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MCAD RAISES QUESTIONS ABOUT MEN BEING ENTITLED TO BENEFITS UNDER THE MASSACHUSETTS MATERNITY LEAVE ACT

There have been recent communications from the Massachusetts Commission Against Discrimination (“MCAD”) indicating that the MCAD views the Massachusetts Maternity Leave Act (“MMLA”) as facially discriminatory against men who become parents. The language of the MMLA provides that only female employees are entitled to leave for purposes of the birth or adoption of a child. Citing a legislative amendment granting MMLA leave to parents who adopt and the Massachusetts Supreme Judicial Court’s decision legalizing same-sex marriage, the MCAD’s Commissioner said that it would be discriminatory to grant leave to both women in a same-sex marriage who adopt a child, while denying leave to men in a same-sex marriage who adopt. Although the MCAD recognizes that male employees remain ineligible for the eight weeks provided under the MMLA, the MCAD has indicated that it may investigate employer policies that provide superior leave benefits to females. There is also some indication that the MCAD plans to pursue legislation that would make the MMLA gender-neutral.

In response to these recent developments, we recommend that employers revisit their parental leave policies and consider providing male employees the same parental leave benefit as provided to female employees. The MMLA provides eight weeks of unpaid leave for purposes of a birth or adoption of a child. During these eight weeks, the employer does not have to continue the employee’s health insurance, unless the employer continues to provide health insurance for other types of leaves of absences. At the end of the eight weeks, the employer must restore the employee to the previous or a similar position with the same status, pay, or length of service credit or seniority as of the date of the leave. In many cases, an employee entitled to leave under the MMLA may also be entitled to 12 weeks of leave under the Federal Family and Medical Leave Act (the “FMLA”). Typically, the two leaves of absences run concurrently. The FMLA (applicable only to employers with 50 or more employees) already grants fathers a 12 week leave of absence in order to care for a newborn during the first year.

If you have any questions, or would like us to review your family leave or other employment related policies, please contact one of the authors: Laurie Alexander-Krom at (617) 589-3867 or lalexander-krom@davis-malm.com or Gary M. Feldman at (617) 589-3874 or gfeldman@davis-malm.com.

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