaid)?

YES NO

21

How many weeks of job-guaranteed time off for adoption for parents do you offer beyond the 12 weeks mandated by FMLA, if applicable?

22

What was the average number of weeks of job-guaranteed time off for adoption taken by FEMALE LAWYERS in the past year?

23

What was the average number of weeks of job-guaranteed time off for adoption taken by MALE LAWYERS in the past year?

**PAY PRACTICES FOR CHILDBIRTH SHORT-TERM DISABILITY LEAVE
-- BIRTH MOTHERS**

24

What is the usual pay practice for women during the period of short-term disability before and after childbirth? Please do not include vacation, sick or personal time.

- Full pay
- Full pay for a time, then part or prorated pay
- Part or prorated pay more than as mandated by New York law
- Pay practices as mandated by New York law

25

Is there a minimum length of service (or tenure) requirement in the formula used to determine the pay benefit for women during the period of short-term disability before and after childbirth?

YES NO

26

If "YES," what is the MINIMUM length of service (or tenure) required?

27

If "YES," what is the length of service (or tenure) required to receive the MAXIMUM pay benefit?

PAY PRACTICES FOR CHILDBIRTH EXTENDED LEAVE -- BIRTH MOTHERS

28

Do you provide paid leave beyond the short-term disability period?

YES NO

29

If you provide leave extended beyond the short-term disability period, what is the usual pay provided? Please do not include vacation, sick or personal time. This also does not include medically necessary leave.

- Full pay
 - Full pay for a time, then part or prorated pay
 - Full pay for a time, then part or prorated pay, then no pay
 - Part or prorated pay
 - Part or prorated pay, then no pay
 - No pay
 - No program, does not apply
-

30

Is there a minimum length of service (or tenure) requirement in the formula used to determine the pay benefit for leave extended beyond the short-term disability period?

YES NO

31

If there is a time requirement in the formula used to determine the pay benefit for leave extended beyond the short-term disability period, what is the MINIMUM length of service (or tenure) required?

32

If there is a time requirement in the formula used to determine the pay benefit for leave extended beyond the short-term disability period, what is the length of service (or tenure) required to receive the MAXIMUM pay benefit?

33

Do you continue to provide health insurance coverage for women during the period of leave extended beyond the short-term disability period?

 YES NO

PAY PRACTICES FOR ADOPTION LEAVE -- PARENTS

34

Do you offer paid adoption leave?

 YES NO

35

How many weeks of paid adoption leave do you offer? Please do not include vacation or accrued time off.

36

What is the usual pay practice for parents who are provided with an adoption leave?

- Full pay
- Full pay for a time, then part or prorated pay
- Full pay for a time, then part or prorated pay, then no pay
- Part or prorated pay
- Part or prorated pay, then no pay
- No pay
- No program, does not apply

37

Is there a minimum length of service (or tenure) requirement in the formula used to determine the pay benefit for parents taking adoption leave?

YES NO

38

If "YES," what is the MINIMUM length of service (or tenure) required to receive the pay benefit?

39

If "YES," what is the length of service (or tenure) required to receive the MAXIMUM pay benefit?

ADOPTION EXPENSE REIMBURSEMENT

40

Do you reimburse nonrecurring expenses for adoption (e.g., adoption agency fees, placement fees, legal costs, maternity costs for birth mother)?

YES NO

RETURN TO WORK AFTER LEAVE

41

Following any leave taken, can a new parent elect to phase back to a guaranteed full-time job on a part-time basis?

YES NO

42

Do you have a written policy on phase back options?

YES NO

43

Do you have a written policy for part-time or reduced hour flexible work arrangements?

YES NO

44

Do you have a written policy for full-time flexible work arrangements (e.g., telecommuting/work at home, compressed work week)?

YES NO

OTHER

45

Do you allow attorneys to put unused vacation time in a leave bank/paid time-off bank to carry over for future use at their discretion?

YES NO

46

Do you allow attorneys to put unused sick or personal time in a leave bank/paid time-off bank to carry over for future use?

YES NO

47

Do you allow attorneys to accrue sick leave against short-term disability?

YES NO

48

If a bonus is typically paid, how do you calculate the bonus for attorneys who take parental leave?

- Full bonus is paid
 - Bonus is prorated
 - No bonus is paid
-

COMMENTS

49

If aspects of your parental leave policy are not adequately reflected in the above questions, please provide any additional comments here:

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