

804 CMR: MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

804 CMR 8.00: SEX DISCRIMINATION IN EMPLOYMENT: MATERNITY LEAVE

Section

8.01: Regulations Pursuant to M.G.L. c. 151B, § 3, Paragraph 5

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(1) Applicable Law. M.G.L. c. 151B, § 4 and c. 149, § 105D as interpreted and enforced pursuant to c. 151B, § 11A.

(2) Definitions. The following words as used in M.G.L. c. 149, § 105D of c. 149 shall have the following meanings:

Female Employee a female regardless of marital status.

Initial Probationary Period the period of time not exceeding six calendar months set by an employer to establish initial suitability of an employee to perform a job notwithstanding the fact that the actual period required to attain tenure and other employment benefits may be longer.

(3) Pregnancy-Related Disabilities. Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities; provided, however, that if a disability caused or contributed to by childbirth and recovery therefrom is less than eight weeks duration or if a temporary leave policy of an employer would result in a maternity leave of less than eight weeks, a female employee who meets the requirements specified in M.G.L. c. 149, § 105D shall be entitled to an eight week maternity leave. Nothing in the above subsection of this regulation shall be construed to limit provisions of M.G.L. c. 149, § 105D.

(4) Burden of Proof. Upon the request of an employee or in the event a complaint is filed with this Commission, the employer shall have the burden of proving that the position to which a female employee returns after a maternity leave as provided in M.G.L. c. 149, § 105D is similar to her previous position.

(5) Notice. Every employer shall post the following notice in a conspicuous place in each establishment in which females are employed:

FORM 1
MATERNITY LEAVE NOTICE

Pursuant to M.G.L. c. 151B, § 4(1) and c. 149, § 105D every full-time female employee is now entitled as a matter of law to at least eight weeks maternity leave if she complies with the following conditions:

1. She has completed an initial probationary period set by her employer which does not exceed six months or in the event the employer does not utilize a probationary period for the position in question has been employed for at least three consecutive months and
2. She gives two weeks notice of her expected departure date and notice that she intends to return to her job.

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She is entitled to return to the same or a similar position without loss of employment benefits for which she was eligible on the date her leave commenced, if she terminates her maternity leave within eight weeks. (The guarantee of a same or similar position is subject to certain exceptions specified in M.G.L. c. 149, § 105D.)

Accrued sick leave benefits shall be provided for maternity leave purposes under the same terms and conditions which apply to other temporary medical disabilities.

Any employer policy or collective bargaining agreement which provides for greater or additional benefits than those outlined in this notice shall continue to apply.

REGULATORY AUTHORITY

804 CMR 8.01: M.G.L. c. 151B, §§ 3 and 5.