



Massachusetts Commission Against Discrimination

Guidelines on the Massachusetts Parental Leave Act

Hypothetical Questions and Answers

Issued: May 17, 2023

A. Q&A on Eligibility for Leave

Question 1: Is a male employee entitled to eight weeks of parental leave for the birth or adoption of a biological child?

Answer 1: Yes, the law requires that all eligible employees, regardless of sex, have the same entitlement to parental leave and the same rights under the law.

Question 2: Is an employee who is unmarried and involved in a same-sex relationship entitled to eight weeks of parental leave to adopt a child?

Answer 2: Yes, an eligible employee is entitled to eight weeks of parental leave for the adoption of a child regardless of sex, gender identity, sexual orientation, or marital status.

Question 3: Employer has a parental leave policy that provides eight weeks of leave to female employees only. Does a non-binary employee have a right to leave upon the birth or adoption of their child?

Answer 3: Yes. The MPLA was amended in 2015 to provide eight weeks of parental leave to all employees, regardless of their sex or gender identity. The employer should update its policy to conform with the MPLA.

Question 4: Employer has a parental leave policy that provides sixteen weeks of leave to only employees who identify as female. Does a transgender employee have the right to sixteen weeks of leave upon the birth or adoption of their child?

Answer 4: Yes. Providing leave in excess of the eight weeks required by the MPLA to only employees who identify as female would constitute discrimination based on gender identity in violation of M.G.L. c. 151B. The employer should update its policy to conform with the MPLA.

Question 5: May an employee take eight weeks of parental leave if they are not the primary caretaker of the child?

Answer 5: Yes, there is no requirement that the employee be the primary caretaker of the child.

Question 6: May an employer require verification of marital status before approving a request for parental leave?

Answer 6: No, marital status has no bearing on the leave entitlement.

Question 7: An employee has a child in January and takes eight weeks of leave. In June of the same year, the employee adopts a second child. Is the employee entitled to eight more weeks of leave?

Answer 7: Yes. The MPLA allows eight weeks of leave each time the employee gives birth or adopts a child.

Question 8: Employee is eligible for paid bonding leave under the MA Paid Family and Medical Leave law (PFML) and the MPLA. Employee gives birth to twins and requests sixteen weeks of leave, on the grounds that she has given birth twice. Must the employer give her the sixteen weeks?

Answer 8: Yes. An employee who gives birth to twins has given birth to two children and is entitled to eight weeks of unpaid leave for each child under the MPLA. In this instance, PFML will run concurrently with the employee's MPLA leave, so the employee will have twelve weeks of paid bonding leave under PFML and then four weeks of subsequent unpaid leave under the MPLA.

Question 9: Employee adopts two babies at the same time. They request sixteen weeks of leave, on the grounds that they have adopted two children. Must their employer give them the sixteen weeks?

Answer 9: Yes, the eligible employee is entitled to sixteen weeks. The MPLA treats multiple adoptions the same as multiple births.

Question 10: Employee adopts an adult of 21 years of age who has a mental disability. Is the employee entitled to MPLA leave?

Answer 10: Yes. The MPLA applies to adoption of a child under the age of 23 if the child has a physical or mental disability.

Question 11: A couple in which both individuals work for the same employer is adopting a baby. How much MPLA leave is each individual entitled to take?

Answer 11: Since both individuals work for the same employer, they are entitled to only eight weeks of leave between the two of them under the MPLA.

Question 12: An employee, the Chief Technology Officer of the company, requests parental leave because their spouse will be giving birth. Employer denies the leave, on the grounds that the employee's absence and restoration following leave would cause undue hardship to the business. Has the employer complied with the MPLA?

Answer 12: No. If the employee meets the eligibility requirements for the MPLA, they are entitled to take parental leave and be restored to the same or similar position, even if granting leave and restoring them to their position would cause hardship to the employer. Undue hardship is not a defense under the MPLA.

Question 13: Employer's Collective Bargaining Agreement provides for six weeks of parental leave only. Is the employee entitled to a full eight weeks of MPLA leave, even if granting such leave to them would violate the terms of the Collective Bargaining Agreement?

Answer 13: Yes. The employer may not avoid the requirements of the MPLA by a Collective Bargaining Agreement or other contract.

Question 14: An employer's written policy is to permit employees to take a parental leave after one year of employment. Has the employer done anything wrong?

Answer 14: Yes, this policy is inconsistent with the MPLA which requires employers to provide certain employees a parental leave after a probationary period, not to exceed three months.

Question 15: The employer's employee handbook provides that employees are not eligible for any benefits prior to completing a six-month probationary period. The employee requests to begin parental leave four months after the start of their employment. Are they entitled to the leave?

Answer 15: Yes. An employee is eligible for parental leave once they have completed an initial probationary period set by their employer which cannot exceed three months, or once they have completed three months of employment. MPLA leave is not a benefit that the employer can withhold as a matter of policy or otherwise.

Question 16: An employee who works 25 hours per week is considered a part-time employee under the employer's handbook and is not eligible for the benefits given to full-time employees. Is the employee eligible for MPLA leave?

Answer 16: No. Absent other factors tending to show full-time status, the employee would be considered a "part-time" employee, and therefore would not be eligible for MPLA leave. The employee may be entitled to leave under the federal Family and Medical Leave Act (FMLA), however, or if employer provides leaves to part-time employees for other reasons.

Question 17: An employee wants to take MPLA leave to help care for their newborn grandchild. Are they eligible for the MPLA leave?

Answer 17: No. The purpose of the MPLA is to grant job-protected leave to parents who are welcoming a new child into their family. While grandparents can be parents, if the grandparent is not intending to adopt the grandchild, they are not eligible for MPLA leave.

Question 18: An employee who is a surrogate wants to take MPLA leave to give birth and recover. Are they eligible for MPLA leave?

Answer 18: No. They are not eligible for MPLA leave because the purpose of MPLA is to grant job-protected leave to parents who are welcoming a new child into their family. If the surrogate is not intending to adopt and is relinquishing any parental rights, they are not entitled to MPLA leave. However, they may be eligible for other job-protected leave for medical or other reasons.

B. Q&A on When Parental Leave May be Taken

Question 19: An employee schedules parental leave to begin before the expected due date of a birth. Does the period before the due date count as parental leave under the MPLA?

Answer 19: Yes, if the leave is scheduled to begin close to the due date or adoption date in order to prepare for the birth or adoption.

Question 20: An employee informs her employer that she is pregnant, that she expects to deliver the baby in June, and that she plans to return to work following her leave. The baby is delivered prematurely, in May. Is the employee entitled to take her parental leave early?

Answer 20: Yes. The MPLA requires the employee to give two weeks' notice of her "anticipated date of departure and intention to return." The employee has satisfied this requirement; therefore, she is entitled to the leave.

Question 21: An employee who is adopting a child that is sixteen years old is asking for intermittent MPLA leave to make court appearances and other preparations for the adoption. They are asking for a total of forty days off, spread out over six months. Does the employer have to grant that leave?

Answer 21: Yes, the intermittent leave should not be unreasonably denied.

Question 22: An employee takes continuous MPLA leave beginning January 1. On January 29, the employee returns to work with the intention of taking the rest of their MPLA leave on March 1. The employer denies their March 1 leave because it is outside of eight weeks from January 1. Has the employer done anything wrong?

Answer 22: Yes, the employee still has four weeks remaining of their leave. The employer can only count the amount of leave actually taken towards the employee's leave.

Question 23: Is a foster parent who intends to adopt the child entitled to unpaid leave under the MPLA?

Answer 23: Yes. M.G.L. c. 149, § 105D specifically covers employees who intend to adopt.

Question 24: Employee develops a medical condition related to pregnancy prior to giving birth. Employee is hospitalized for three weeks under doctor's orders until the condition resolves, at which point the employee is able to return to work and does return to work. Would the three-week leave come under the MPLA?

Answer 24: No. The three-week leave for the medical condition would not count as MPLA leave because it is not "for the purpose of giving birth," which means preparing for childbirth, childbirth itself, participating in childbirth, and/or caring for a newborn. The employee may be entitled to leave under the Paid Family and Medical Leave law (PFML), the Family Medical Leave Act (FMLA), or under the employer's sick leave or disability policy. In addition, the employee may be entitled to leave for the medical condition as a reasonable accommodation under the Pregnant

Workers Fairness Act, M.G.L. c. 151B, or the Americans with Disabilities Act, as amended, if the medical condition constitutes a disability under state or federal law. The employee would still be entitled to eight weeks of parental leave under the MPLA at the time the child is born.

Question 25: A female employee has a knee operation in January. She takes twelve weeks of leave, which is designated by employer as FMLA leave. She gives birth to a baby in June of that year and requests an additional leave of absence as parental leave. Employer denies her request for leave, on the grounds that she has used up her total family and/or medical leave entitlement for the year. Has the employer done anything wrong?

Answer 25: Yes. The employee is entitled to eight weeks of leave under the MPLA. The twelve weeks taken under the FMLA for the knee operation did not count as MPLA leave, since it was not for the purpose of giving birth or adopting a child.

Question 26: Employee has a baby in January and takes twelve weeks of leave to care for the child, which is designated by the employer as FMLA leave. At the expiration of the twelve weeks, employee asks for an additional eight weeks of parental leave in connection with the same child. Is the employee entitled to this leave under the MPLA?

Answer 26: No. Employer has already complied with the MPLA's requirement that the employee receive up to eight weeks of leave for the purpose of giving birth to a child. In this instance, the MPLA leave runs concurrently with the FMLA leave.

C. Q&A on Employee Rights and Prohibited Employer Conduct

Question 27: At the time their leave begins, employee has five weeks of accrued vacation time. Employee informs their employer that they do not wish to use their accrued vacation concurrently with their MPLA leave which will run simultaneously with their FMLA leave. May the employer require them to use their accrued vacation pay during their leaves?

Answer 27: No, employers cannot require an employee to use accrued paid vacation or personal time concurrently with all or part of the MPLA parental leave, even if such requirement is imposed upon similarly situated persons who take leave for other reasons or allowed by other leave statutes. In this scenario, the MPLA and FMLA leaves will not be concurrent for any part that the employer applies the vacation time. Once the employee's MPLA leave finishes and the employee still remains out on FMLA leave, the employer could apply the accrued vacation time to the remaining FMLA leave.

Question 28: At the time their leave begins, the employee has accrued sick time. Employee informs their employer that they do not wish to use their accrued sick time concurrently with their MPLA leave. May their employer require them to use sick time concurrently with their MPLA leave?

Answer 28: It depends on the nature of the sick leave. If the sick leave was accrued pursuant to the Earned Sick Time Statute ("EST statute"), M.G.L. c. 149, § 148C, then the employer may require the employee to use that sick leave concurrent with their MPLA leave. The employer may

not require the employee to use any sick leave which was not accrued under the EST statute. For example, if the employee has accrued forty hours of sick leave pursuant to the EST statute, but pursuant to the employer's policy, has accrued an additional eighty hours of sick leave, the employee can be required to use forty hours of sick leave concurrent with their MPLA leave and may use eighty hours of sick leave after the MPLA leave, provided that the employee qualifies for the sick leave under the employer's policy.

Question 29: Prior to an employee's parental leave, the employee received dental insurance through the employer, as did all other employees. During the leave, the employer eliminated dental insurance for all employees. Is the employee entitled to dental insurance upon their return from leave?

Answer 29: No, because the employee would have lost the dental insurance even if they had not taken leave.

Question 30: Employer grants a bonus to all employees who have worked for one year. At the time their MPLA leave commences, the employee has worked ten months. Must employer grant them the bonus upon their return from leave?

Answer 30: No. The employer need not count the two months of parental leave in computation of months of service for the purposes of the bonus unless it is the employer's practice to count such time for employees who take other types of leaves. In addition, employee may be eligible for the bonus, upon completion of two months of service following their return from leave, if similarly situated employees are also deemed eligible for the bonus.

Question 31: Prior to an employee's leave, they are eligible for participation in the Company 401K Plan. Upon return from their leave, the employer no longer permits them to participate in the Plan on the grounds that there has been a break in employee's service. Has the employer violated the MPLA?

Answer 31: Yes. Parental leave may not affect the employee's right to participate in programs for which the employee was eligible at the date of their leave.

Question 32: An employee informs their employer that they intend to take MPLA leave on June 1 for eight weeks. After eight weeks, when the employee tries to return to work, the employer denies restoration because the employee never explicitly said they intended to return. Has the employer violated the MPLA?

Answer 32: Yes. The employee implicitly confirmed their intent to return when they characterized their departure as a leave and limited that leave to eight weeks.

Question 33: Prior to an employee's leave, the employee was a Vice President. Upon return from their leave, they were transferred to a position with the same pay, but which was not considered an officer-level position, and which had a lower grade level. No other officer-level employees were similarly transferred. Has the employer complied with the MPLA?

Answer 33: No, because the new position does not have the same status as the prior position, unless the employer can prove that it would have transferred the employee even if the employee had not taken a leave.

Question 34: Prior to an employee's leave, the employee was a secretary, working the day shift, at a location fifteen minutes from their home. Upon return from leave, the employee was reinstated as a clerk, working the night shift, and was transferred to a location one and one-half hours from their home. No other employees were similarly transferred. Has the employer complied with the MPLA?

Answer 34: No. The two positions are not "similar," because of the significant difference in their respective duties, schedule, and commute.

Question 35: Prior to the employee's leave, the employee was a full-time shipping clerk who worked the day shift. Prior to their return from leave, the employee requests that they be reinstated to a part-time shipping clerk position on an evening shift, which also has a slightly higher rate of pay. Employer offers to reinstate employee to their previous position. Has the employer complied with the MPLA?

Answer 35: Yes. The MPLA does not require an employer to return an employee to a part-time position, or to a position with greater pay or benefits. The employer is required only to return the employee to the same or similar position.

Question 36: While the employee is on leave, the employer decides to eliminate their position for operational reasons. Employer's decision is not in any way linked to employee's pregnancy or need for parental leave. Is employee entitled to reinstatement?

Answer 36: The employee would not be entitled to reinstatement if the employer can show that that it eliminated the employee's entire department (or other employees similarly situated as the employee) as part of an operational change.

Question 37: While the employee is on leave, the employer discovers that the employee has been embezzling money from the company and decides to terminate the employee. The employer's decision is not in any way linked to employee's parental leave. Is the employee entitled to reinstatement?

Answer 37: No, the employee would not be entitled to reinstatement if the employer can show that it would have terminated the employee even if the employee had not taken the parental leave because of the embezzlement.

Question 38: Employer's parental leave policy provides ten weeks of parental leave. An employee takes ten weeks of leave. May the employer deny job restoration on the grounds that the employee has taken more than eight weeks of leave without violating the MPLA?

Answer 38: No. If the employer agrees to provide parental leave for longer than eight weeks, the employer must reinstate the employee at the end of the extended leave unless before the leave it

clearly informed the employee in writing that taking longer than eight weeks of leave shall result in the denial of reinstatement or the loss of other rights and benefits.

Question 39: During a job interview, an applicant informs the employer that she is pregnant. The employer chooses not to hire her, on the grounds that the employer does not want to have to grant parental leave. Has the employer done anything wrong?

Answer 39: Yes. The employer may not consider the employee's pregnancy, or potential need for leave, in hiring decisions since doing so would constitute sex discrimination under M.G.L. c. 151B.