



## Don't Wait for the Time to Care Act to Review Parental Leave Policies

Employment lawyers are monitoring closely a federal lawsuit filed by two former associate attorneys against Jones Day, one of the nation's largest law firms, alleging that the firm's parental leave policy discriminated against expecting fathers. Under the firm's policy at the time of the lawsuit's filing, biological mothers received 10 weeks of paid family leave and 8 weeks of automatic disability leave, while biological fathers received only 10 weeks of paid family leave. In responding to the associates' claims, Jones Day argued (1) that its policy was nondiscriminatory because it granted biological mothers the additional leave automatically in order to avoid having to request medical proof that the leave was medically necessary and (2) that the period of disability leave granted was consistent with insurance and medical standards for recovery from childbirth. A decision resolving the legal merits of the case could be issued any day.

### Parental Leave Policies Under Attack

The case against Jones Day is part of a growing trend of lawsuits brought by male employees against their employers alleging discrimination on the basis of sex, putting paid parental leave policies under increased scrutiny.

In recent years, employers have reached large settlements to resolve claims related to paid parental leave policies. CNN settled an Equal Employment Opportunity Commission (EEOC) charge brought by a former employee who claimed that the company's paid parental leave policy discriminated against biological fathers. Estée Lauder Companies reached a \$1.1 million settlement to resolve a lawsuit brought by the EEOC that alleged the company provided new fathers with less paid leave and related benefits for child bonding than it provided to new mothers. JPMorgan Chase reached a settlement in the first class action lawsuit to allege sex discrimination on behalf of employee fathers who claim they were denied the opportunity to receive paid parental leave equal to that provided to employee mothers.

In the JPMorgan Chase case, a few weeks before the plaintiff's second child was due, he asked for the full 16 weeks of paid parental leave that JPMorgan provided to biological mothers, as

presumptive “primary caregivers,” under its parental leave policy. JPMorgan instead provided the 2 weeks of paid leave that fathers, as presumptive “non-primary caretakers,” receive under the company’s policy. The case culminated in a class-action settlement with JPMorgan under which the bank paid \$5 million to male employees who were denied primary caregiver leave in the last 7 years.

### **Review of Parental Leave Policies**

The **delayed Time to Care Act** will set a new standard for employee parental leave—offering 12 weeks of paid family leave to all parents upon welcoming a child. Companies should not wait until 2026 (the expected date Time to Care Act benefits will begin) to review carefully their parental leave policies.

The parental leave policies objected to in the cases described above go against the growing trend of employers eliminating the distinction between biological mothers and fathers or primary and secondary caregivers in their parental leave policies. An increasing number of employers are providing every employee with the same amount of family leave, regardless of parental or caregiver status, and offering additional pregnancy-related medical leave to birthing parents who require more time for recovery.

In light of these recent cases and in anticipation of the Time to Care Act, employers should conduct reviews of parental leave policies to ensure that administration of parental leave is appropriate and could not be perceived as discriminatory.

*\*This client alert is for informational purposes and is not legal advice.*

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If you have any questions regarding employment needs **please contact our employment practice team members.**

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