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RECEIVED, 08/31/2017 02:53:33 PM, Clerk, Supreme Court

A RESOLUTION OF THE CUBAN AMERICAN BAR ASSOCIATION (CABA)
IN SUPPORT OF THE MANDATORY VERSION
OF A PARENTAL LEAVE RULE

WHEREAS, Craig Leen, a member of the Rules of Judicial Administration Committee (RJAC) proposed a parental leave rule; and

WHEREAS, Mr. Leen proposed said rule after learning of instances where pregnant attorneys were denied a continuance requested in anticipation of maternity leave in situations where no compelling interest (i.e. speedy trial, emergency action) existed; and

WHEREAS, anecdotal evidence exists that female lawyers, in the State of Florida, are often denied continuances in anticipation of taking maternity leave; and

WHEREAS, there is a stigma attached to both female and male lawyers asking for a continuance in anticipation of maternity or paternity leave; and

WHEREAS, the legal profession as a whole and the judiciary specially should acknowledge the importance of child-rearing and support members of the bar who choose to practice law and build families; and

WHEREAS, the proposed rule failed before the RJAC, although a letter was issued by the committee related to the topic; and

WHEREAS, in March 2016, the Diversity and Inclusion Committee, after establishing a subcommittee, adopted a resolution in support of the passage of this rule; and

WHEREAS, on June 30, 2016, the full RJAC rejected the rule in concept with a caveat that it could be brought back if a request came from the Board of Governors or the Florida Supreme Court; and

WHEREAS, the RJAC did send a letter to the Judiciary in support of a policy and training in favor of judges granting continuances for parental leave; and

WHEREAS, the Dade County Bar Association and the Miami Chapter of the Florida Association of Women Lawyers have memorialized their support of the rule in either a letter or resolution; and

WHEREAS, NOW THEREFORE BE IT RESOLVED THAT THE CUBAN AMERICAN BAR ASSOCIATION IS IN FAVOR OF THE FOLLOWING RULE OF PROCEDURE AND THAT IT SUPPORTS THE CREATION OF A JOINT TASK FORCE BETWEEN RJAC AND THE DIVERSITY AND INCLUSION COMMITTEE OF THE FLORIDA BAR TO FURTHER STUDY AND PROMULGATE THIS INITIATIVE.

PARENTAL LEAVE

A motion for continuance based on parental leave of the attorney, when consistent with the parental leave policy of the firm or governmental entity for which the attorney works, or for a reasonable time when the attorney is a solo practitioner, shall be granted unless exceptional circumstances are shown. If the court denies the continuance, the specific grounds for denial shall be stated in the order, and the court shall exercise its discretion to grant as much leave as would be reasonable under the circumstances.

Comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a presumption that a continuance for parental leave will be granted unless an exceptional reason is shown. An exceptional reason could be the need for emergency or time sensitive relief, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

Passed and adopted unanimously this 16th day of August, 2016.

On behalf of the Cuban American Bar Association:

Anna Marie Hernandez
President

From: "Herman J. Russomanno III" <herman2@russomanno.com>
Date: November 1, 2016 at 3:32:00 PM EDT
To: 'Stephen Echsner' <SEchsner@awkolaw.com>, "'Stephens, Steven'" <stephenss@fljud13.org>, <ssolomon@solomonlaw.com>, "'Ms. Marynelle Hardee'" <mnh@alachuaclerk.org>, <jcohen@weinsteincohen.com>
Subject: RE: response needed . . .FW: Liaison Florida Bar Committees

Dear Judicial Administration Committee - I wanted to report to you that at our last trial lawyer's section meeting, our committee discussed the issue re continuances for pregnant lawyers, and our committee was in agreement that we think it is best to leave those continuance motions up to the discretion of the sitting trial court judges versus implementing a hard fast Judicial Admin rule. If there is any update on your end about this issue we would be very interested to know about it.

Thank you in advance and best wishes,

Herman J. Russomanno III, Esq.
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Reply to: Lakewood Ranch

March 20, 2017

VIA E-MAIL – Josh@jpfirm.com

Joshua T. Chilson, Esq.
Johnson, Pope, Bokor, Ruppel & Burns, LLP
911 Chestnut Street
Clearwater, Florida 33756

RE: Florida Bar Board of Governors Consideration of Rule 2.570 Parental Leave

Dear Mr. Chilson:

As you may know, I serve as the 2016-2017 President of the Pinellas County Chapter of the Florida Association for Women Lawyers (PFAWL). I have enclosed a Resolution passed by our Board of Directors at our last meeting concerning proposed Rule 2.570 on Parental Leave. I understand this Rule will be before the Florida Bar Board of Governors at your next meeting in St. Augustine on March 24, 2017.

As your constituents in the Sixth Circuit, we hope that you will consider our position on this important rule when you cast your vote. This rule has been tediously vetted by the Special Committee on Parental Leave appointed by Florida Bar President Bill Schifino and stands to serve both men and women in the legal community.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Regina A. Kardash

RAK/dgb

Regina A. Kardash

A RESOLUTION OF THE PINELLAS COUNTY CHAPTER OF THE FLORIDA ASSOCIATION FOR WOMEN LAWYERS IN SUPPORT OF A MANDATORY PARENTAL LEAVE RULE

WHEREAS, there have been instances in the state of Florida where pregnant attorneys were denied a continuance requested in anticipation of maternity leave in situations where no compelling interest (i.e. speedy trial, emergency action) existed; and

WHEREAS, anecdotal evidence exists that female lawyers, in the State of Florida, are often denied continuances in anticipation of taking maternity leave; and

WHEREAS, there is a stigma attached to both female and male lawyers asking for a continuance in anticipation of maternity or paternity leave; and

WHEREAS, the legal profession as a whole and the judiciary specially should acknowledge the importance of child-rearing and support members of the bar who choose to practice law and build families; and

WHEREAS, the Florida Bar Special Committee on Parental Leave in Court Actions (Special Committee) issued a Final Report and Recommendation of the Committee on January 27, 2017 (R&R); and

WHEREAS, the R&R concluded that:

> Adopting and expanding policies that promote parental leave would serve as a meaningful step towards closing the gender gap as well as encourage more male attorneys' participation in paternity leave. When fathers take leave, it increases the opportunity and ability of mothers to engage in paid work, with a positive effect on female labor force participation as well as women's wages. The stigma of the 'mommy track' and diminished career opportunities faced by women who bear children is alleviated by the availability of more gender-neutral leave policies. As women take more maternity leave and require more flexible hours to care for their children, they are perceived as unable to undertake the level of commitment required to become partners or advance within their firms.

and

WHEREAS, the R&R proposed the following rule and committee comment:

> <u>RULE 2.570 PARENTAL LEAVE</u>
>
> <u>A motion for continuance based on parental leave of the lead attorney in the case shall be granted if made within a reasonable time after learning the basis of the continuance unless substantial prejudice to the opposing party is shown. Three months shall be the presumptive length of a continuance granted for parental</u>

leave absent good cause for a longer time. If the court denies the requested continuance, the court shall state on the record the specific grounds for the denial.

If the motion for continuance is challenged by an opposing party proffering a basis for a claim of substantial prejudice, the attorney seeking the continuance shall have the burden of demonstrating the lack of substantial prejudice to the opposing party.

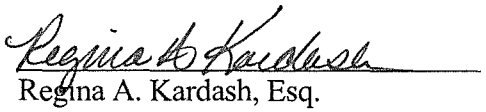
committee comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a strong presumption that a continuance for parental leave, generally not exceeding three months, will be grated when the request for relief is made within a reasonable time after the basis for continuance is reasonably discernible. Substantial prejudice to an opposing party could be the need for emergency or time sensitive relief that would be unreasonably delayed by a continuance or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

and

WHEREAS, NOW THEREFORE BE IT RESOLVED THAT THE PINELLAS COUNTY CHAPTER OF THE FLORIDA ASSOCIATION FOR WOMEN LAWYERS IS IN FAVOR OF THE FOLLOWING RULE OF PROCEDURE AND THAT IT ENCOURAGES THE FLORIDA BAR BOARD OF GOVERNORS TO ADOPT THE RULE AT ITS EARLIEST OPPORTUNITY.

Passed and adopted this 20th day of February, 2017.



Regina A. Kardash, Esq.
President, 2016-2017

Jacksonville Women Lawyers Association

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INGRID SUAREZ OSBORN
SPECIAL PROJECTS

March 30, 2017

The Florida Bar Board of Governors
c/o President Bill Schifino
651 E. Jefferson Street
Tallahassee Florida, 32399

Dear Board of Governors,

The Jacksonville Women Lawyers Association ("JWLA"), a chapter of the Florida Association for Women Lawyers ("FAWL"), after vigorous debate and discussion, joins FAWL and many other chapters, as well as the Conference of Circuit Court Judges, in strongly supporting the proposed rule on mandatory continuances in the absence of substantial prejudice where attorneys are on parental leave.

In the course of discussing whether JWLA would support the rule, one member of our small board of ten women, shared her personal experience, which may prove valuable to the discussion at your May meeting. She was denied a continuance and forced to go to trial over 200 miles away from her seven week old newborn daughter in Jacksonville, whom she was breastfeeding. She worked for a small firm, had been working on the case since its inception, and it was not possible for another attorney to step into the case with the intimate knowledge of the facts. When she went to trial, the judge was reluctant to allow her breaks to pump in order to feed her child and maintain her supply. Effectively, her choice was to tell her client to get a new lawyer or to go to trial no matter the circumstances related to her health and the health of her child. This is not a choice that any attorney should have to make in the absence of substantial prejudice to the opposing party.

While JWLA is supportive of additional education for judges on the disparate impact of such rulings, education is insufficient to correct the problem. Passage of the proposed rule would increase consistency and fairness across the courts of Florida, prioritize the client's right to her choice of counsel, and be one step in the direction of creating a profession in which both parents and non-parents can thrive.

As a final note, JWLA disapproves of the remark that parents will use the proposed rule to "game the system." Any suggestion that members of the Bar will use this rule as a trial strategy is an unfair and inaccurate representation of how families make reproductive decisions and impugns the integrity of lawyers of this state. JWLA is unaware of any evidence, even anecdotal, of individual attorneys being added to first chair trials based on their need for parental leave on the precise dates of the trial term. We appreciate the Board of Governors attention and consideration of this serious issue and urge you to support this rule that empowers attorneys to be both zealous advocates for their clients at trial and parents.

We hope the Board of Governors will vote in support of the proposed rule and trust the dialogue will be both informed and elevated.

Sincerely,

The Board of the Jacksonville Women Lawyers Association

From: Joann Grages Burnett [mailto:jgrages@law.stetson.edu]
Sent: Tuesday, April 18, 2017 4:09 PM
To: Josh Chilson <Josh@jpfirm.com>
Subject: Please support Parental Leave Rule 2.570

Dear Mr. Chilson,

I hope this finds you well. It is my sincere hope that you will support the **Parental Leave Rule 2.570** at your May 27th Board of Governors meeting. This rule stands to support both men and women in our profession and ties in perfectly with Florida Bar Objective V: "*Continue to Encourage and Promote Diversity and Inclusion in All Aspects of the Profession and the Justice System.*"

This rule has been heavily vetted by the Special Committee on Parental Leave appointed by Florida Bar President Bill Schifino. It is a good and fair rule and it is my sincere hope that you will support it.

Warmly,

Joann

Joann Grages Burnett, Esq.
Florida Bar 58944
Associate Director
Office of Career Development
Stetson University College of Law
1401 61st Street South
Gulfport, FL 33707
727-562-7303

Godwin, Krys

From: Kristin Norse <KNorse@kmf-law.com>
Sent: Tuesday, April 25, 2017 3:55 PM
To: Godwin, Krys
Subject: Comment on Proposed Rule of Judicial Administration 2.570

Board of Governors
The Florida Bar
Attn: Krys Godwin, Director, Legal Publication

Re: Proposed Rule of Judicial Administration 2.570

Dear Governors,

I am writing in support of the proposed rule of judicial administration on parental leave that you will be considering at your May meeting. While I write to you individually, I hope that my comments may have some particular significance to you given my role on The Florida Bar's Special Committee on Gender Bias and the time that I was honored to spend with the Board in my year as president of the Florida Association for Women Lawyers.

I have watched the debate on this rule with interest, and with some dismay. Comments made in the debate have suggested a woman who needs parental leave should be required to step aside from her case, or that women might "game the system" by using parental leave to get an unnecessary continuance. To be frank, when the initial debate over this rule first began I might have been convinced one way or the other as to whether a rule was necessary. But in following the debate, hearing the anecdotes of parents denied continuances, listening to comments that are dismissive of a woman's role as lead attorney for her clients, and seeing some very vigorous opposition to a rule (or even *any* rule) that leaves significant judicial discretion intact, I have become convinced a rule is needed. As written, this rule effectively creates a presumption for a reasonable request for a continuance due to parental leave. The rule appears to do no particular harm (over and above the harm that any continuance might cause), and yet could do a critical world of good for parents who may desperately need time for parental leave.

I was tasked with preparing a summary of materials for the Committee on Gender Bias, and one study in particular comes to mind when considering this rule: The American Bar Association's research report, "First Chairs at Trial: More Women Need Seats at the Table." This report found that in civil cases

> men are three times more likely to appear in lead roles than women, which is a marked departure from what we expected based on the distribution of men and women appearing generally in federal litigation (a roughly 2 to 1 ratio) and the

distribution of men and women in the legal profession (again, a roughly 2 to 1 ratio).

This disparity may have many causes, as the report itself points out. But it seems unlikely the disparity can be remedied if courtrooms are hostile to reasonable and limited requests for things like maternity leave.

In the 25 years I have been a member, The Florida Bar has consistently promoted equality in the profession. There is no question we have many great judges across the state who adhere to the highest standards of professionalism and work daily to promote equality and fairness in their courtrooms. It may not be purely aspirational to hope that this rule will have little impact, as reasonable requests for parental leave may already receive fair treatment from the large majority of judges who are presented with them. But enacting the rule can help ensure that such requests are treated equitably.

Thank you for your consideration, and for your service to The Bar and the profession.

Kristin A. Norse

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Godwin, Krys

From: Robin.Nauman@hklaw.com
Sent: Tuesday, April 25, 2017 9:27 AM
To: Godwin, Krys
Subject: Proposed Parental Leave Rule

I am in favor of the proposed rule. As a young women in the litigation group of a large law firm who hopes to one day be a parent, I see this rule as making great strides to retain women in this profession. It is no secret that firms struggle to retain women once they have children and the profession as a whole is at a loss when these women leave. This rule allows parents to have the flexibility they need, and to make an otherwise demanding profession more workable. I hope that the Board of Governors supports this rule. Thank you.

Robin M. Nauman| **Holland & Knight**
Associate
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Godwin, Krys

From: Adina Pollan <apollan@pollanlegal.com>
Sent: Thursday, April 20, 2017 11:52 AM
To: Godwin, Krys
Subject: Proposed Rule of Judicial Administration 2.570 - Comment

Hi Krys!

Hope you're well!

I wanted to provide my comments in support of the Proposed Rule of Judicial Administration 2.570 on parental leave. I want to start by saying that I am not married, nor do I have any children. But I would hate to force anyone – man or woman – to give up their parental leave time to attend a hearing when a continuance would suffice.

I am aware most judges are considerate of the curveballs life throws our way – whether it be unexpected deaths or health emergencies, family issues, or even the planned birth of a child. Unfortunately, I've been in plenty of situations where something unanticipated has come up, and opposing counsel (in a typical move of extreme unprofessionalism), refuses to accommodate a brief continuance which would not result in any undue prejudice. Usually it is done so that they can somehow get the upper hand.

I just think having a rule like this in place will (1) clean up Court dockets by removing unnecessary hearings on motions for continuance, and (2) avoid gamesmanship by unprofessional attorneys. I recognize "gamesmanship" was brought up as a potential deterrent to getting this Rule passed, but clearly gamesmanship is always an issue for attorneys who may not consider ethics to be clear-cut. I just think the potential for harm in NOT having a rule like this in place would be more detrimental for gamesmanship and judicial economy, than if the rule were to pass.

I may never be in a position to use this rule, but it comforts me to know there are people who would benefit from having this rule in place. And that, I think, is our duty as conscientious attorneys – to make the practice of law easier for those who may need a little help during one of life's rough patches.

Thanks.

-Adina

*****WE HAVE MOVED OFFICES. PLEASE NOTE OUR NEW ADDRESS BELOW.*****

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Desire Durrant

Subject: FW: Proposed Parental Leave Rule

From: Andrea Johnson [mailto:andrea@amjlawfirm.com]
Sent: Wednesday, May 3, 2017 9:04 AM
To: F. Scott Westheimer <swestheimer@smrl.com>
Subject: Re: Proposed Parental Leave Rule

I think it's a good rule to promote the importance of family. Sad, though, that there have been instances of attorneys refusing to agree to continuances on these grounds. So I think it's good that the Bar has addressed it by implementing a rule to correct it.

Andrea

--
Law Office of Andrea M. Johnson, P.A.
P.O. Box 1283
Bradenton, FL 34206
(941) 896-7215
www.AMJLAWFIRM.com

From: "F. Scott Westheimer" <swestheimer@smrl.com>
Date: Monday, May 1, 2017 at 2:43 PM
To: Sierra Butler <sierra@butlerelderlaw.com>, Lori Dorman <LoriDorman@BPDLawOffice.com>, "anne.douglass@verizon.net" <anne.douglass@verizon.net>, "robert.eschenfelder@mymanatee.org" <robert.eschenfelder@mymanatee.org>, Jennifer Fowler Hermes <JFowler-Hermes@WilliamsParker.com>, Jeffrey Goethe <jgoethe@barneswalker.com>, "paul@bradentonfamilylawyer.com" <paul@bradentonfamilylawyer.com>, Andrea Johnson <andrea@amjlawfirm.com>, Marisa Powers <mpowers@blalockwalters.com>, "rproctor@rebeccaproctor.com" <rproctor@rebeccaproctor.com>, Alexandra St Paul <astpaul@dyefirm.com>, Charlie Telfair <cwtelfair@lutzbobo.com>, Ann Breitinger <abreitinger@blalockwalters.com>, "ryanc@legalaidofmanasota.org" <ryanc@legalaidofmanasota.org>, "nchipurnoi@boyerboyer.com" <nchipurnoi@boyerboyer.com>, "ac@harlleebald.com" <ac@harlleebald.com>, "cucinotta.kristina@gmail.com" <cucinotta.kristina@gmail.com>, "sean@espositolegal.com" <sean@espositolegal.com>, James Horne <jhorne@kallinsandlittle.com>, "ajohn@blalockwalters.com" <ajohn@blalockwalters.com>, "Jlevy@blalockwalters.com" <Jlevy@blalockwalters.com>, "jel@harlleebald.com" <jel@harlleebald.com>, "tquinlan@manateelegal.com" <tquinlan@manateelegal.com>, "grace@leglerflynn.com" <grace@leglerflynn.com>, "bgs@phkhlaw.com" <bgs@phkhlaw.com>, "atullidge@blalockwalters.com" <atullidge@blalockwalters.com>, Monica Villaverde-Beck <ineedjusticenow@gmail.com>, "Kerry@macklawfirm.org" <Kerry@macklawfirm.org>, "sboone@boone-law.com" <sboone@boone-law.com>, "dan@danpolicastrolaw.com" <dan@danpolicastrolaw.com>, "susan@ctrust.com" <susan@ctrust.com>, "bob@k-rlaw.com" <bob@k-rlaw.com>, "jjdulmer@aol.com" <jjdulmer@aol.com>, "Kelley@mdhpa.com" <Kelley@mdhpa.com>, "bryan@kesslerlawvenice.com" <bryan@kesslerlawvenice.com>, "tony@mowrylawoffice.com" <tony@mowrylawoffice.com>, "ekdubose@matthewseastmoore.com" <ekdubose@matthewseastmoore.com>, "kbruning@bentleyandbruning.com" <kbruning@bentleyandbruning.com>, "Chip.gaylor@mgswlaw.com" <Chip.gaylor@mgswlaw.com>, "Nancy E. Cason" <ncason@smrl.com>, "dcherry@slk-law.com" <dcherry@slk-law.com>, "aarchbold@fergesonskipper.com" <aarchbold@fergesonskipper.com>, "jcarroll@jud12.flcourts.org" <jcarroll@jud12.flcourts.org>, "dclayton@claytonlawyers.com" <dclayton@claytonlawyers.com>, "stacy.dillard@flalandlaw.com" <stacy.dillard@flalandlaw.com>, "haskins@lumpkinhaskins.com" <haskins@lumpkinhaskins.com>, "dbk@keaneandkeane.com"

F. Scott Westheimer

From: Margaret Good <mgood@matthewseastmoore.com>
Sent: Thursday, May 18, 2017 2:48 PM
To: F. Scott Westheimer
Subject: TFB Parental Leave Rule
Attachments: Parental Leave letter to Schifino.pdf

Hey Scott,

I hope all is well with you! I saw you from a distance last night at the judicial reception, but didn't make it over to say hi! I want to touch base with you about the parental leave rule. You may have heard that at our last YLD Board meeting, our board voted unanimously to support the rule. I know TFB Board is voting on it at their next meeting and I wanted to make sure you knew how important the rule is to the young lawyers in the state. I've attached the letter that Katherine sent to Bill Schifino with our official position. If you are interested, I would be happy to talk to you about the reasons our board voted in favor of it.

Thanks for being a great representative of the 12th Circuit!
Margaret

Matthews Eastmoore
TRIAL LAWYERS

MARGARET ROWELL GOOD
Attorney at Law

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PROGRAM ADMINISTRATOR
Thomas V. Miller

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www.flayld.org

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Jacqueline Simms-Petredis, Tampa
Austin Thacker, Orlando
Celia Thacker, Kissimmee
Chrystal Thornton, Lakeland
Lindsay Tygart, Jacksonville
Matthew Welch, Daytona Beach

May 16, 2017

VIA EMAIL and U.S. MAIL

William Schifino, President
The Florida Bar
651 E Jefferson Street
Tallahassee, FL 32399

Re: Unanimous Support of the YLD Board for the proposed Parental Leave Continuance Rule

Dear President Schifino:

At its most recent board meeting on May 5, 2017, **The Florida Bar Young Lawyers Division Board of Governors voted unanimously to support the proposed Parental Leave Continuance Rule** pending before The Florida Bar Board of Governors. This followed the unanimous recommendation of the rule from the Young Lawyers Division Executive Committee a month before the meeting.

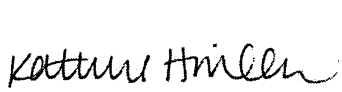
While the YLD board took careful consideration of the arguments against such a rule, we see the rule as groundbreaking and necessary. The rule is consistent with issues the YLD has prioritized, such as supporting women in the profession and encouraging health and wellness of all attorneys. Our board members, through personal experience and/or the experiences of family members, friends, and constituents, including the responses to our 2015 survey, are aware of a number of situations where continuances were denied for expecting parents, as well as similar situations where new and expectant mothers were treated poorly in the courtroom. How attorneys are treated in the courtroom – and particularly the trial experience they develop – affects how they are perceived by their clients, their peers, and their employers for the rest of their career.

The rule as written balances the interest of the attorney, the client, and the opposing party. The rule only applies to lead trial counsel making a request within a reasonable time after learning of the basis of the continuance, and the attorney seeking the continuance must show a lack of substantial prejudice if challenged by an opposing party proffering a basis for a claim of substantial prejudice. Although I believe many members of our board would support an even broader rule, we wholeheartedly support the current version and ask the Board of Governors to vote in favor of it and send it to the Florida Supreme Court.

If you have any questions about the YLD board's unanimous vote in favor of the

proposed Parental Leave Continuance Rule, please feel free to contact me by phone at 386-428-3311 or by email to kmiller@surfcoastlaw.com.

Sincerely,



Katherine Hurst Miller
President

cc: Jack Harkness (via email)
Michael Higer (via email)
Michelle Suskauer (via email)
Krys Goodwin (via email)
Zack Zuroweste (via email)
Christian George (via email)

The Florida Bar • 651 E. Jefferson Street • Tallahassee, FL 32399-2300 • (850) 561-5621 • FAX: (850) 561-5825

F. Scott Westheimer

From: adam@portnowlaw.com
Sent: Wednesday, May 17, 2017 4:09 PM
To: F. Scott Westheimer
Subject: RE: Proposed Parental Leave Rule

Scott,

I strongly support the concept of the Parental Leave Rule and urge you to support it and do whatever you can to get others on the BOG to get behind this rule. The "examples" starting on page 11 of the special committee's report are all the reason we need to have this rule. These are nothing less than horror stories that should never happen in a self-governing profession that prides itself on ethics, professionalism and civility. Being a female attorney is hard enough without having to deal with the humiliation of being denied a continuance due to a pending childbirth or adoption. Not only common sense, but compassion and quality of life considerations require that a rule be in place to protect attorneys and their clients in these situations.

Sincerely,
Adam Portnow

Adam B. Portnow, Esq.
Law Office of Adam B. Portnow, P.L.

(941) 373-1797 Work
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From: F. Scott Westheimer [mailto:swestheimer@smrl.com]
Sent: Monday, May 01, 2017 2:43 PM
To: sierra@butlerelderlaw.com; LoriDorman@BPDLawOffice.com; anne.douglass@verizon.net; robert.eschenfelder@mymanatee.org; JFowler-Hermes@WilliamsParker.com; jgoethe@barneswalker.com; paul@bradentonfamilylawyer.com; andrea@amjlawfirm.com; mpowers@blalockwalters.com; rproctor@rebeccaproctor.com; astpaul@dyefirm.com; Charlie Telfair <cwtelfair@lutzbobo.com>;

F. Scott Westheimer

From: Sara Castro <scastro@farr.com>
Sent: Wednesday, May 17, 2017 12:13 PM
To: F. Scott Westheimer
Subject: RE: Proposed Parental Leave Rule

I am in favor of this rule change. Please let me know if you would like any more detail. Thank you.

Sara Castro | Associate
FARR, FARR, EMERICH, HACKETT, CARR & HOLMES, P.A.
99 Nesbit Street, Punta Gorda, Florida 33950
941.639.1158 | F: 941.639. 0028 | Sara's Bio | farr.com

FARR LAW FIRM

From: F. Scott Westheimer [mailto:swestheimer@smrl.com]
Sent: Monday, May 01, 2017 2:43 PM
To: sierra@butlerelderlaw.com; LoriDorman@BPDLawOffice.com; anne.douglass@verizon.net; robert.eschenfelder@mymanatee.org; JFowler-Hermes@WilliamsParker.com; jgoethe@barneswalker.com; paul@bradentonfamilylawyer.com; andrea@amjlawfirm.com; mpowers@blalockwalters.com; rproctor@rebeccaproctor.com; astpaul@dyefirm.com; Charlie Telfair <cwtelfair@lutzbobo.com>; abreitinger@blalockwalters.com; ryanc@legalaidofmanasota.org; nchipurnoi@boyerboyer.com; ac@harlleebald.com; cucinotta.kristina@gmail.com; sean@espositolegal.com; jhorne@kallinsandlittle.com; ajohn@blalockwalters.com; Jlevy@blalockwalters.com; jel@harlleebald.com; tquinlan@manateelegal.com; grace@leglerflynn.com; bgs@phkhlaw.com; atullidge@blalockwalters.com; ineedjusticenow@gmail.com; Kerry@macklawfirm.org; sboone@boone-law.com; dan@danpolicastrolaw.com; susan@ctrust.com; bob@k-rlaw.com; jjdulmer@aol.com; Kelley@mdhpa.com; bryan@kesslerlawvenice.com; tony@mowrylawoffice.com; ekdubose@matthewseastmoore.com; kbruning@bentleyandbruning.com; Chip.gaylor@mgswlaw.com; Nancy E. Cason <ncason@smrl.com>; dcherry@slk-law.com; aarchbold@fergesonskipper.com; jcarroll@jud12.flcourts.org; dclayton@claytonlawyers.com; stacy.dillard@flalandlaw.com; haskins@lumpkinhaskins.com; dbk@keaneandkeane.com; jlessinger@icardmerrill.com; tonya@mcintyrefirm.com; Jonathan Whitney <JWhitney@lutzbobo.com>; adam@portnowlaw.com; kerry@macklawfirm.org; adam@portnowlaw.com; Amanda King <aking@smrl.com>; bgoodrich@bentleyandbruning.com; Cathy.Kenney@swfwmd.state.fl.us; cunkel@mctlawyers.com; echristy@williamsparker.com; erin@ittslaw.net; hagenbrody@gmail.com; isayeg@mctlawyers.com; jbutler@dglawyers.com; mgood@matthewseastmoore.com; Sara Castro <scastro@farr.com>; zbuffington@williamsparker.com
Cc: HLipps@jud12.flcourts.org; Graceann Frederico <mcba@manateebar.com>
Subject: Proposed Parental Leave Rule

Dear Manatee County Bar and Sarasota County Bar leaders

Good afternoon everyone. I am sending this email to you in your capacity as a leader of either the Manatee County Bar Association , Sarasota County Bar Association, South County Division of the Sarasota County Bar Association, or their respective YLD Board of Directors. As some of you may have read in prior issues of the Florida Bar News , on the Bar's website, or on its social media pages, The Florida Bar Special Committee on Parental Leave in Court Actions (A joint committee appointed by President Schifino consisting of members of the Diversity and Inclusion Committee and the Rules of Judicial Administration Committee), has recommended draft Rule 2.750 on Parental Leave. Our own Robert

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Art Cohen, J.D., M.D., M.B.A.
of Counsel

May 12, 2017

VIA E-MAIL & U.S. MAIL

F. Scott Westheimer, Esq.
12th Circuit Representative, Board of Governors of Florida Bar
Syprett, Meshad, Resnick, Lieb, Dumbaugh,
Jones, Krotec & Westheimer, P.A.
1900 Ringling Boulevard
Sarasota, FL 34236
swestheimer@smrl.com

Re: Proposed Parental Leave Rule

Dear Scott:

I write to you in my capacity as President of the Young Lawyers Division of the Manatee County Bar Association (MCBA-YLD). On May 1, 2017, you requested input from local bar leaders regarding Proposed Rule 2.570 on Parental Leave. At our most recent Board of Director's Meeting for the MCBA-YLD, we discussed the proposed rule at length, even raising some questions as follows:

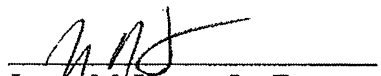
"Is parental leave limited to circumstances surrounding the birth of a new child?" We noted that the committee notes reference balance of work and family (broad), but that the examples in the Special Committee's Memorandum all seem to focus on maternity situations (narrow).

"Does the proposed rule really have any teeth?" We noted that while there are presumptions for leave, it is not automatic. The leave can be denied by a judge with a statement on the record, and if objected to, the person seeking leave has the burden of demonstrating a lack of substantial prejudice.

At the conclusion of our discussion, those board members present voted unanimously to have me formally extend support for the rule on behalf of the MCBA-YLD Board of Directors. It is our hope that as our 12th Circuit Representative you will vote in favor of Rule 2.570 at your May 26, 2017, Board of Governors Meeting.

I thank you for your attention to this matter and remain,

Very truly yours,



James M. Horne, Jr., Esq.
2016-2017 President of the Manatee County
Bar Association Young Lawyers Division

F. Scott Westheimer

From: Jesse R. Butler <JButler@dglawyers.com>
Sent: Friday, May 5, 2017 10:40 AM
To: F. Scott Westheimer
Subject: RE: Proposed Parental Leave Rule

Scott,

I fully support the rule amendment. I trust that you do as well, and that you will support the rule with your vote. I am happy to report that the Young Lawyers Division Board and its Executive Board just unanimously voted to recommend approval of the rule.

In my opinion, it's shameful that there are members of the Board who think that women are somehow going to "game the system." With all respect to judicial discretion, this is about common decency and understanding. Unfortunately, there is far too much anecdotal evidence of both women and men in the profession being denied sensible continuances due to childbirth. The rule is fairly balanced to take into consideration the potential prejudice to the opposing party. If Florida is serious about diversity and inclusion, and seeing more female trial attorneys, this is a rule which needs to be passed.

Sincerely,

Jesse Butler

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ATTORNEYS AT LAW

JESSE R. BUTLER
Associate

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Sarasota, FL 34232

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F. Scott Westheimer

From: Jesse R. Butler <JButler@dglawyers.com>
Sent: Friday, May 19, 2017 9:44 AM
To: F. Scott Westheimer
Subject: Proposed Parental Leave Rule
Attachments: doc00427720170519094034.pdf

Scott,

Please see the attached letter of support for the proposed rule.

Sincerely,

Jesse Butler

DICKINSON & GIBBONS, P.A.
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¤BOARD CERTIFIED MARITAL & FAMILY LAWYER

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E-Mail: jbutler@dglawyers.com

May 19, 2017

Via E-Mail – swestheimer@smrl.com

Scott Westheimer, Esq.
12th Circuit BOG Representative
Syprett Meshad, et al.
1900 Ringling Blvd.
Sarasota, FL 34236

Re: Proposed Rule 2.570 – Parental Leave

Dear Scott,

At our last Sarasota County YLD Board meeting, the Board held a vote regarding the proposed rule on parental leave continuances that will be brought before the BOG for a vote this month. I am honored to report that the Sarasota County YLD Board voted *unanimously* in support of proposed Rule 2.570. As you know, the Florida Bar YLD Board of Governors also voted *unanimously* in support of this rule at its last meeting.

I hope that as our Board of Governor Representative from the 12th Judicial Circuit you will vote in favor of the proposed rule as well. If you want to discuss the proposed amendment further, I would be happy to share my thoughts and the thoughts of our Board as to why we believe this is a positive rule.

Sincerely,

Jesse R. Butler
President, Sarasota County Bar Association YLD
12th Circuit Representative, BOG Florida Bar YLD

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THE FLORIDA BAR BOARD CERTIFIED

Godwin, Krys

From: Richard Friedman <rnathanfriedman@gmail.com>
Sent: Thursday, May 04, 2017 2:35 AM
To: Godwin, Krys
Subject: Proposed Rule 2.570, Fla. R. Jud. Admin., Parental Leave-"Coddle The Attorney" Rul

Krys Godwin, Director, Legal Publication

Dear Sir:

The proposed Rule 2.570, for a minimum of a three month parental leave is a "coddle the attorney" rule and suggests that trial court judges and opposite counsel are unsympathetic to a pregnancy situation as a basis for a continuance and need a new rule to dictate their decisions.

Trial courts control their own calendars and, in the ordinary course, will grant reasonable requests for a continuance for good cause. Moreover, most attorneys are professionals and will accommodate the other side in a case when a reasonable request for a continuance is requested, including a pregnancy. A new rule should not impinge on the discretion and judgment of courts and opposite counsel.

The female attorney who is pregnant or the male attorney who will be the father generally know about eight months ahead of time of the birth date. Accordingly, the attorneys involved in the birth should be able to arrange their calendars to avoid the conflict between their clients interests and their personal interest.

Does the proposed Rule mean that the excused attorney is going to be at home with the new born child the entire three months or longer? If not, how much time after the birth will the impacted attorney resume his or her duties as a attorney on behalf of the client. If less than three months, why have an arbitrary rule making the time three months? I suggest every worker, including many clients, would like the ability to stay at home for at least three months after a pregnancy.

Courts and attorneys do not exist for the benefit of judges and attorneys. Rather, they exist to resolve disputes between litigants in the speediest and most cost effective manner. This proposed Rule delays the resolution of the legal dispute and may cost litigants money.
Richard N. Friedman, Esquire

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.

Post Office Box 10567
Tallahassee, FL 32302

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Hillary Powell

The Florida Bar Board of Governors
c/o President Bill Schifino
651 E. Jefferson Street
Tallahassee, Florida 32399

May 8, 2017

Dear Board of Governors,

The Tallahassee Women Lawyers ("TWL"), a chapter of the Florida Association of Women Lawyers ("FAWL"), joins FAWL and many other chapters around Florida in strongly supporting the proposed rule on mandatory continuances in the absence of substantial prejudice where attorneys are on parental leave.

Please find enclosed a Resolution passed by our Board of Directors regarding this proposed rule. As your constituents in the Second Judicial Circuit, we hope that you will consider our position and support of this rule when you cast your vote later this month.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Christin Gonzalez

Christin F. Gonzalez
President

F. Scott Westheimer

From: Jesse R. Butler <JButler@dglawyers.com>
Sent: Friday, May 5, 2017 10:40 AM
To: F. Scott Westheimer
Subject: RE: Proposed Parental Leave Rule

Scott,

I fully support the rule amendment. I trust that you do as well, and that you will support the rule with your vote. I am happy to report that the Young Lawyers Division Board and its Executive Board just unanimously voted to recommend approval of the rule.

In my opinion, it's shameful that there are members of the Board who think that women are somehow going to "game the system." With all respect to judicial discretion, this is about common decency and understanding. Unfortunately, there is far too much anecdotal evidence of both women and men in the profession being denied sensible continuances due to childbirth. The rule is fairly balanced to take into consideration the potential prejudice to the opposing party. If Florida is serious about diversity and inclusion, and seeing more female trial attorneys, this is a rule which needs to be passed.

Sincerely,

Jesse Butler

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A RESOLUTION OF TALLAHASSEE WOMEN LAWYERS IN SUPPORT OF A MANDATORY PARENTAL LEAVE RULE

WHEREAS, anecdotal evidence exists that women lawyers, in the State of Florida, have been denied continuances on the basis of parental leave; and

WHEREAS, there is a stigma attached to lawyers, both men and women, asking for a continuance in anticipation of maternity or paternity leave; and

WHEREAS, attorneys should not be forced to choose between the advocacy of their clients and the care of their children; and

WHEREAS, the legal profession as a whole and the judiciary specially should acknowledge the importance of child-rearing and support members of the bar who choose to practice law and build families; and

WHEREAS, there is no local rule specifically addressing continuances based on parental leave in state or federal district courts; and

WHEREAS, the Florida Bar Special Committee on Parental Leave in Court Actions (Special Committee) issued a Final Report and Recommendation of the Committee on January 27, 2017 ("the Committee"); and

WHEREAS, the Committee concluded that:

> Adopting and expanding policies that promote parental leave would serve as a meaningful step towards closing the gender gap as well as encourage more male attorneys' participation in paternity leave. When fathers take leave, it increases the opportunity and ability of mothers to engage in paid work, with a positive effect on female labor force participation as well as women's wages. The stigma of the 'mommy track' and diminished career opportunities faced by women who bear children is alleviated by the availability of more gender-neutral leave policies. As women take more maternity leave and require more flexible hours to care for their children, they are perceived as unable to undertake the level of commitment required to become partners or advance within their firms.

and

WHEREAS, the Committee proposed the following rule and committee comment:

RULE 2.570 PARENTAL LEAVE

A motion for continuance based on parental leave of the lead attorney in the case shall be granted if made within a reasonable time after learning the basis of the continuance unless substantial prejudice to the opposing party is shown. Three months shall be the presumptive length of a continuance granted for parental leave absent good cause for a longer time. If the court denies the requested continuance, the court shall state on the record the specific grounds for the denial.

If the motion for continuance is challenged by an opposing party proffering a basis for a claim of substantial prejudice, the attorney seeking the continuance shall have the burden of demonstrating the lack of substantial prejudice to the opposing party.

committee comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a strong presumption that a continuance for parental leave, generally not exceeding three months, will be grated when the request for relief is made within a reasonable time after the basis for continuance is reasonably discernible. Substantial prejudice to an opposing party could be the need for emergency or time sensitive relief that would be unreasonably delayed by a continuance or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

and

WHEREAS, NOW THEREFORE BE IT RESOLVED THAT TALLAHASSEE WOMEN LAWYERS IS IN FAVOR OF THE FOLLOWING RULE OF PROCEDURE AND THAT IT ENCOURAGES THE FLORIDA BAR BOARD OF GOVERNORS TO ADOPT THE RULE AT ITS EARLIEST OPPORTUNITY.

Passed and adopted this 8th day of May, 2017.

Christin F. Gonzalez

Christin F. Gonzalez, Esq.
President, 2016-2017

Godwin, Krys

From: Susan Warner <susan.warner@nelsonmullins.com>
Sent: Tuesday, May 09, 2017 9:21 AM
To: Godwin, Krys
Subject: Comment In Support of Proposed Rule of Judicial Administration 2.570

I write in support of proposed Rule of Judicial Administration 2.570, for continuances for parental leave. While I do not have children of my own yet, I know several women who have been a position of having a new born baby and being forced to show up to court when a judge will not grant a continuance for trial, even knowing full well the trial date is set immediately after the female attorney's due date. It happens far too often and that it happens at all is a shame. I believe this rule is important to prompt gender equality in the courtroom and legal profession.

Nelson Mullins

Susan V. Warner
Attorney at Law
susan.warner@nelsonmullins.com

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(View Bio)

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May 5, 2017

The Florida Bar Board of Governors
c/o President Bill Schifino
651 E. Jefferson Street
Tallahassee, Florida 32399

Dear Board of Governors,

The Board of Directors of the Jacksonville Justice Association ("JJA"), after debate and discussion, joins many other chapters, including the Jacksonville Women Lawyers Association ("JWLA"), as well as the Conference of Circuit Court Judges, in strongly supporting the proposed rule on mandatory continuances in the absence of substantial prejudice where attorneys are on parental leave.

The Jacksonville Justice Association (JJA) is a non-profit organization of over 200 civil justice attorneys that represent those injured by negligence or malpractice. Established in 1996 with the goal of providing civil justice attorneys with the tools and resources needed to improve and enhance their trial practices, it continues today by offering its members educational and professional development through quarterly networking meetings, continuing legal education seminars and an extensive deposition and legal document databank.

Passage of the proposed rule would increase consistency and fairness across the courts of Florida, prioritize the client's right to their choice of counsel, and be one step in the direction of creating a profession in which both parents and non-parents can thrive.

As a final note, JJA joins with JWLA and disapproves the remark that parents will use the proposed rule to "game the system." Any suggestion that members of the Bar will use this rule as a trial strategy is an unfair and inaccurate representation of how families make reproductive decisions and impugns the integrity of lawyers of this state. The JJA and JWLA are unaware of any evidence, even anecdotal, of individual attorneys being added to first chair trials based on their need for parental leave on the precise dates of the trial term. We appreciate the Board of Governors attention and consideration of this serious issue and urge you to support this rule that empowers attorneys to be both zealous advocates for their clients at trial and parents.

We hope the Board of Governors will vote in support of the proposed rule and trust the dialogue will be both informed and elevated.

Sincerely,

Daniel A. Iracki, Esquire
Jacksonville Justice Association, President

Florida Chapters
American Board of Trial Advocates

Central Florida • Ft. Lauderdale • Jacksonville • Miami • North Florida • Northwest Florida
Palm Beach • Sarasota/Bradenton • Southwest Florida • Tallahassee • Tampa Bay

May 11, 2017

Board of Governors
Attn: Krys Goodwin, Director, Legal Publication
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399
KGodwin@floridabar.org

Re: Proposed Rule of Judicial Administration 2.570

Dear Governors,

I write on behalf of the Florida Chapters of the American Board of Trial Advocates (FLABOTA). ABOTA is a national organization comprised of civil trial lawyers from both sides of any case - plaintiff and defense. Our membership includes lawyers who often oppose one another in hearings and trials but we do so while staying true to the principals of civility and professionalism.

FLABOTA would like to express support for Proposed Rule of Judicial Administration 2.570. Like many we support diversity across our profession and this Rule would further that support.

Our society increasingly recognizes the importance of parental leave; we do as well. We believe that granting a continuance for the welfare of a new family is the correct decision provided there is no substantial prejudice. As this proposed rule allows judges sufficient discretion to make appropriate determinations we support it being adopted.

Very truly yours,

Jeffrey M. Goodis, President FLABOTA

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www.flabota.org • flabota@flabota.org

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Art Cohen, J.D., M.D., M.B.A.
of Counsel

May 12, 2017

VIA E-MAIL & U.S. MAIL

F. Scott Westheimer, Esq.
12th Circuit Representative, Board of Governors of Florida Bar
Syprett, Meshad, Resnick, Lieb, Dumbaugh,
Jones, Krotec & Westheimer, P.A.
1900 Ringling Boulevard
Sarasota, FL 34236
swestheimer@smrl.com

Re: Proposed Parental Leave Rule

Dear Scott:

I write to you in my capacity as President of the Young Lawyers Division of the Manatee County Bar Association (MCBA-YLD). On May 1, 2017, you requested input from local bar leaders regarding Proposed Rule 2.570 on Parental Leave. At our most recent Board of Director's Meeting for the MCBA-YLD, we discussed the proposed rule at length, even raising some questions as follows:

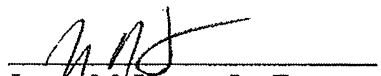
"Is parental leave limited to circumstances surrounding the birth of a new child?" We noted that the committee notes reference balance of work and family (broad), but that the examples in the Special Committee's Memorandum all seem to focus on maternity situations (narrow).

"Does the proposed rule really have any teeth?" We noted that while there are presumptions for leave, it is not automatic. The leave can be denied by a judge with a statement on the record, and if objected to, the person seeking leave has the burden of demonstrating a lack of substantial prejudice.

At the conclusion of our discussion, those board members present voted unanimously to have me formally extend support for the rule on behalf of the MCBA-YLD Board of Directors. It is our hope that as our 12th Circuit Representative you will vote in favor of Rule 2.570 at your May 26, 2017, Board of Governors Meeting.

I thank you for your attention to this matter and remain,

Very truly yours,



James M. Horne, Jr., Esq.
2016-2017 President of the Manatee County
Bar Association Young Lawyers Division

Godwin, Krys

From: Richardson, Jennifer Shoaf (Jacksonville) <Jennifer.Richardson@Jacksonlewis.com>
Sent: Monday, May 15, 2017 4:05 PM
To: Godwin, Krys
Cc: Freire, Leora
Subject: Parental Leave - Comments
Attachments: Parental Leave Anonymous Accounts.pdf

Krys,

The attached document contains two accounts of denials where the individuals wanted to report anonymously.

These are the accounts (contained in the doc, but it is kind of long):

1. 2009: At docket sounding, trial date for modification of family law case (my client was petitioner) was set for 4 weeks after my due date. It was objected to and Magistrate denied it. Ended up giving birth a week early so trial took place when my daughter was 5 weeks old. I had only requested 6 weeks from my original due date so the continuance was not even that long.

2. I have a friend, a single practitioner, who was set to give birth to her first child. The judge and opposing counsel were aware of her due date. Then the judge set the civil trial in her matter to occur the week after she was due to give birth. She immediately requested a continuance, stating that she was due the week before. This was the first trial set in this matter, so this was not a case of a matter being on the docket for years and years. The male judge denied the continuance and forced trial. Thus, she was forced to come to the court a week after giving birth for a trial.

Thank you for gathering the comments for the BOG's consideration. I have encouraged everyone to send comments directly to you.

Jenny

Jennifer Shoaf Richardson
Attorney at Law
Jackson Lewis P.C.
501 Riverside Avenue
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Jacksonville, FL 32202
Direct: (904) 638-2668 | Main: (904) 638-2655
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Jackson Lewis P.C. is included in the AmLaw 100 and Global 100 law firm rankings.

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Continuance Denials - Parental Leave

For submission to The Florida Bar

Have you sought a continuance for parental leave?

- ○ Yes
- ◉ No

Was it opposed?

- ○ Yes
- ○ No

Was it denied?

- ○ Yes
- ○ No

Please explain the circumstances and the year. It is not necessary to name the judge or court.

If you have not personally experienced a denial, but have heard of someone else experiencing one, please explain the details.

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Godwin, Krys

From: Leanne Prendergast <Leanne.Prendergast@fisherbroyles.com>
Sent: Monday, May 15, 2017 7:48 PM
To: Godwin, Krys
Subject: RE: proposed Rule of Judicial Administration 2.570

Re-sending to correct typo in original.

Thanks again.

Leanne McKnight Prendergast

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From: Leanne Prendergast
Sent: Monday, May 15, 2017 7:29 PM
To: 'kgodwin@floridabar.org' <kgodwin@floridabar.org>
Subject: proposed Rule of Judicial Administration 2.570

I am utterly dismayed that there could be opposition to proposed Rule of Judicial Administration 2.570. I have heard of more than one instance of a request for continuance based upon parental leave being denied. The proliferation of stories of such abuses of discretion discourages women from entering into or sticking with careers in litigation. After all, while the proposed rule is written to be gender-neutral—as it should be—the status quo disproportionately affects women. Is it any wonder that although a little more than half of law school graduates are women, so few make it to the ranks of law firm leadership? The Bar should set the bar. Florida should be leading the charge on this issue, particularly after the abysmal results of the 2015 YLD Survey on Women in the Legal Profession. We cannot expect significant change within the profession if the Bar cannot muster the wherewithal to implement such a basic protection as a guaranteed continuance due to parental leave.

Thank you for your consideration of this important issue.

Leanne McKnight Prendergast

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Godwin, Krys

From: Matthew Posgay <mnp@cokerlaw.com>
Sent: Monday, May 15, 2017 3:49 PM
To: Godwin, Krys; The Florida Bar President
Cc: Michael Tanner; Franklin, Fred; Higer, Michael; Suskauer, Michelle
Subject: Proposed Rule for Mandatory Continuances for Parental Leave

The Florida Bar Board of Governors c/o President Bill Schifino,

Please accept this email as support for the proposed rule requiring mandatory continuances for parental leave, absent a showing of substantial prejudice to the opposing party. It has been far too long that attorneys and their families have been placed in limbo when making decisions about the birth of their children and whether their commitment to their families will suffer due to their commitment to their profession. As you well know, being an excellent father and an excellent attorney are not mutually exclusive. Although the balancing act can be difficult, we should not have to neglect the blessings we have been given as fathers, just because opposing counsel is not willing to provide a limited continuance so we may handle our family affairs.

The proposed rule is gender-neutral and provides a benefit to both mothers and fathers, however, it would be foolish for us to think women do not suffer disproportionately due to difficulties they face when dealing with family issues. It is amazing it has taken so long for such a proposed rule to come before the Florida Bar Board of Governors, but thankfully it is here. Although this is just one step for fairness and equality, it is an important step that must be taken. I respectfully request you support the proposed rule.

Sincerely,

Matthew Posgay
Board Certified Civil Trial Lawyer
Coker, Schickel, Sorenson, Posgay, Camerlengo and Iracki
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COKER, SCHICKEL, SORENSON, POSGAY, CAMERLENGO & IRACKI
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May 15, 2017
BY ELECTRONIC MAIL

Krys Godwin, Director
Legal Publication
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399

RE: Comment regarding proposed Parental Leave Rule 2.570

Dear Ms. Godwin:

Please see attached the Public Interest Law Section comment to the proposed Rule 2.570 Rules of Judicial Administration for consideration at the May 26, 2017 Florida Bar Board of Governor's meeting. I have also attached the exhibits referenced in the comment. Thank you (and the BOG), in advance, for your consideration.

Sincerely,

DocuSigned by:

CE0C46E71C0B4D7...

Sarah R. Sullivan
Chair

COMMENT BY THE PUBLIC INTEREST LAW SECTION
REGARDING PROPOSED RULE 2.570 TO THE FLORIDA BAR BOARD OF GOVERNORS

The practice of law looks backwards towards precedence for guidance in making decisions affecting a litigant's future. The practice of law, however, is changing rapidly, and those of us in the position to shape the future of the practice of law should not only embrace the precedence of the past, but also take responsibility for the health and growth of our industry. The Public Interest Law Section supports Parental Leave, Rule of Judicial Administration 2.570 as a measure that moves our profession forward by allowing parental leave, regardless of gender, in the event of need.

In 2015, the Young Lawyer's Division conducted a survey of female lawyers and the results, published in December 2015, paint an unfavorable, if not explicitly hostile environment reported by almost 25% of the women responding. While much of the focus of their concerns was on employers, there were several instances of the judiciary engaging in gender bias. An underlying theme of devaluing work/life balance weaved its way throughout the commentary solicited by the survey.

Rule of Judicial Administration 2.570 is not the panacea of all things gender inequitable. As per proper rule drafting/format, it is gender neutral and only pertains to parental leave. But, it is a step, an inch towards a truly equitable profession that sincerely values attorneys who are balanced, multi-faceted and well-rounded professionals not competitors racing towards the bottom line. This rule doesn't change law firm culture, but it is a step by our state's bar to identify and support the need for parental leave through the leadership of our judiciary.

The Public Interest Law Section proposes a further improvement to the rule to clarify the timing for filing a motion for continuance. Rather than require the motion to be filed at the time pregnancy/adoption is discovered, the proposed language sets the time for filing the motion, "within a reasonable time after learning the basis for the continuance or the setting of the proceeding that is the subject of the motion, whichever is later." Parental leave may not be necessary upon discovery of the pregnancy, but necessary in the event that a trial or hearing is scheduled at the time of birth or first months of infancy. The proposed language is attached as Exhibit A.

Recently, evening television host, Jimmy Kimmel, gave an impassioned and tearful commentary on the need for accessible healthcare by telling the story of his infant son's emergency heart surgery days after his birth. Jimmy Kimmel's story could as easily be deployed as support for the need for policies protecting parental leave. Both mothers and fathers should be given opportunity to bond with their children in those first few months of infancy. Bonding that is not just important for the parent/child relationship, but also essential for the child's development. Even the Florida Conference Of Circuit Judges, in their letter dated March 17, 2017, "recognized that parental leave has legal, social, and psychological benefits for the legal profession, and for the mothers, fathers and children impacted by positively promoting work/life balance," and voted to unanimously support a mandatory parental leave rule (See March 17, 2017 letter from the Florida Conference of Circuit Judges as Exhibit B). Many of the Public

Interest Law Section's members, experts in child welfare, also value the importance of the healthy development necessary for children to attach to their parents.

Some critics of the parental leave rule state that Judges currently have the discretion to provide this type of relief through the existing rules of procedure. However, if all judges were granting continuances for parental leave consistently, the need for this rule would not exist. The Special Committee on Parental Leave reported that "modern trends in the legal profession are leaning towards offering significant parental leave policies for mothers and fathers." (See Committee Analysis and Action Report, Special Committee on Parental Leave in Court Actions, by Robert Eschenfelder, January 27, 2017, page 16 as Exhibit C). Whether or not a practicing attorney receives parental leave should not depend on your gender, your jurisdiction or local trend—it should be consistently applied throughout the state to all judges and all attorneys. This rule provides the framework for that consistency while providing a balanced remedy for those litigants that suffer extreme prejudice by the granting of such a continuance.

The proposed parental leave rule signals more than just a mechanism for parental leave. It is a symbol in support of gender equity, pay equity and a norm (not an exception) for workplace equality. The Special Committee's report underlined the positive consequence of such a rule. "Studies show that when men share the care work at home through policies like parental leave, women's participation in the paid labor force increases…paid leave for fathers helps to foster gender equity, both in the workplace and in the home, since it shortens leaves for mothers, increasing their job tenure and potentially their wage growth." (Exhibit C, page 18, citing a 2007 U.S. Government Accountability Office report). Instead of asking "*why* have a parental leave rule," the question should be, "*why not*?"

The National Partnership for Women and Families gave Florida the grade of "D-" in its inaugural 2005 report, "Expecting Better: A State-by-State Analysis of Parental Leave Programs," authored by Jodi Grant, Taylor Hatcher and Nirali Patel. (See Exhibit D) And, in a study referenced in the report, "the United States lags far behind the rest of the world in providing paid parental leave to new parents. A Harvard University study of 168 countries found that 163 guarantee paid leave to women in connection with childbirth, and 45 guarantee paid paternity or parental leave." (See Exhibit D, page 12). The study focuses on "paid" parental leave through state statutes or private employers—much different from the proposed Rule of Judicial Administration on parental leave. The studies' relevance to the Board of Governor's consideration, however, is the stark reality that a decade ago, Florida ranked towards the bottom of states for policies supporting parental leave, in a country that ranked last among industrialized countries for policies supporting paid parental leave.

Today, the tide is shifting, and calls for a national paid maternity leave policy positively resonates in both chambers of our nation's legislative branch. The Florida Bar and the Supreme Court have opportunity to push the needle, even if slightly, in favor of families, children and work/life balance consistent with society's evolving social mores. And, it's not just all "feel-good" policy.

The Florida Bar Special Committee's report points out that no other states have explicit parental leave rules for court appearances, but what was not mentioned is that four states have implemented mandatory paid parental leave statutes including California, New Jersey, Rhode Island, and New York. (Paid Family Leave in the United States, Urban Institute May 10, 2017 by Julia Isaacs, Olivia Healy, and H. Elizabeth Peters as Exhibit E). This timely report takes the hypothesis of the parental leave policy from decades past and proves, with data from states who have implemented parental leave, the tangible benefits of such a policy for employers as well as families. The new report is further evidence that implementation of parental leave policies are good for business and, by comparison, the proposed rule would be good for the legal profession.

For these reasons, the Public Interest Law Section of the Florida Bar is in support of proposed Rule 2.570, Parental Leave when considered by the Florida Bar Board of Governors on May 27, 2017.

Dated: May 15, 2017

Respectfully Submitted,

DocuSigned by:

CE0C46E71C0B4D7...

Sarah R. Sullivan, Esq.
Chair, Public Interest Law Section
The Florida Bar
Florida Bar No. 0121592
2220 CR 210 West, Suite 108-407
Saint Johns, FL 32259

PROPOSED BOARD ACTION

Pursuant to Standing Board Policy 1.60, the Board of Governors of The Florida Bar publishes this notice of intent to take final action to recommend that the Supreme Court of Florida adopt new Rule of Judicial Administration 2.570 at its May 27, 2017, meeting in Key West, Florida. This is governed by Florida Rule of Judicial Administration 2.140. If approved by the board, this amendment must still be formally filed with the Supreme Court of Florida, with further notice and opportunity to be heard, before it is officially approved and becomes effective. All comments for the board's consideration must be submitted in writing, no later than May 15, 2017, to Krys Godwin, Director, Legal Publication, at kgodwin@floridabar.org.

RULE 2.570. PARENTAL LEAVE

A motion for continuance based on parental leave of the lead attorney in the case shall be granted if made within a reasonable time after learning the basis for the continuance or the setting of the proceeding that is the subject of the motion, whichever is later,~~if made within a reasonable time after learning the basis for the continuance~~ unless substantial prejudice to the opposing party is shown. Three months shall be the presumptive length of a continuance granted for parental leave absent good cause for a longer time. If the court denies the requested continuance, the court shall state on the record the specific grounds for denial. If the motion for continuance is challenged by an opposing party proffering a basis for a claim of substantial prejudice, the attorney seeking the continuance shall have the burden of demonstrating the lack of substantial prejudice to the opposing party.

COMMITTEE NOTES

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a strong presumption that a continuance for parental leave, generally not exceeding three months, will be granted when the request for relief is made within a reasonable time after the basis for continuance is reasonably discernible. Substantial prejudice to an opposing party could be the need for emergency or time sensitive relief that would be unreasonably delayed by a continuance, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

Florida Conference of Circuit Judges

March 17, 2017

William J. Schifino Jr. President, The Florida Bar
P.O. Box 380
Tampa, Fl. 33601-0380

Dear Mr. Schifino:

The Florida Conference of Circuit Judges is comprised of all 599 Circuit Court Judges in the State of Florida. The Florida Conference of Circuit Judges met in Executive Committee on February 27, 2017 in Tampa, Florida. Among other Court business, we considered the Final Report and Recommendation of the Special Committee on Parental Leave in Court Actions. The Executive Committee voted overwhelmingly in favor of a mandatory parental leave rule.

The Conference has a longstanding commitment to fairness in the court system. We regularly present judicial education programs on a vast array of diversity topics, including implicit bias and gender bias. The Executive Committee recognizes that parental leave has legal, social, and psychological benefits for the legal profession and for the mothers, fathers and children impacted positively by promoting work/life balance. The Executive Committee also recognizes that parental leave is generally an appropriate basis for which to grant a continuance.

The Conference is aware that the Board of Governors is now considering proposed rule language and that the Board of Governors may alter or amend the language proposed by the Special Committee. The Conference does not wish to influence the Board of Governors in its consideration of specific rule language. Therefore, the Florida Conference of Circuit Judges will wait until the Board of Governors finalizes the language before passing a formal resolution supporting a proposed mandatory parental leave rule.

Please let me know if I or the Florida Conference of Circuit Judges can assist you further.

Very truly yours,

Judge Scott M. Bernstein
Chair,Florida Conference of Circuit Judges
and Administrative Judge, Family Division LET Courthouse Center
175 N.W. 1st Avenue, Suite 2815
Miami, FL 33128
305-349-5744

THE FLORIDA BAR SPECIAL COMMITTEE ON PARENTAL LEAVE IN COURT ACTIONS

COMMITTEE ANALYSIS AND ACTION REPORT

TO: Bill Schifino, Florida Bar President and the Florida Bar Board of Governors

FROM: Robert Eschenfelder—Committee Chair

DATE: January 27th 2017

TOPIC: Final Report and Recommendation of the Committee

Please be advised that pursuant to the referral given to this committee by you on September 16th 2016, the committee submits this report for such further action as you and the Governors should desire.

The membership of this committee is as follows:

Robert Eschenfelder (chair)
Hon. Josephine Gagliardi
Craig Leen
Marynelle Hardee
Andres Oliveros
Miriam Ramos
Hon. Manuel Menendez
Chasity O'Steen
Stanford Solomon
Katherine Yanes

To ensure it was able to accommodate the Bar President's charge to this committee to have a final report adopted by the Bar's January 2017 meeting, the committee met a total of 10 times prior to its final January 27, 2017 live meeting to adopt the report.

Historical Background on the Referral:

The Florida Bar's committee structure includes a variety of committees, one of which is the Diversity and Inclusion Committee (hereinafter Diversity Committee). One item that Committee identified as worthy of resolution via a change in the Rules of Judicial Administration was a lack of sensitivity among some of the State's trial judges to the occasional need for attorneys involved in litigation matters to seek continuances of proceedings in light of "parental leave" type events in their lives.

Inasmuch as changes to certain portions of the Rules of Judicial Administration are to first be referred to the Bar's standing Rules of Judicial Administration Committee (RJA), the Chair of the Diversity Committee (who also sits on the RJA as Diversity's liaison) presented the concept to the full RJA at its January 22nd 2016 meeting, and request that the RJA take on the matter and approve a rule on parental leave in court proceedings. After much discussion, a substantial majority of the RJA voted not to pursue such a rule.

On March 22nd 2016, the Diversity and Inclusion Committee, after its own substantial research and discussion, adopted a formal resolution recommending the adoption of a new Rule of Judicial Procedure addressing the Diversity Committee's belief that the State's trial judges were not giving sufficient import to motions from counsel for continuances associated with counsel's child birth schedule or associated parental needs.

Since this action triggered a more formal referral to the RJA, it was presented to the RJA at its June 17th 2016 meeting. The RJA engaged in additional debate concerning the topic, but again voted to reject the request to draft or recommend a rule addressing family leave in court proceedings.

When the Florida Bar President learned of the disagreement between the two committees, he recommended to the Board of Governors that a special committee be created to analyze the topic for the Bar, and draft compromise rule language if possible to address the concerns of both Diversity and the RJA. To ensure diverse and balanced views would be represented, the President's appointments to the membership of this special committee drew from members of both the Diversity and RJA committees. The committee was given its referral on September 19th 2016.

Work Plan:

In response to the referral, the committee first set about challenging itself to identify both the background factual information the Governors might want to know in order to feel adequately educated about the topic, and also to identify and analyze the various "pros and cons" proponents and opponents to a rule might raise, with an eye toward addressing them in a dispassionate, reasoned and fact-based manner.

The special committee, after its own reflection and doing informal surveys of other Bar and judiciary members, identified the following initial list of questions, issues or concerns:

- What do the judges think about this?
- What evidence is there that lawyers have suffered due to the exercise of judicial discretion (specific accounts are requested)?
- At motion hearings on a family leave rule, who bears the burden of proof?
- For motions for family leave, what is the evidentiary burden?
- Will the Code and Rules of Evidence apply to motions for family leave?
- What do other states do as to judicial leave for family issues?

- If a family leave rule speaks only to the state of expectancy, is the Equal Protection Clause implicated?
- What does the federal court system do as to this topic?
- How does this proposal alter a judge's discretion and what impact to the judiciary would removing discretion have on the judiciary?
- To build support for this idea, should we not have some individual stories to tell?
- How will we enforce this with the judges, who do lawyers complain to if a judge fails to grant a continuance for a parental leave reason?
- What happens if a party's litigation position is harmed by delay?
- Should the client of the requesting lawyer have a say in granting the request?
- Are there monetary impacts upon the party or lawyers on the non-requesting side, and how if at all should those impacts be considered?
- What, if any consideration should be given to third parties (and clients) who may be impacted by a judicial family leave rule?
- Has this issue ever been the subject of litigation?
- Could the Bar or State face liability from a party harmed by the effect of rule-required continuance?
- What are the policies regarding leave for family issues currently being used by law firms and governmental agencies?
- What does the FMLA provide for as to employers covered by that law?
- How is attorney compensation influenced by the availability of firm-provided family leave from court proceedings and other firm duties?
- Is there a correlation between career advancement and the availability of judicial leave, and are there gender distinctions as between female and male lawyers with access or no access to such leave?

The committee discussed these various points, and concluded that some were "variations on a theme" and thus combined some into more general discussion points. The committee's analysis of these points follows.

Committee Analysis:

CURRENT CONTINUANCE STANDARD UNDER FLORIDA LAW

In this section of the committee report, we first discuss the standard for granting motions for continuances in Florida. Next, we explore the various factors that courts should generally consider when ruling on such a motion. Finally, we identify additional issues that may be applicable to a court's ruling on a motion for continuance.

a. Standard

Two rules govern consideration of motions to continue in the civil setting. First, Florida Rules of Civil Procedure Rule 1.460 states:

> A motion for continuance shall be in writing unless made at trial and, except for good cause shown, shall be signed by the party requesting the continuance. The

> motion shall state all of the facts that the movant contends entitle the movant to a continuance. If a continuance is sought on the grounds of nonavailability of a witness, the motion must show when it is believed the witness will be available.

Second, Florida Rules of Judicial Administration Rule 2.545(e) provides:

> All judges shall apply a firm continuance policy. Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge. All motions for continuance shall be in writing unless made at a trial and, except for good cause shown, shall be signed by the party requesting the continuance. All motions for continuance in priority cases shall clearly identify such priority status and explain what effect the motion will have on the progress of the case.

To a certain extent, the plain language of these rules discourages the court from granting continuances. Still, the rules complement one another to create a truly discretionary standard for the court. In fact, one Court noted that "a ruling on a motion for continuance is treated with a relatively high degree of deference, even among other kinds of discretionary decisions." ***Yaris v. Hartley*, 128 So. 3d 825, 827-28 (Fla. 4th DCA 2013)** (citing ***Shands Teaching Hosp. & Clinics, Inc. v. Dunn*, 977 So. 2d 594, 599 (Fla. 1st DCA 2007)**). When considering the highly discretionary nature of these rulings, it is fitting that a trial court's decision will be reversed only upon a clear showing of a palpable abuse of judicial discretion. *Id.*; *see also* ***Edwards v. Pratt*, 335 So. 2d 597, 598 (Fla. 3d DCA 1976)** (stating "[t]he granting or denying of a motion for continuance is within the discretion of the trial judge and a gross or flagrant abuse of this discretion must be demonstrated by the complaining party before this court will substitute its judgment for that of the trial judge.").

b. Factors

Although the applicable standard is discretionary in nature, there exist factors that the court should consider when ruling upon a continuance motion. These factors include:

> 1) whether the denial of the continuance creates an injustice for the movant;
> 2) whether the cause of the request for continuance was unforeseeable and not the result of dilatory practices; and
> 3) whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance.

Courts discuss these factors when reviewing the denial of a motion for continuance, but they are equally applicable to the trial court in determining whether a motion should be granted. ***Yaris*, 128 So. 3d at 828** (citing ***Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998)**); ***Myers v. Siegel*, 920 So. 2d 1241, 1242 (Fla. 5th DCA 2006)**. It should also be noted that, when considering these factors, there is no presumption in favor of the moving party. The Court discussed this topic in the context of an appeal, but it is equally

applicable to the trial court. ***Stern v. Four Freedom Nat. Medical Services, Co.*, 417 So. 2d 1085, 1086 (Fla. 3d DCA 1982)**.

c. Other Considerations

– Right to Counsel

In order to meet the "realities of our adversary system of justice," additional factors may be considered when ruling upon a motion for continuance due to the mental or physical condition of counsel. ***Myers v. Siegel*, 920 So. 2d 1241, 1243 (Fla. 5th DCA 2006)** (citing multiple cases to support the argument that courts recognize additional factors in addition to the three aforementioned factors). These factors include:

1) the length of the requested continuance;
2) whether the counsel who becomes unavailable for trial has associates adequately prepared to try the case;
3) whether other continuances have been requested and granted;
4) the inconvenience to all involved in the trial; and
5) any other unique circumstances.

One court further explained that, "[c]onsideration of these factors allows the courts to balance the protection of the client's right to counsel of his or her choice with the general interest in the prompt and efficient administration of justice, which includes an opposing party's right to prompt resolution of the issues involved in the proceedings." While earlier in its opinion the Court notes that in civil proceedings the right to counsel is not absolute, "judicial protection of that right ensures continued public confidence in our system of justice."

– Absence of a Witness

In addition to the requirements of Rule 1.460, a party seeking a motion for continuance due to the absence of a witness must show:

1) prior due diligence to obtain the witness's presence;
2) that substantially favorable testimony would have been forthcoming;
3) that the witness was available and willing to testify; and
4) that the denial of the continuance would cause material prejudice.

***Fisher v. Perez*, 947 So. 2d 648, 650 (Fla. 3d DCA 2007)** (quoting ***Geraldis v. State*, 674 So 2d 96, 99 (Fla. 1996)**).

– Affidavits and other Requirements

The plain language of the rules regarding motions for continuance does not require a sworn statement nor any documentation that provides substance to the motion. ***Myers*, 120 So. 2d 1241 at 1244**. Nonetheless, the Authors' Comment-1967 to Florida Rule of

Civil Procedure 1.460 notes that many courts may require continuance motions be supported by affidavits or documentation as a matter of practice. *Id*. (quoting the Authors' Comment-1967 to Florida Rule of Civil Procedure 1.460). This too seems to be a reaffirmation of the discretionary nature of disposition of continuance motions currently existing in Florida.

Conclusion of Discussion of Florida Law

The applicable rules and case law provide that a truly discretionary standard is applied to motions for continuance. While the cases identify various factors that the court may consider when ruling upon such a motion, the court is free to adopt its own requirements for continuance motions. It is only upon a clear showing of palpable abuse that a court's decision on a motion for continuance is overturned. Accordingly, the current state of the law clearly illustrates that a judge is competent enough to use his or her discretion to determine whether granting a continuance is warranted based upon the specific facts of each individual case.

ANALYSIS OF SAMPLE OF FOREIGN STATE RULES

The committee did not have the resources to research the continuance rules of each other state. However, it examined rules of court in a sampling of the more populous states - Illinois, Massachusetts, New Jersey, New York, Ohio, and Texas – to determine whether any of these states have a rule or rules addressing the granting of continuances for parental leave. That review did not reveal any rules of the family leave focused nature proposed by the Diversity Committee, nor has the committee been made aware of any such rule during its review of secondary sources. We did find that not all of the states surveyed had rules expressly addressing continuances. In those that did, the rules focused on issues such as preservation of witness testimony, attorney scheduling conflicts resulting from other proceedings, and the right to speedy trial in criminal cases.

Illinois was the only state with a continuance rule directly referencing attorney scheduling conflicts.

Massachusetts has two criminal court rules that address continuances. One authorizes the judge to require the testimony of a witness to be taken and preserved for trial as a condition of granting the continuance, with the cost to be paid by the party requesting the continuance. The second Massachusetts continuance rule authorizes the judge to grant a continuance upon a finding that the ends of justice served by granting the delay outweigh the interests of the public and the defendant in a speedy trial.

In New Jersey, a rule on pretrial conferences does not specifically address continuances, but does provide that no change in trial counsel shall be permitted without leave of court if it will interfere with the trial schedule.

New York has a rule that permits parties to stipulate to as many as three continuances not exceeding 60 days. Continuances exceeding 60 days can only be authorized by the court.

Following are excerpts from the relevant foreign state rules reviewed:

ILLINOIS

19.2 Extensions of Time and Continuances

Extensions of time and continuances beyond the times specified in these rules shall be granted on motion of a party or interested person for good cause only, whether or not the parties are in agreement. Orders for extensions or continuances shall appear on the record, identify the moving party and state supporting reasons.

5.2 Continuances

a) Attorney engaged - A party shall be entitled to a continuance on the ground that his attorney (who filed his trial appearance at the pretrial conference) is actually engaged in another trial or hearing, but only for the duration of the particular trial or hearing in which the attorney then is engaged. No trial will be continued a second time upon the motion of the same party on the ground of prior engagement of his attorney.

(b) Addition or substitution of attorneys - A continuance shall not be granted upon the ground of substitution or addition of attorneys.

(c) Motion not to be renewed - If a motion for a continuance is denied by a central assignment judge, it shall not be renewed before the trial judge.

MASSACHUSETTS

Criminal Procedure Rule 10: Continuances
(Applicable to District Court and Superior Court)

(c) Preservation of Testimony. A judge may order as a condition upon the granting of a continuance that the testimony of a witness then present in court be taken and preserved for subsequent use at trial or any other proceeding. The witness shall be examined in open court by the party on whose behalf he is present and the adverse party shall have the right of cross-examination. The expense of taking and preserving the testimony shall be assessed as costs against the party requesting the continuance.

Criminal Procedure Rule 36: Case Management
(Applicable to District Court and Superior Court)

F) Any period of delay resulting from a continuance granted by a judge on his own motion or at the request of the defendant or his counsel or at the request of the prosecutor, if the judge granted the continuance on the basis of his findings

that the ends of justice served by taking such action outweighed the best interests of the public and the defendant in a speedy trial. No period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subdivision unless the judge sets forth in the record of the case, either orally or in writing, his reasons for finding that the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial.

NEW JERSEY

4:25-1. Pretrial Conferences

(14) In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth. No change in such designated trial counsel shall be made without leave of court if such change will interfere with the trial schedule. If the name of trial counsel is not specifically set forth, the court and opposing counsel shall have the right to expect any partner or associate to proceed with the trial of the case, when reached on the calendar.

NEW YORK

Section 202.8 Motion procedure

(1) Stipulations of adjournment of the return date made by the parties shall be in writing and shall be submitted to the assigned judge. Such stipulation shall be effective unless the court otherwise directs. No more than three stipulated adjournments for an aggregate period of 60 days shall be submitted without prior permission of the court.
(2) Absent agreement by the parties, a request by any party for an adjournment shall be submitted in writing, upon notice to the other party, to the assigned judge on or before the return date. The court will notify the requesting party whether the adjournment has been granted.

FEDERAL COURT RULES RELEVANT TO THE TOPIC

The committee found that of the ninety-four federal district courts, none has a local rule specifically addressing continuances based on parental leave. Many, although not all, federal district courts have local rules regarding continuances. Those rules generally impose a "good cause" standard, and sometimes include a requirement that the moving party have been informed of the request for continuance and have agreed to it. See, e.g. M.D. Fla. Local Rule 3.09. Some federal district court local rules require that a motion for continuance be filed as soon as counsel learns of the reason the continuance is needed. See, e.g., D.R.I. Local Rule Civ. 39.02. Additionally, some district courts require that a motion for continuance be accompanied by an affidavit setting forth the facts on which the request is based. See, e.g., N.D.N.Y. Local Rule Crim. Pro. 45.1. A

few district courts require that a request for continuance based on the illness of a party of witness be supported by a medical certificate. D. Mass. Local Rule 40.3(c); M.D. Pa. Local Rule 83.10.3.

IMPACTS ON PARTIES, OTHER COUNCIL

As noted earlier, in considering the efficacy of a possible rule establishing a framework for the granting in court actions of continuances based on parental leave, the committee examined questions such as the effect, if any, on a party's litigation position potentially caused by such a continuance; whether or not the client of a lawyer requesting such a continuance should be heard by the court in its consideration of whether to grant the continuance; whether or not there are financial impacts upon the party (or parties) on the non-requesting side and how, if at all, those impacts should be considered; whether any consideration should be given to any entity, or their clients, not a party to the court action, who may be impacted by such a rule; and whether or not the Florida Bar or the State of Florida could be legally liable to a party harmed by the effect of a continuance mandated or granted under any such rule.

As also noted earlier, currently in Florida a continuance motion proponent carries the burden of proof to show "good cause" while there is no explicit requirement of any party opposing the motion to show any prejudice at all. As has been noted elsewhere in this report, however, several appellate cases enumerate additional factors for consideration by the court which relate to any adverse impact on the opposing party. Among these are whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance and the inconvenience to all involved in the trial.

In addressing the first issue, it should be clear that a continuance granted under any circumstances has the *potential* to harm the litigation position of any party involved — including the party requesting such a continuance. However, the litigation position of a party opposing such a continuance, it stands to reason, is likely the most vulnerable to harm. An unexpected delay for any party in the trial of a case could, among numerous other consequences, render lay or expert witnesses unavailable (or more expensive); it could impact limitations periods and related litigation pending in other jurisdictions; it could heighten the potential for assertions that evidence has been spoliated; it could add to legal fees for the parties as attorneys would necessarily be required for representation for a longer period of time; and, in many civil contexts, it could add daily to a financial injury being suffered by a party which may not be compensable retroactively. Clearly, continuances in the criminal context will ultimately impact the accused who may remain incarcerated longer, as well as the public, which deserves the justice resulting only from disposition of the case.

Not surprisingly, most potential impacts enumerated in this non-exhaustive list are linked to financial effects on the parties. It is therefore clear that any continuance of a matter will likely have some type of financial effect on one or all of the parties. However, if the current law in Florida is to control, it is reasonable to assume these financial effects will

be considered and weighed within the present rubric of "prejudice or inconvenience as a result of a continuance" and the "inconvenience to all involved in the trial".

The committee wishes to be clear that its ultimate recommendation with respect to a rule dedicated to the family leave needs of trial counsel is made against the fundamental rule that an attorney's client — the actual litigant, or party to a case — is the entity whose interests should be served justly above all others through legal process. Thus, absent extraordinary circumstances, the committee believes that client opposition to a lawyer's motion to continue a matter should defeat any such request. And the client would continue to have the same voice he/she/it has now in that if the client wishes to express directly to the court a position on the client's attorney's request for continuance (based on parental leave or otherwise), there seems to be no reason why the client's position should not be heard on the matter, as it would be heard at the court's discretion on any other matter. While client-opposed continuance motions could implicate certain ethical duties, those questions are beyond the consideration of the proposed procedural rule.

Presently, the existing rules on continuances do not address whether the interests of non-parties (or their attorneys or clients) to a court action should be considered when ruling on motions for continuances. The committee believes that any overriding concerns brought to the court by non-parties to the litigation as to parental leave continuance motions would again be weighed by the court under the same current standard of "inconvenience to all involved in the trial", and there does not appear to be any reason for creating any explicit protection of the interests of non-parties to the litigation when considering motions for continuances based on parental leave.

Addressing the potential that the Florida Bar or the State of Florida could be exposed to any new theory of liability if a rule addressing continuances based on parental leave were adopted, it does not appear that any liability could adhere to either entity, so long as the officers of either were acting within the scope of their official duties when enacting such a rule. S*ee* ***Mueller v. The Florida Bar,*** **390 So. 2d 449 (Fla. 4th DCA 1980)**; *see also* ***League of Women Voters of Florida v. Florida House of Representatives,*** **132 So. 3d 135 (Fla. 2013)**.

ANECDOTAL EVIDENCE

The members of the committee were aware from the beginning that one of the central questions which would be raised with respect to this referral was how the axiomatic saying, "if it aint broke, don't fix it." If academia had undertaken an exhaustive analysis of the matter, the committee's work would have been made easier as to its evaluation of whether the current system is "broke" with respect to lawyers seeking court approval to continue matters due to child birth or related challenges.

Therefore, the committee had to rely upon anecdotal evidence. The committee therefore made a broad request to a variety of Bar Members and associations seeking actual instances where:

(1) individuals have been denied a continuance requested due to parental leave and the harm it caused them, their families and their client(s), and

(2) individuals and their client(s) have been harmed by the granting of a continuance, based on parental leave, to the opposing party.

Due to time and resource constraints, the request was sent to approximately 50 lawyers known to committee members with the added request that the information request be passed on to their contacts, thus having a multiplier effect on the solicitation.

Recipients included lawyers with government agencies such as the City of Miami City Attorney's Office and the state Department of Children and Families, as well as other larger private offices and smaller firms. The request was also posted on social media outlets and Florida Association of Women Lawyers networks. To the results obtained from these efforts, the committee also elected to consider the detailed stories of difficulty which have previously appeared in articles addressing the topic.

While the committee included substantial details as to the events, the names of the persons providing the instances are not included so as to encourage persons to provide their information. Below is a compilation of the most relevant, recent examples provided by attorneys:

► I am a partner at a law firm and was lead trial counsel on a case in south Florida. I learned that I was pregnant in October 2013 and that I would be due in July 2014. In January, the judge granted opposing counsel a continuance. In April, opposing counsel requested another continuance which, if granted, would mean a trial period in July. I advised my client of the situation and the client made it clear that she wanted me to continue to represent her and as such, wanted me to object to the granting of the April continuance. (I will note that opposing counsel had been dragging his feet in this case.) At the hearing on the Motion for Continuance, I objected to the granting of the motion and stated that if the judge was inclined to grant it that the trial period be set for October, after my return from maternity leave. The judge was very annoyed at how this all affected his trial docket, stood up, stated that he needed to "calm down" and left the bench. He added, "How do I know you aren't going to come back from maternity leave and get pregnant again and we are never going to try this case?" And then, "I don't understand why you can't assign this case to someone else." The judge ultimately granted opposing counsel's continuance in April and left the trial date open. At the end of June, opposing counsel set the deposition of the most important witness in the case in another city. I objected because at that point my doctor will not let me fly. The judge ruled that the deposition will go forward and that I could participate by phone putting my client at a significant disadvantage.

► I was about 5 month pregnant in December 1989 and was definitely showing. I had a case set for trial after my due date, during the time that I would be taking maternity leave. I filed a motion to move up the trial or continue it until I

returned. At the hearing, opposing counsel did not object. The judge told me that he needed a letter from my obstetrician confirming my pregnancy and attesting that I would be out on maternity leave until the date I had stated in my motion. Opposing counsel jokingly stipulated that I was pregnant since it was so obvious. Nevertheless, the judge insisted that I produce the letter which I ultimately did. It was a humiliating experience.

► I represented the defendant driver in a negligence case in Tampa. While the case was pending, the defendant got pregnant. Before the defendant became pregnant, a trial date was set. The date was within a month of her due date. She was put on bed rest during the last few months of her pregnancy. As soon as the doctor ordered the bed rest, I moved for a continuance, asking for a minimum of a 12-week continuance (the equivalent of FMLA). At the hearing, the judge denied the motion stating that it was the defendant's decision to have a baby and cautioned me not to mention breastfeeding because the defendant could do that at the courthouse during trial if necessary.

► While I was expecting my daughter, I had an attorney move to strike my Notice of Unavailability. The case had been going on for many months and was very contentious. After being granted many extensions, opposing counsel was granted another 20 days to file an Amended Complaint. In anticipation of my due date, I filed a Motion of Unavailability. In response, opposing counsel filed a Motion to Strike attesting that the postponement would cause extreme prejudice to his client. Opposing counsel then set the motion on a motion calendar after her due date. Luckily, the baby was late in arriving and I was able to appear at the hearing. The judge denied the Motion to Strike and admonished opposing counsel for his behavior.

► I tried a case before going on maternity leave when I was 7 ½ months pregnant and the judge could not have been any more accommodating, including granting all of my requests for bathroom breaks.

► I am a solo practitioner and I had filed my notice of unavailability for December 1, 2016 – March 1, 2017. After filing my notice, I was scheduled for a c-section on November 29th. The court set a hearing on November 29th at 8:30 a.m. stating that my unavailability would not begin until December 1st and also that it will not place the case on hold for 3 months. Separately, I had two attorneys object to my maternity leave stating that it was "an unreasonable" amount of time and demanding that I hire coverage counsel.

► A prosecutor in south Florida was hospitalized with complications during her eighth month of pregnancy on the third day of a trial. The judge told her to find a substitute but when she explained that no one else was familiar enough with the case to step in, the judge threatened to dismiss the case. The prosecutor ended up leaving the hospital against the doctor's orders in order to finish the trial.

► My wife was due to give birth. During pretrial motions, I made the court aware of the impending birth of our first child. I was not asking for a continuance but rather making the court aware so that I could be present during the birth. The judge's response was that this was not his problem. After the trial began, my wife went into labor. She labored without my support for hours. Thankfully, I was able to make it to the hospital just as the doctor was delivering our baby. I then went back to trial the following day. I would sleep at the hospital at night and return to court in the morning. While I was not lead counsel in the case, I was heavily involved from the beginning of the matter and my absence would have been detrimental to my client.

► An attorney sought a continuance so she could represent her clients – two police officers – in an upcoming trial scheduled during her maternity leave. It was the first continuance she sought in the matter. Nevertheless, the request was denied because she was told she could transfer her case to another attorney at the government agency she represented. She was very disappointed by the experience as she wanted to both handle the case and take parental leave.

FMLA'S APPLICATION TO THE TOPIC OF JUDICIAL LEAVE

The Family Medical Leave Act of 1993, Pub.L. 103–3; 29 U.S.C. 2601 *et seq.*; 29 CFR 825, is a federal law that requires covered employers to provide eligible employees job-protected leave for qualified medical and family reasons. The Act allows eligible employees to take up to 12 workweeks in a 12-month period (29 CFR §§ 825.200, .202, and .205) for certain purposes, including 1) the birth of the employee's child and to care for the newborn child within one year of birth or 2) the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement. An eligible employee is entitled to use FMLA leave for an incapacity due to pregnancy or prenatal care, and a spouse can use FMLA leave to care for the other spouse who is incapacitated due to pregnancy or child birth. 29 CFR §§ 825.115 and 825.120. Mothers and fathers have the same right to take FMLA leave for the birth or placement of a child and/or to be with the healthy child after the birth or placement.

The FMLA does not cover all employers and employees. Public agencies, including local, state, and federal employers, and public and private elementary and secondary schools are subject to the FMLA. 29 CFR § 825.104. Private sector employees that employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year, including joint employers and successors of covered employers, are subject to the FMLA. 29 CFR §§ 825.105 and 108. This accommodation to small businesses in the law is of particular relevance to lawyers as many law firms do not have the requisite number of employees to trigger the law's coverage.

An employee must qualify for FMLA leave. An employee must 1) work for a covered employer, 2) have worked for the employer for at least 12 months, 3) have worked at least 1,250 hours during the 12 months prior to the start of leave, and 4) be employed at a work site with 50 or more employees within 75 miles. 29 CFR § 825.110. *See also* 29

CFR § 825.111. Employees seeking to use FMLA leave must provide 30-day advance notice when the need for leave is foreseeable and otherwise provide notice as soon as practicable when leave is unforeseeable. 29 CFR §§ 825.302-.303. If requested by the employer, the employee must provide a certification to support the need for FMLA leave (29 CFR §§ 825.305, .307-.308 and .313) and periodic status reports (29 CFR § 825.311), as well as a fitness-for-duty certification. 29 CFR § 825.312.

Employers must provide confirmation of FMLA leave eligibility within five business days of receiving a leave request or when the employer has knowledge that leave may qualify under the FMLA. If the employee is not eligible for FMLA leave, the employer must provide a reason to the employee. 29 CFR § 825.300.

The employer is required to maintain group health benefits during the leave as if the employee continued to work instead of taking leave. 29 CFR §§ 825.209-.213. An employee may elect, or the employer may require the employee, to use accrued paid vacation leave, paid sick leave, or paid family leave for some or all of the FMLA leave period in lieu of unpaid leave. 29 CFR § 825.207. Employees are entitled to return to their same or equivalent job at the end of their FMLA leave. 29 CFR §§ 825.214-.219.

An employer is prohibited from 1) interfering with, restraining, or denying an employee FMLA rights; 2) discriminating or retaliating against an employee for having exercised FMLA rights; 3) discharging or in any other way discriminating against an employee because of involvement in any proceeding related to FMLA, including filing a complaint, cooperating with the Department of Labor Wage and Hour Division, or bringing a civil action; and 4) using the taking of FMLA leave as a negative factor in employment actions. 29 CFR § 825.220.

At the state level, the Florida Legislature has adopted the "Family Support Personnel Policies Act". Florida Statutes §§ 110.1521-110.1523 (2016). Under the Act, the Department of Management Services (DMS) developed a model rule establishing family support personnel policies for all executive branch agencies, excluding the State University System. "Family support personnel policies" is statutorily defined to mean "personnel policies affecting employees' ability to both work and devote care and attention to their families . . . ," including maternity or paternity leave for employees with a newborn or newly adopted child. The DMS model rule became part of the personnel rules of all applicable state agencies 150 days after the effective date of the rule to the extent that each agency did not adopt a rule that set forth the intent to specifically amend all or part of the DMS model rule.

DMS subsequently adopted the "Family Supportive Work Program" rule (Rule). Rule 60L-34.0051, F.A.C. Pursuant to the Rule, agencies are required to approve parental or family medical leave to assist employees in meeting family needs, including approving leave for up to six months for a parent within one year following the birth or adoption of a child. An employee that is granted this leave may request to use accrued leave credits; otherwise, the agency will place the employee on leave without pay.

The committee has taken the space in its report to review these laws so as to ensure the current leave laws surrounding the employment relationship are understood by those who would advocate for or against, or make decisions concerning, the proposed court rule on family leave continuances. The committee sees two issues bringing together these laws and the rule proposal.

The first issue is that many law firms within the State of Florida do not meet the employee threshold to be covered. Indeed, many firms house only a few staff, and a growing trend the Bar is aware of is the typically young sole practitioner operating virtual practices from home offices, and perhaps obtaining primary income serving as "coverage attorneys" for others. Since the laws associated with family leave do not apply to these lawyers, and these lawyers are just as likely to have family leave issues as lawyers in larger firms and perhaps less likely to have alternative support mechanisms, a rule allowing special focus on the importance of granting continuances for litigating lawyers who have such issues is all the more important.

The other issue is that even where a Florida lawyer practices within a public sector office or a larger law firm covered by the law, an employer's compliance with the law may not be enough. Unlike most other types of employment, a lawyer involved in litigation seeking to be absent from the workplace for family leave reasons without negative consequences must not only gain the approval of his or her employer, but must also get the approval of the court in which the litigation is pending. This added layer of scrutiny could result in instances where a firm grants approval for an absence, yet the court compels attendance. While the committee is well cognizant of the judiciary's need to move cases and opposing counsel's duty to advance his or her client's case, a denial of a continuance for a less than justified reason could make the federal and state policy decisions of the Congress and the Florida Legislature hollow rights for the unsuccessful movant. And while the committee unanimously agrees that the great number of trial judges in the state are being as accommodating as they possibly can, the anecdotal evidence reviewed in this report would certainly reveal that in at least some settings, continuances based on family leave needs are being denied where a factual basis for the denial does not seem to be present.

IMPACT OF ABILITY TO TAKE FAMILY LEAVE ON LEGAL CAREERS

There is a growing trend in more generous parental leave policies throughout the legal profession. Research was conducted looking into the specific effects of parental leave policy on wages and salaries, as well as the long-term effects of parental leave policies. These studies are posted on the committee's Bar web page, and are incorporated into this report by reference. In the committee's overall review of the studies it could find on the topic, the combination of better practices and eliminating the stigma associated with taking leave will have the positive effects of encouraging more male attorneys to take parental leave, and promote female attorney career growth and development. Best practices to support increased access to and use of parental leave by attorneys, mothers and fathers alike, include incentivizing attorneys to take leave as well as implementing policies that are more inclusive of all parents.

a. The Challenges of Parental Leave for Attorneys and Modern Trends

To begin with, the practice of law brings a unique set of circumstances when faced with the challenge of taking paternity leave. From the beginning, the attorney preparing to take leave must determine the best time to discuss the issue with partners, staff, and clients. The timing of these discussions is impacted by many factors, specifically those regarding trial strategies, discovery conferences, deadlines, extensions and continuances. Extensions and continuances, or a lack thereof, will oftentimes prompt these discussions with clients earlier on due to the uncertainty of whether or not a continuance will be granted.

Attorneys often must consider when to stop taking on new matters and are forced to seek substitute counsel to monitor their caseload. Additionally, many attorneys are forced to leave firms, or simply never return, due to their lack of caseload. In a profession in which success relies heavily on client service and caseload, attorneys forced to seek substitute counsel due to paternity leave are put at a disadvantage. However, modern trends in the legal profession are leaning towards offering significant parental leave policies for mothers and fathers.

Leading the way of this transition are some of the largest national law firms and those included on the "50 Best" firms list. A recent Above the Law article titled "Which Biglaw Firm Has the Best Parental Leave Policy," revealed Orrick Herrington & Sutcliffe, a global law firm originally founded in San Francisco, offers its attorneys twenty-two weeks of paid leave for mothers and fathers. Orrick's chairman, Mitchell Zuklie, substantiates the new policy move as a means to "improve the lives of people who work at a very high level and who are very dedicated to client service." *See* http://abovethelaw.com/2015/05/which-biglaw-firm-has-the-best-parental-leave-policy/?rf=1.

b. Motivate Male Attorneys to Use Parental Leave

Studies show workplace culture and gender stereotypes prevent men from seeking to take more extended paternity leave. A recent survey of highly educated professional fathers who had more access to parental leave than most U.S. workers found a substantial portion took less than the full amount of paid leave available. In that survey, fathers cited workplace pressures as a factor into the length of leave they took. *See DOL Policy Brief, Paternity Leave: Why Parental Leave for Fathers Is So Important for Working Families retrived at* https://www.dol.gov/asp/policy-development/paternityBrief.pdf. *Citing to* Harrington, et al found in a 2014 survey of highly paid professional U.S. fathers that only about 5% took no paternity leave, but over 80% took two weeks of leave or less. Brad Harrington, et al. 2014. *The New Dad: Take Your Leave*. Boston College Center for Work and Family, retrieved from: http://www.bc.edu/content/dam/files/centers/cwf/news/pdf/BCCWF%20The%20New%20Dad%202014%20FINAL.pdf (last visited June 17, 2015).

A 2012 Department of Labor survey found that 70 percent of men taking leave for parental reasons took 10 days or less. Jacob Alex Kler-man, et al. 2012. *Family and Medical Leave in 2012: Technical Report.* (Prepared for U.S. Department of Labor.) Cambridge: Abt Associates, at 141. Nepomnyashy and Waldfogel (at 433-37) similarly find paternity leaves in the U.S. are short and that two thirds of fathers take less than two weeks of leave. Even when men have access to leave, they might cut their leave short to avoid being perceived as less dedicated. Forty-eight percent of men working full time reported job demands interfered with family life sometimes or often. *DOL Policy Brief, Paternity Leave: Why Parental Leave for Fathers Is So Important for Working Families retrived at* https://www.dol.gov/asp/policy-development/paternityBrief.pdf.

New efforts to motivate fathers' use of parental leave are accelerating a cultural change and breaking down the stereotypes within the professional realm. Workers face tension in balancing their roles as professionals and parents, especially when there are adverse consequences to prioritizing family over work or work over family. Empowering more fathers with the opportunity to take leave means they can achieve their professional goals and be supportive fathers. Access to parental leave and implementation of policies in support of taking leave without consequences will ultimately result in an increase of fathers' use of it.

c. Increase Productivity and Reduce Turnover

Additionally, research shows that leave increases the likelihood that workers will return to work after childbirth, improves employee morale, has no or positive effects on workplace productivity, reduces costs to employers through improved employee retention, and improves family incomes.

Leave may also contribute to increased productivity by reducing turnover, increasing the length of time workers stay at firms or in the labor market, thus helping workers accumulate increased human capital, which enhances their productivity at work. A study of OECD countries shows that family leave, especially when paid, can have a positive impact on productivity. Every one-week increase in available family leave is associated with an increase in aggregate labor productivity and multifactor productivity. *See* Institute for Women's Policy Research (IWPR) *Paid Parental Leave in the United States*. http://www.iwpr.org/publications/pubs/paid-parental-leave-in-the-united-states-what-the-data-tell-us-about-access-usage-and-economic-and-health-benefits.

d. Economic Implications: Gender Equity in Workplace

Research shows women are more likely to return to the work force in a *part-time* position than men are after the birth of a child. *See Paternity Leave Stimulus*, TIME (Dec. 22, 2014) http://time.com/3642763/paternity-leave-stimulus/). As a result, men's incomes increase, while women remain at lower income or outside the formal labor market. Paternity leave reduces this disparity by allowing men to participate in leave, breaking the trend and shifting the traditional gender expectations.

Studies show that when men share the care work at home through policies like parental leave, women's participation in the paid labor force increases. At least one study, cited by the U.S. Government Accountability Office (2007) finds that paid leave for fathers helps to foster gender equity, both in the workplace and in the home, since it shortens leaves for mothers, increasing their job tenure and potentially their wage growth. Further, study in Sweden found that woman's income increases 7 percent for each month that her partner takes leave. *See* Noland, *Is Gender Diversity Profitable? Evidence from a Global Survey.* https://piie.com/publications/working-papers/gender-diversity-profitable-evidence-global-survey.

Additionally, according to the Organization of Economic Coordination and Development reports that if women in the U.S. worked at the same rates men did, U.S. GDP could grow 9 percent; France's by more than 11 percent; and Italy's would see a 23 percent climb. On average, across OECD countries, if women's participation in the workplace were to converge with men's rates by 2030, we could see an overall increase of 12 percent in GDP. The McKinsey Global Institute (2015) estimates that a scenario in which women achieved complete gender parity with men could increase global output by more than one-quarter relative to a business-as-usual scenario.

e. Missed Promotions & Opportunity

A recent report produced by "The Visier Insights: Gender Equity" revealed women are more likely to leave the workforce between the ages of 25 and 40; the range in which most women commonly have children. This time frame in which most women are known to take maternity leave is simultaneously the time frame in which workers are known to get the greatest gains in their compensation. The lack of women in the workplace leads to what has been coined as the "managerial divide."

Statistics reveal the gender wage gap widens at age 32, starting with women earning 90 percent of the wages of men and decreasing to women earning 82 percent of the wages of men by age 40. The timing of this widening gap aligns with a pronounced dip in the ratio of women in the workforce.

Just as women's income increased in Sweden for each month that her partner took leave, the same is true when women take leave. The data showed men are more likely to be promoted if there is less female competition in the workplace. As a result, women are estimated to lose $1.3 million during their lifetime in pay alone. Forty-two percent of working mothers had reduced their hours to care for a child in comparison to twenty-eight percent of working fathers. The result is an inevitable gender wage gap.

However, the report suggests there are a number of steps to make meaningful progress toward closing the manager divide and reducing the gender pay gap. Among the recommendations in the report:

► Support meaningful paid parental leave that is equal for both men and women.

► Ensure that it is socially acceptable for both men and women to take time off to care for their children and that it is socially acceptable for both mothers and fathers to make use of flexible working time arrangements to care for children.
► Support programs that increase the availability of quality, affordable child care for all parents.

It is generally recognized that employers with strong parental leave policies benefit through greater employee loyalty and productivity, more successful recruitment efforts, increased employee retention, and enhanced client satisfaction through continuity.

Another global survey the committee reviewed reveals that mandated maternity leave is not correlated with female corporate leadership, though paternity leave is strongly correlated with the female share of board seats. It is argued that countries in which fathers have access to more leave have significantly more women in corporate positions. See study *Women Miss Promotions for Maternity Leave:* (Nov. 14, 2016): http://www.benefitnews.com/news/women-miss-promotions-for-maternity-leave-study.

It stands to reason that policies that allow childcare needs to be met but do not place the burden of care explicitly on women increase the chances that women can build their careers and grow within their professional field. More gender-neutral family leave would also cut off the expectation by employers that young men will necessarily provide greater returns to training and mentoring than young women. This suggests that policies that place a disproportionate burden of childcare on women are one barrier to female corporate advancement.

OTHER REMEDY ISSUES

The committee attempted to determine what the remedy would be if a continuance is incorrectly denied under the proposed rule. The denial of a motion for continuance is subject to an abuse of discretion standard of review on appeal. *See* ***Fleming v. Fleming*****, 710 So. 2d 601, 602 (Fla. 1st DCA 1998)**. As can imagined, an appeal of a denial of a continuance would typically come up if a default is granted because a continuance was denied. An appeal would then follow regarding whether the continuance should have been denied. Of course, that is not the situation we are addressing here. Here, there would be no issue of a default if the continuance was denied; the issue would be whether the attorney would be allowed to both take the leave and continue as the attorney on a case. Accordingly, the way to address the erroneous denial of a continuance based on parental leave would be by interlocutory review via a petition for writ of certiorari. In a situation where the denial of a continuance causes irreparable harm (which has been found in situations where there is a medical issue or emergency), certiorari review is available. *See, e.g.,* ***Carnival Cruise Lines v. Bonavia*****, 773 So. 2d 1212, 123 (Fla. 3d DCA 2000)**; ***SSJ Mercy Health Systems, Inc. v. Posey*****, 756 So. 2d 177, 179 (Fla. 4th DCA 2000)**. The order denying the continuance could then be quashed, and the continuance would then be allowed.

If the Supreme Court ultimately adopts this Rule, it would be determining that there should be a specific rule addressing and protecting parental leave. If a trial court were then to not apply the rule, or if the motion for continuance were denied without justification (under an abuse of discretion standard), the committee believes there would be a good argument that a petition for writ of certiorari could be filed to protect the attorney's ability to both take parental leave and remain as attorney on the case (as there would otherwise be irreparable harm that could not be cured through an appeal).

Ultimately, I do not think the appellate remedy is so important though. **Simply having the parental leave rule will ensure that the motion is made and granted more often, which will address most of the concern.** It will let the trial courts know that the Bench and Bar view this as a significant consideration, which will allow the Judges to exercise their discretion under the rule in a manner that would grant parental leave unless there was substantial prejudice to the other side. As long as the trial court applies the rule and the substantial prejudice standard, I believe it would be unlikely that the court's decision would be overturned considering the abuse of discretion standard.

Conclusion

Adopting and expanding policies that promote parental leave would serve as a meaningful step towards closing the gender gap as well as encourage more male attorneys' participation in paternity leave. When fathers take leave, it increases the opportunity and ability of mothers to engage in paid work, with a positive effect on female labor force participation as well as women's wages. The stigma of the 'mommy track' and diminished career opportunities faced by women who bear children is alleviated by the availability of more gender-neutral leave policies. As women take more maternity leave and require more flexible hours to care for their children, they are perceived as unable to undertake the level of commitment required to become partners or advance within their firms.

INPUT AND ANALYSIS FROM REPRESENTATIVES OF THE JUDICIARY

As part of its work on the various proposals for a parental leave amendment to the court rules, the committee sought input from the judiciary. Specifically, the chief judges of each circuit and DCAs were requested to circulate the proposals and seek comment from their colleagues. The committee did not receive a substantial percentage of responses from judicial officers.

With that said, the committee did receive more responses from judges and courts than it did from Bar members offering anecdotal evidence of improperly denied continuances. A total of fifteen individual judges drafted responses to us. However, several Chief Judges indicated that they were speaking not just for themselves but also for some number, if not all of the members of their respective courts. Unless otherwise set forth, the committee has removed the names of the judges who provided written comments since focus on the personal identity of the judges is less important than hearing what each

had to say. The number of male to female respondents were roughly the same. The written comments received by the committee were as follows:

1. Saw the proposed rules and am wondering what is generating the interest in having a rule to govern this specific ground for a continuance. Are judges routinely denying continuances for this reason when they would grant them for other reasons? My own experience has been that on the relatively rare occasion when a continuance is sought because an attorney is going on maternity/parental leave, everyone is quite agreeable and respects the need for a continuance if the attorney's presence is essential to the trial. Unless there has been some history of a significant number of judges arbitrarily refusing to even consider this particular ground as compared to other grounds for continuance, I wouldn't think that such a rule would be even considered. Additionally, it would put the Supreme Court in the position of "prioritizing" grounds for continuance and imposing its ideology on trial judges regarding one particular reason to consider a continuance. In my view, parental leave should remain one of many reasons why a continuance may be granted and not given any priority over other equally valid reasons. Whether phrased as a mandatory or discretionary rule, a rule like this would unnecessarily invade the independence of trial judges. For these reasons, I would not be in favor of such a rule. Thanks for inviting input. [Circuit Judge, 8th Judicial Circuit]

2. I agree with Judge **********. Thanks for seeking input. [Circuit Judge, 8th Judicial Circuit]

3. I do not have anything new to add to the discussions, other than I believe it would be appropriate for there to be a Rule rather than a "policy." It seems to me to be a distinction of substance, because a judge's failure to follow "policy" would be non-reviewable and thus of little force or effect. [Circuit Judge, 1st Judicial Circuit]

4. November 14, 2016

   Re: Proposed Rule Focusing on Family Leave

   Dear Chairman Eschenfelder:

   While the Third District Court of Appeal is committed to lawyers being able to balance work and personal life, including specifically family matters and parental leave, the Court is in unanimous agreement with the position of the Rules of Judicial Administration Committee, which on two separate occasions declined to approve a Rule in this regard.

   The nature of this issue makes it one best left to the exercise of the sound discretion of the court, subject to review as provided by existing rules. We approve including a segment on work/life issues in judicial training, as appropriate.

Sincerely,
Richard J. Suarez, Chief Judge

5. Thank you for seeking input on the rule. I agree with the rule that would require it to be mandatory, with the Court having to explain the denial. However, I believe the rule should include a requirement for the attorney (male or female) expecting* a baby to file their motion upon receipt of the trial order, or as soon thereafter as is known, if the projected parental leave would somehow interfere with pre-trial deadlines or conflict with the trial period, so that the matter may be timely addressed. Of course, this requirement would not apply if the case can proceed, pre-trial deadlines met, etc., without the attorney that is expecting a baby. For example, if co-counsel is able to handle matters. (The attorney expecting the baby would be the one to decide – not the Court – by either filing or not filing the motion.) Failure to timely file the motion would provide the court with sufficient grounds for denial of continuance based on parental leave. Giving birth does not usually come as a surprise. Unless there are unexpected complications, attorneys know the approximate due date way in advance. Although I grant the continuance or, at a minimum, excuse them for a portion of the trial period, (usually it's the father seeking a continuance) I've never understood why they wait until calendar call to advise that their wife will be having a baby during the trial period. So, while I agree with the mandatory rule, I propose it include parameters for the timeliness of the motion, as well as the possible consequences for failure to comply.
   * "Expecting" refers to the future mother or father of the child to be born, not the person that is actually pregnant. Would also apply to those that are adopting a child to be born from a surrogate.
   [Circuit Judge, 11th Judicial Circuit]

6. Our court plans to write a letter agreeing with the Judicial Administration Committee that a special rule should not be created. Offhand, can you advise where and to whom the letter should be sent? If an email is sufficient, let us know to whom and email address. [Judge of the Third District Court of Appeal]

7. While I do not know nearly enough about the laws relating to issues of family leave, if they bind us and say what we must do in this circumstance, we do not need a redundant court rule. If they do not, our obligation to be reasonable at all times will guide us.

   My thought is rules of this type are borne of unnecessary hand-wringing over what must have been the persistent, misguided actions or policies of a few of our colleagues. I am unwilling to believe that this is a systemic problem. If it is, let the rule be served. If not, it is clutter in the cupboard.

   While these sorts of rules, it might be argued, are designed to present to the public a view of the courts that is fair, just, and reasonable, I am of the opinion they work just the opposite result – reflecting a wild judiciary with no sense of decency or humanity. We are supposed to be resting upon the summit of these virtues and the public should perceive that we are implicitly trusted to so rest. "Good people

do not need laws to tell them to act responsibly." - didn't some sage Greek once proclaim this? The more rules we have to tell us how to be "good", the less likely the public is to view us as inherently so.

There are mechanisms in place to address errant judicial conduct – ethics complaints, extraordinary writs, and the dread branding of "the learned trial judge", for instance. I know when confronted with a lawyer requesting a postponement on grounds of recent parental responsibility, I have without hope of escape found myself under the microscope of decency. If our elected lawmakers have spoken, by damn I will abide. If not, I rely upon those traits I must believe had something to do with my being entrusted with this position. I can only hope I will do the right thing. I must have confidence the vast majority of my colleagues are of similar ilk. Allowing the public to observe we are fair and decent despite commandment goes much further than making room for the perception we are doing this, that, or the other thing only because required by edict.

If on the committee, I would vote no on the rule and yes on judicial education.
[Circuit Judge, 10th Judicial Circuit]

8. I'm with **********. The measure of morality is "what you do when no one is looking." [Circuit Judge, 10th Judicial Circuit]

9. I agree w/ Kevin, too! There is a rule in place; however, humanity & decency should guide us through these situations. [Circuit Judge, 10th Judicial Circuit]

10. I understand the importance of wanting to address this issue, but agree with Roger that it is already addressed with the "good cause" language in the Rule. However, if it needs to be spelled out, then perhaps Rule 2.545(e) should be revised to elaborate on "good cause" to include, but not limited to, not just parental leave but other types of leave covered under FMLA, to avoid future revisions. [Circuit Judge, 10th Judicial Circuit]

11. I am certainly supportive of the discretionary rule, although the mandatory version may be a distinction without a difference. I am, however, concerned with the stated need for any rule being based upon "anecdotal" evidence. [Circuit Judge, 3rd Circuit]

12. Adding to my earlier response; I am certainly supportive of the spirit of the discretionary rule although I wonder if it is a solution in search of a problem when the stated need for the rule is, according to the petition, based upon "anecdotal" evidence. The question is also begged as to whether establishing continuance protocols for sole practitioner parental leave situations will signal a need to establish future rules dealing with other specific scheduling conflicts facing attorneys or the parties, including but not limited to parental leave situations involving the parties or essential witnesses. Having said that, I certainly think that emphasis on having sensitivity to sole practitioner parental leave issues (I was

a sole practitioner for the last decade of my practice) arising in the context of continuance motions is something that should be stressed in judicial training especially during new judges college.

13. I received comments from several trial judges.

First, all who commented expressed sensitivity to parental leave. All recognized parental leave as an appropriate basis for accommodation, including trial continuances in many circumstances. More generally, the judges recognized how demanding the life of a trial lawyer can be and the need to make sensitive judgments.

Second, judges expressed misgivings about attempting to reduce these considerations to a rule generally and with some of the specific choices made in this proposal.

Many judges expressed concern regarding mandating a continuance, exceptional circumstances and written findings. One judge thought it inappropriate to incorporate the individual leave policies of law firms and agencies by reference.

Judges emphasized the representational responsibilities of trial work and the consequences of delay on parties, witnesses, law enforcement, clerks and other court personnel. Judges have legal and ethical responsibilities to resolve cases expeditiously for good reason and many legal principles and rules emphasize this responsibility.

Rule of Judicial Administration 2.250(a)(1) provides specific time standards for trial court litigation without reference to mandatory continuances, for example. Similarly, the proposal does not address whether a mandatory continuance under the proposal would relieve the lawyer of the responsibility of obtaining the client's written consent to a continuance under, for example, rule 1.460. Nor does the proposal impose on lawyers a responsibility to make the case by timely motion that they acted responsibly to anticipate, avoid and mitigate the consequences of delay that others may experience under the specific circumstances of an individual case.

I suggest that the Committee consider memorializing by rule that parental leave is an appropriate basis for a continuance but eliminating the mandate and the requirement for a written order of exceptional circumstances. I am doubtful that the proposal gives appropriate deference to the trial court's judgment about the circumstances of individual cases. I suggest it is more appropriate to provide lawyers a rule establishing parental leave as a specific basis for a continuance to present to the judge in support of a motion.

I suggest the following alternative language: “A court may grant, and shall closely consider, a motion for a reasonable continuance to accommodate parental leave.”

I also support inclusion of accommodation of parental and family leave as a topic for judicial education.

I hope these comments are helpful. I am confident that the Committee will make a careful judgment in its work.

Respectfully, [Circuit Chief Judge]

14. In response to your request for judicial feedback on the proposed parental leave continuances I believe the rule is necessary. The practice of law is changing, indeed the world is changing, but we should not leave our humanity behind. Each family situation is different and some judges may not have a frame of reference to fully appreciate all the differences. There are conceivably some families where the attorney is a solo practitioner who has no colleague that could reasonably be expected to cover cases during maternity or paternity leave. How does this attorney balance the requirement to care for young children with the need to effectively represent clients, earn an income, and maintain balance in an otherwise stressful situation? Many scenarios exist where parental leave is equitable and necessary and we need to both acknowledge and memorialize it.

    In the fluid environment of cases before the court, the judge may inadvertently miss a salient factor that goes toward whether a parental leave continuance, or even a continuance in general, should be granted. The courts are the gatekeepers of justice for the citizens of our communities, cities, states and nation. How can we be expected to fairly adjudicate on provisions related to parental leave in the contracts of many small and large corporate entities, if we as a court do not recognize the necessity for the same rights within our own profession?

    Based upon these reasons along with others, I strongly believe that any parental leave rule implemented should be consistent with the mandatory versions and not discretionary.

    Thank you for requesting our input on this important matter.
    [County Court Judge, 9th Circuit]

15. I apologize for the untimely response. Nonetheless, I am of the opinion that Fla. R. Civ. P. 1.460 is more than adequate to address the issue of parental leave. I am disappointed that I could not find any reference to or any consideration of the best interest of the client in any of the materials or the discussion. Lastly, as a tax payer I am disappointed that the county attorneys behind this proposal appear to be more interested in advancing their own careers rather than a speedy resolution of the litigation. As we all know, the longer a case takes the more expensive it becomes.
    [Circuit Judge, 17th Judicial Circuit]

16. I vote to recommend the mandatory rule in keeping with that premise that lawyers are people too with families and lives outside of the practice of law. I think the mandatory rule would work best because it creates the presumption of granting leave, rather than leaving it up to the judge's discretion. In criminal court the only hesitation is the defendant's speedy trial rights.
    [Circuit Judge, 11th Judicial Circuit]

17. I do not have anything new to add to the discussions, other than I believe it would be appropriate for there to be a Rule rather than a "policy." It seems to me to be a distinction of substance, because a judge's failure to follow "policy" would be non-reviewable and thus of little force or effect.
    [Circuit Judge, 1st Judicial Circuit]

18. Our court plans to write a letter agreeing with the Judicial Administration Committee that a special rule should not be created. Offhand, can you advise where and to whom the letter should be sent? If an email is sufficient, let us know to whom and email address.
    [Judge of the Third District Court of Appeals]

In addition to the written responses received by the committee, the committee member who primarily performed the work associated with this element of the report personally spoke to a number of other judges within the state who, though they did not wish to go on a written record, shared their comments with us verbally.

Suffice to say there was not a unanimous consensus for or against any of the proposals. However, the majority of those few who did respond were against any mandatory rule provision. While noting that the proposals were no doubt well intended, some questioned the need for a rule which would in essence prioritize parental leave above all other situations which might necessitate a continuance (such as calendar conflicts, illness of counsel party or essential witness, death of a parent, or the like). Also, it was noted by many judges that the parental leave proposals were aimed solely at leave requested on behalf of counsel in the case, without regard for parental leave requests on behalf of parties or witnesses. At least one responder commented that the rules of court were designed to provide a framework to process litigation through the courts, and should not be "tinkered with" in order help advance the career goals of attorneys. Judges felt that the best interests of the parties and witnesses, as well as the policy goal of the speedy administration of justice, should be paramount.

A number of those opposed to a parental leave rule also expressed concern that making such a provision mandatory, or even discretionary, could easily be used to "game" the system. Most if not all who responded or with whom the committee spoke to verbally expressed the belief that a request for continuance based on parent leave would, under most circumstances be well received. Anecdotal evidence of situations where a trial judge may have unreasonably denied such a request was to some insufficient to justify a rule change, while to other judges it represented proof of the need for such a change.

It was mentioned that such a rule could run counter to the attorney's oath of office which ends with the words: "I will never reject from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice." Likewise, conflicts could very well arise in cases entitled to statutory priority, such as an eminent domain proceeding, or cases involving "elderly" litigants. It was also mentioned that the proposed rules are antithetical to other provisions in the rules of court which suggest a firm continuance policy with few requests being granted, such as time standards for disposing of cases, and written motions signed by counsel and client (Rules 1.460, 2.250, 2.545, and 1.460). The prevailing theme being justice delayed is justice denied, and there are many negative consequences to litigants and witnesses and the courts that flow from delay.

In addition to discussing the matter with judges, the committee spoke to a number of trial lawyers, and as to be expected some favored the rule, mandatory and discretionary, while others opposed it for many of the same reasons set out herein. One noted that paternity leave in the workplace does not mean that the work of the business, law firm, or government entity ceases during the duration of the leave. The business of the law firms continues, the business of their clients continues, and the services of government continue, albeit without the presence of those on leave. Hence the proposed rule may very well be perceived by an already distrusting public as geared in favor of attorneys and against the real users of the system, the litigants.

In summary those who opposed a rule change felt that parental leave was only one among various reasons that should be given reasonable accommodation, including providing for continuances when possible and that a rule change was neither necessary nor warranted. The concept of creating an increased awareness of the issue through judicial education and perhaps comments to the current rules were referenced as alternate means of addressing the issue.

A number of those judges who favored the rule felt that a mandatory rule would be preferable so as to provide for some enforcement mechanism. Others felt that a discretionary rule would suffice in that it would at least designate the matter as reasonable grounds for a continuance. Some we spoke with felt that some sort of rule would in and of itself work to positively increase awareness that there are many valid reasons for continuances, and this would be a positive development.

POTENTIAL LEGAL QUESTIONS OR ISSUES

The committee did not take lightly the question of whether a rule of this type would be constitutional when examined under the Equal Protection Clause of the state and federal Constitutions. However, strict or intermediate scrutiny do not come into play absent a rule which attempts to make distinctions based, for instance, on race or gender. The proposal for a parental leave rule does not make such distinctions.

The proposal does, of course, create a distinction between lawyers seeking a continuance for parental leave vs. those seeking a continuance for some other reason. Clearly, the

proposal would, if adopted as a rule, create a distinction that by its nature would create different continuance standards, albeit modest in distinction. However, the courts would apply the lowest level of review, the "rational basis test", in reviewing the rule. Under this deferential standard, so long as the court would be able to demonstrate some rational factual and/or policy basis for the rule, it would likely be upheld. Indeed, in the legislative arena, there may be found a host of statutes and administrative regulations making similar distinctions. Examples include, of course, the federal Family Medical Leave Act.

With respect to the question of the evidentiary standard to be applied to motions under this rule, the committee does not find any reason to have any evidentiary standards different than those which apply to motions made pursuant to the rest of the various rule sets. Therefore, attorneys making a motion for a parental leave continuance under the proposed rule would be expected to provide the trial judge with admissible forms of evidence, including the most obvious testimony under oath, to support the motion.

Likewise, as to what remedy a lawyer would have should a trial court not, in the lawyer's opinion, enforce the rule, the committee believes that the same remedies would be open to unsuccessful movants of parental leave continuance requests as are available in other procedural rule settings, thus avoiding the need to create new common law on the subject. The committee does recognize that there are unique issues presented with this proposed rule inasmuch as the rule focuses not on the desire of the client (though, presumably, the client would have been consulted and would have not objected to his/her/its lawyer making the motion), but the familial needs of the attorney. So issues such as the billable nature of such motions and related appeals, as well as ethical conflicts, may arise. However, the committee did not believe that the proposed rule, being a rule of procedure, should attempt to parse these issues as they are informed by other authorities, such as fee statutes and the ethical rules applicable to all members of the Florida Bar.

Proposed Rule Language

The charge given to this special committee was not only to analyze the issue, but also to draft and submit rule language which could be considered by the Board of Governors and, if desired, be submitted by that body for approval by the Florida Supreme Court. Pursuant to that charge, and after careful debate and discussion over a variety of drafts, the committee submits the following rule along with a committee comment:

> RULE 2.570 PARENTAL LEAVE
>
> A motion for continuance based on parental leave of the lead attorney in the case shall be granted if made within a reasonable time after learning the basis for the continuance unless substantial prejudice to the opposing party is shown. Three months shall be the presumptive length of a continuance granted for parental leave absent good cause for a longer time. If the court denies the requested continuance, the court shall state on the record the specific grounds for denial.

If the motion for continuance is challenged by an opposing party proffering a basis for a claim of substantial prejudice, the attorney seeking the continuance shall have the burden of demonstrating the lack of substantial prejudice to the opposing party.

committee comment

The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a strong presumption that a continuance for parental leave, generally not exceeding three months, will be granted when the request for relief is made within a reasonable time after the basis for continuance is reasonably discernible. Substantial prejudice to an opposing party could be the need for emergency or time sensitive relief that would be unreasonably delayed by a continuance, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

Final Committee Action

Based on the foregoing discussion, and after debating the components of this report, the committee voted by a vote of **9** to **0** at its January 27th 2017 meeting to approve and transmit this report to the Florida Bar President and Board of Governors.

additionally

The committee voted by a margin of **5** to **4** to recommend that the draft rule on parental leave set forth in this report should added to the Rules of Judicial Administration by the Florida Supreme Court.

Acknowledgements

The Chair wishes to ensure the Governors understand the substantial work which make up the content of this report was diligently and thoroughly performed by each member of the committee and but for each member's agreeing to quickly undertake their assigned analysis components, the committee would not have been as successful in meeting its mandate for a speedy, yet thorough final product.

Finally, the committee wishes to commend its Bar staff liaison, Ms. Krys Godwin. Ms. Godwin's cheery persona, attention to detail, and invaluable behind-the-scenes assistance were greatly appreciated by all.

c: Krys Godwin—Florida Bar Liaison

Expecting Better:

A State-by-State Analysis of Parental Leave Programs

National Partnership for Women & Families

The principal authors are
Jodi Grant, Taylor Hatcher and Nirali Patel.

About the National Partnership for Women & Families

For more than 30 years,
the National Partnership for Women & Families has been changing the world in ways that make life better for women and their families. From outlawing sexual harassment to prohibiting pregnancy discrimination to giving 50 million Americans family and medical leave, the National Partnership has fought for every major policy advance for women and families in the last three decades.

Today, the National Partnership is leading efforts to improve health care quality and ensure coverage for all Americans. We are working to convince the Senate to confirm only those judges and justices who will respect our most fundamental rights and liberties. We are pressing for paid sick days for every working American and fighting to protect Social Security's guaranteed benefits that are so critical to older women.

The values that underlie the National Partnership's work are fairness, equality, opportunity and justice. Those values shape our agenda and drive our success. We are amplifying women's voices, and working to create a nation where pay is fair, workplaces flexible, health care affordable, opportunity equal, and discrimination is a thing of the past.

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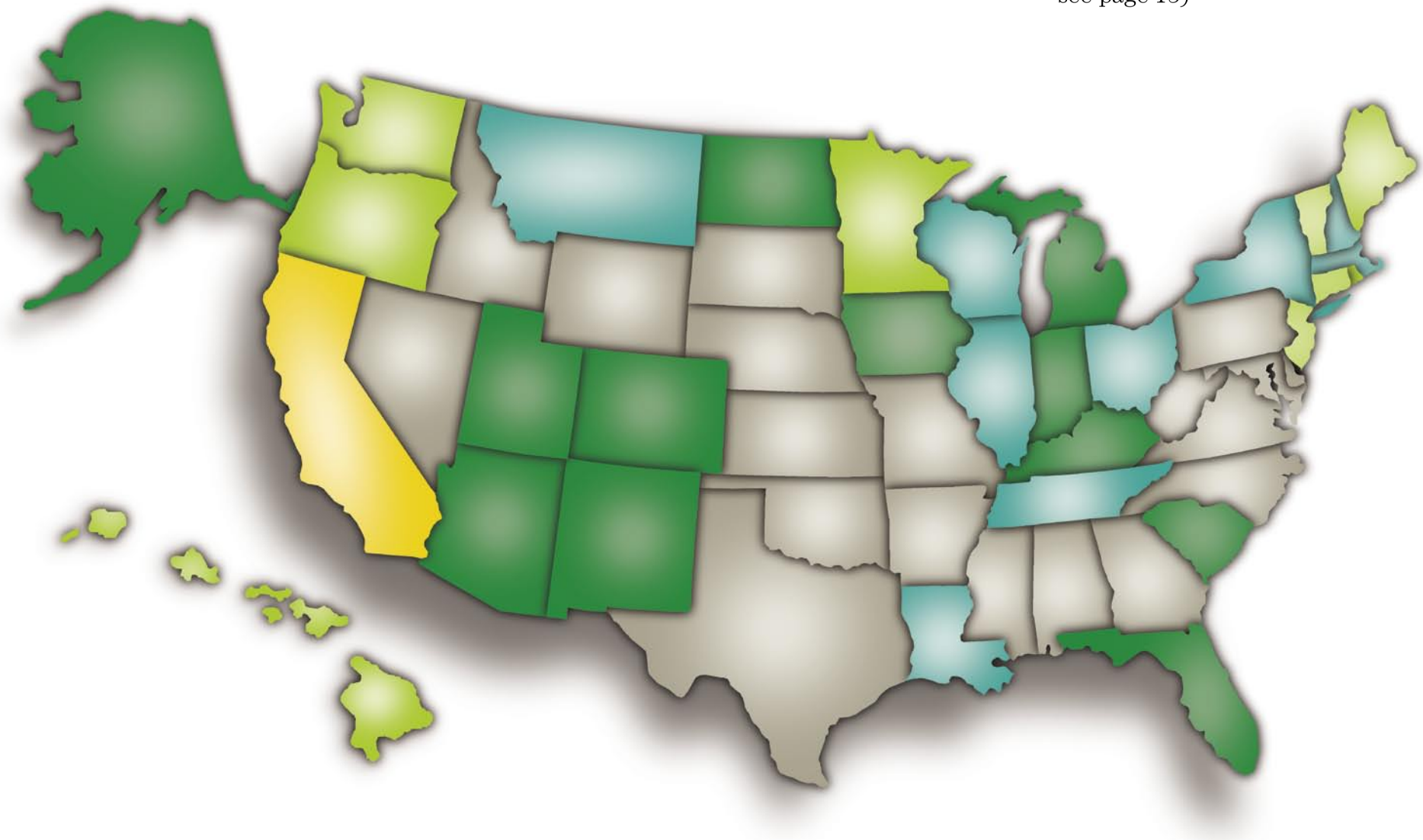
Grades by State

(for complete report card see page 15)



Expecting Better:

A State-by-State Analysis of Parental Leave Programs

Executive Summary

It's a shock to many expecting and new parents, and financially devastating to some. In a nation in which lawmakers and business leaders talk often and easily about valuing children and families, programs that provide paid maternity and paternity leave are rare. Most Americans have no paid leave for prenatal care, no paid leave when a baby is born, and no paid leave to bond with and care for a precious new life. The failure to provide paid parental leave adds financial pressure – in some cases, distress – to millions of families at what should be one of the happiest times of their lives.

Our nation's parental leave policies are among the worst in the world. A 2004 Harvard University study of 168 countries found that 163 guarantee paid leave to women in connection with childbirth, and 45 guarantee paid paternity or parental leave. The United States guarantees no paid leave at all to new parents.

America has changed dramatically in the last few decades, but workforce policies have failed to keep up. Women are in the workforce to stay, and their families rely on their incomes to survive. In 78 percent of today's families, both parents work for pay. Women take great pride in their work and stay on the job until late in their pregnancies. More than half of pregnant women stay on the job until one month before the birth of their first child. And women are returning to work after childbirth at a faster rate than in previous decades.

As a result, the workplace is desperately out of touch with the needs of working families – and we aren't doing much to improve the situation. There are just two federal laws in place to help new and expecting parents. The Pregnancy Discrimination Act makes it illegal for employers to fire, refuse to hire or deny a woman a promotion because she is pregnant. But it provides no job protection to pregnant women or new parents. The Family & Medical Leave Act provides millions of workers with unpaid, job-protected leave when new babies come or illness strikes. But it covers only about 60 percent of workers, and millions of them cannot afford to take the unpaid leave it provides.

The Pregnancy Discrimination Act was passed in 1978. The Family & Medical Leave Act was enacted in 1993. It has been more than a decade since federal lawmakers took any action to help new parents who need leave.

As a result, families today are forced to cobble together solutions – often with dire consequences. Most low-income families lack the savings to support themselves if they take time off to care for a new baby, and they are less likely than other workers to have paid leave of any kind. Roughly two in five working parents with incomes below 200 percent of the federal poverty level have no paid leave of any kind – no paid sick days, paid vacation, or paid personal days off to use to care for a baby. Many simply lose their jobs when new babies come.

But paid parental leave is unavailable to most Americans, regardless of their income. A survey of personnel managers conducted in the year 2000 found that just 12 percent of companies offered paid maternity leave and just seven percent offered paid paternity leave.

Failing to provide paid leave is short sighted. Self-defeating. And a mistake that costs families, businesses and our nation dearly.

Expecting Better: A State-by-State Analysis of Parental Leave Policies provides a roadmap to solutions, describing programs in every corner of the country that expand on the federal Family & Medical Leave Act and provide support to new parents and their babies. It is the most comprehensive state-by-state analysis of laws, programs and policies regarding maternity and paternity leave produced to date.

It finds that all states are coming up short. *Expecting Better* concludes that no state is giving all new parents both guaranteed job protection and benefits. For this reason, not a single state earned a grade of "A." California receives a grade of "A-," and Hawaii, the District of Columbia and Oregon receive grades of "B+." Nineteen states received grades of "F" for failing to provide a single benefit or program to help support families before and after the birth of a child. Most states fall somewhere in between; they are doing something, but not enough, for working parents.

There are many tested, effective solutions to this problem. Numerous programs and policies make it possible for new parents to provide and care for their babies. California's paid family leave program is a fine example. But few states have such programs.

For mothers and fathers, time at home during the first precious months after birth or adoption is critical to getting to know their babies. It can provide long-term benefits that improve a child's brain development, social development and overall well being. Parental leave results in better prenatal and postnatal care and more intense parental bonding over a child's life. It also improves the chance that a child will be immunized; as a result, it is associated with lower death rates for infants.

But lawmakers and employers are denying those benefits to most families by refusing to provide paid parental leave. For most working parents in America today, paid maternity and paternity leave is nothing more than a dream. Instead, families shoulder the economic burden of caring for a newborn alone. For some, the result is financial hardship or ruin.

America can, and must, do better.

Glossary of Terms

Family Leave
Family leave is used to care for a family member. It usually refers to caring for a family member who is ill, including one who is suffering from a pregnancy-related disability or recovering from childbirth. It also refers to leave taken by a new parent to care for a baby or newly placed adopted or foster child.

Medical Leave
Medical leave is used by an employee to recover from his or her own serious health condition. Medical leave includes leave taken for pregnancy-related disabilities and to recover from childbirth.

Parental Leave
A type of family leave, parental leave provides time off to all new parents (moms and dads, both birth and adoptive) to care for an infant or newly placed child. This leave includes both maternity and paternity leave.

Maternity Leave
Women use maternity leave to take time off in connection with the birth or adoption of a child. Maternity leave can include medical leave and parental leave. Often birth mothers have access to benefits based on maternity-related disabilities. These can include access to short-term disability or the use of accrued sick leave. However, these medical leave benefits can rarely be applied to the time when the woman has recovered from childbirth and is still at home caring for her baby.

Paternity Leave
Paternity leave is used by biological and adoptive fathers after the birth of a child.

Job-Protected Leave
This term refers to a state or federal program, law, regulation or contract agreement that ensures that working men and women can take leaves of absence from work without losing their jobs.

Paid Leave Benefits
This is a general term used to refer to various programs that allow employees to receive some pay when they take leave to care for a new child, an ill family member, or to recover from their own illness.

Family Leave Benefits, Paid Family Leave
These terms are used to describe forms of partial or complete income replacement for working women and men who take time off from work to care for an ill family member or a newborn, newly adopted child or newly placed foster child.

Paid Medical Leave, Short-Term Disability Insurance and Temporary Disability Insurance
These terms are used to describe forms of partial or complete income replacement for women and men who take time off from work to recover from their own illness. This type of paid leave is sometimes available to birth mothers who take time off from work to recover from a pregnancy-related disability and to recover from childbirth.

At-Home Infant Care (AHIC)
At-Home Infant Care is a general term used to describe a program that allows income-eligible parents to receive subsidies (in lieu of a child care voucher or subsidy) to care for their infant at home.

Sick Leave, Vacation Leave and Personal Days
Some employers permit, and some states require, that employees who have certain types of accrued paid leave (including sick leave, vacation leave and/or personal leave) use that paid leave to receive compensation while on maternity or paternity leave.

Introduction

Virtually all our nation's leaders talk about valuing children and families. America ought to be a place where the birth of a child is a glorious event, rather than the beginning of a family's economic ruin.

Despite the rhetoric, our nation has failed to adopt basic policies that support families when it comes to pregnancy and childbirth. That is why so many parents are shocked to find themselves without pay, and often in danger of losing their jobs, if they want or need time away from work to care for a newborn or newly adopted child.

Numerous programs and policies would make it possible for new parents in this nation to provide and care for their babies – policies that are readily available to parents outside the United States in most of the world. In fact, the U.S. stands virtually alone among industrialized nations in failing to adopt a national paid parental leave program. We deserve a failing grade when it comes to helping families after the birth of a child.

This report is the most comprehensive state-by-state analysis of laws and programs regarding maternity and paternity leave yet produced. It highlights programs that expand upon the federal Family & Medical Leave Act (FMLA) to provide support to new parents and their babies. The report then grades each state based on its programs.

No state gives all new parents both guaranteed job protection and benefits. For this reason, no state receives a grade of "A." Nineteen states receive grades of "F" for failing to provide a single benefit or program to help support families before and after the birth of a child. Most states fall somewhere in the middle – doing something, but not enough, for working parents.

New Realities, Old Ways

America's workforce has changed. Women and mothers are in the workforce, and in the workforce to stay. In 78 percent of today's families, both parents work for pay. Women and men are working longer and longer hours, with fewer benefits. The typical American couple now works close to 90 hours per week, with each partner giving 40 or more hours to the job.

Women take great pride in their work and often work late into their pregnancies. More than half of pregnant women work until one month before the birth of their first child. Women with access to paid leave tend to stay in the workforce even longer – often well into their last month of pregnancy.

In addition, women are returning to work after pregnancy at a faster rate than in previous decades. Many mothers return to work by the third month after a child's birth, and more than half return by the sixth month. Since the early 1980's, 75 percent of women who worked during pregnancy returned to their jobs within 12 months of a child's birth. But workplace policies have not kept pace, remaining stagnant while the needs and realities of families' lives have changed.

Benefits of Paid Parental Leave to Moms, Dads and Babies

New parents want to be able to spend the first precious months after birth or adoption caring for and getting to know their babies. The quality and nature of caretaking in the first few months of a child's life is critical and can provide long-term benefits that improve a child's brain development, social development and overall well-being. Studies show that parental leave results in better prenatal and postnatal care, more intense parental bonding over a child's lifetime, and lower accident rates in the first year of life. Parental leave policies also increase the likelihood that children will be immunized and, as a result, are associated with lower death rates for infants.[2]

But not enough moms and dads in America today can take time off to care for new babies without fear of losing their paychecks or their jobs. Often they are forced back to work before they are ready. In fact, four out of five parents with children believe that many new mothers are pressured to return to work too quickly. The reasons vary. Infant care may be unaffordable or unavailable. Even when child care is an option, centers sometimes refuse to accept infants younger than 10 or 12 weeks old because their immune systems are not fully developed. This is one reason there is an extreme shortage of quality, affordable child care for infants.[4]

Our nation's failure to offer paid parental leave is particularly problematic given the pervasive lack of infant care and, in particular, affordable infant care that meets basic health and safety standards. Parents often face long waiting lists for slots in infant care centers because infant care is so scarce. The shortage is even more acute in low-income communities and in rural areas. High-quality child care can positively influence the developmental outcomes of infants and toddlers – but for most families, it is simply out of reach.[7]

National Policies Addressing Parental Leave

The United States has passed two laws that provide some protections to new parents. The Pregnancy Discrimination Act (PDA) and the Family & Medical Leave Act (FMLA) have helped millions of new parents hold onto their jobs. But they are only a start.

The Pregnancy Discrimination Act

The first law to protect new parents was the Pregnancy Discrimination Act (PDA). Before its passage, women were routinely fired as soon as their pregnancies became apparent. Passed in 1978, the PDA makes it illegal for employers to fire, refuse to hire, or deny a woman a promotion because she is pregnant. The law also provides that an employer must treat a pregnant woman the same way it would treat any other employee who becomes sick or temporarily disabled. If the employer provides benefits such as paid sick days or disability, it must cover pregnancy related disability and recovery from childbirth.

The PDA does not guarantee job protection; it only guarantees a pregnant employee's right to be treated the same as any other employee with a medical condition. The PDA has helped combat discrimination against millions of pregnant women. But because it does not provide job protection, it left many women without jobs if they needed to take time off for a pregnancy disability or to care for a newborn.

The Family & Medical Leave Act

The Family & Medical Leave Act (FMLA) is a federal law that has allowed millions of new parents, both moms and dads, to take needed time off after the birth or adoption of a child without fear of losing their jobs. Since the FMLA was enacted in 1993, more than 50 million Americans have been able to take time off from work in times of need, and more than one in four of these FMLA-users have been new parents. The law has made an enormous difference to the lives and economic security of working parents striving to care for their babies and support their families.

The FMLA protects working women and men who have been with the same employer for at least one year and have worked for at least 1250 hours over the course of that previous year. The FMLA only covers employees at companies with 50 or more workers.[8] As a result, nearly 40 percent of the workforce is not eligible for the job-protected leave the FMLA provides.

Still more workers who are eligible for FMLA coverage simply cannot afford to take time off from work without pay. In one survey, 78 percent of workers who needed FMLA but did not take it said they could not afford the unpaid leave.[9]

Nearly one in ten workers who do take the unpaid leave the FMLA provides ends up receiving public assistance. In fact, 25 percent of poverty spells begin with the birth of a child.[10]

Special Challenges for Low-Income and Less Educated Families

Access to paid leave is correlated with income and education. The birth of a child can mean economic hardship for all families, but low-income families are the least likely to have re-

sources or savings to compensate for time off. Low-income parents often are without FMLA protections and unlikely to be able to afford the unpaid time off it provides. In addition, few have savings or other benefits such as paid sick, vacation or disability leave that will help compensate for lost income while a parent takes time off to care for a new child.

Roughly two in five working parents with incomes below 200 percent of the federal poverty level have no paid leave of any kind – no paid sick days, no paid vacation and no paid personal days off to use after a new baby comes.[8] Seventy-six percent of low-wage workers do not have a single day of paid sick leave – the most basic employment benefit.

While highly educated, higher income women are more likely to have access to paid leave than women with less education and lower incomes, one-third still lack access to any form of paid maternity leave. In fact, more than one in three highly educated women (35 percent) are forced to take unpaid maternity leave. But they are better off than women who have less than a high school education, nearly half of whom (47 percent) are forced to take unpaid maternity leave.[10]

Parental Leave in America Today

Many new parents are unprepared for the costs incurred and absence of support after the birth of a child. New moms and dads with young children, and therefore a great need for paid leave, are least likely to have access to leave. Many experience grave economic hardship, and some are forced onto public assistance as a result of inadequate leave policies.

Paid parental leave programs are scarce in the private sector. A survey of personnel managers, conducted in 2000, found that just 12 percent of companies offered paid maternity leave and just seven percent offered paid paternity leave. Eighty-five percent of respondents reported no maternity or paternity leave benefits.[9]

Even companies lauded by *Working Mother* magazine as being the best employers in America for working mothers do not always offer the solutions families need:

- Twenty-nine percent of *Working Mother's* best employers offer to pay for maternity leave beyond short-term disability, versus 13 percent of companies nationwide
- Thirty-seven percent offer paid paternity leave, versus 14 percent of companies nationwide
- Forty-seven percent offer paid adoption leave, versus 13 nationwide.[8]

Often because they have no alternative, two in five employed women take unpaid leave around the birth of a child.

Although maternity leave is a far more common benefit than paternity leave, men are advantaged because they are more likely than women to have access to paid vacation and sick

leave, which some employers let workers use after the birth a child.[9]
Just 43 percent of employed pregnant women are able to access some kind of paid leave around the birth of a child; most often they use paid sick leave (11 percent) and vacation leave (11 percent).[10]

In addition to paid leave, some states and companies provide their employees with short-term or temporary disability insurance that can be used for pregnancy disability and recovery from childbirth. The Bureau of Labor Statistics estimates that 39 percent of all private sector workers nationwide have access to short-term disability insurance benefits.[11] Eleven percent of employed women take disability leave around the birth of a child.[12]

Benefits of Parental Leave to Businesses

Research demonstrates that access to paid parental leave is good for business because it is directly tied to employee retention and increased productivity.[13] In addition, when employees have access to paid leave, morale improves and employees show more loyalty toward the company.

Unpaid job-protected leave is also beneficial. The FMLA has been shown to have a positive impact on profitability and growth. In 2000, 90 percent of covered establishments reported that the FMLA had either a positive or neutral effect on profitability and growth.[14] Of those covered establishments that experienced cost savings from the FMLA, 77 percent said decreased turnover was the number one reason for savings.[15]

Some businesses not covered by the FMLA have looked to the success of the program and adopted policies of their own. Since the FMLA was passed, there has been a significant increase in the number of employers not covered by the FMLA that offer their employees unpaid family and medical leave.[16]

Broader Approaches Needed

Millions of Americans do not have enough personal savings to fund their own leave, and most private businesses do not provide any paid parental leave. Thus parents are left to shoulder the economic burden alone.

There are alternatives to forcing families to cobble together solutions and risk poverty when they do. California's paid family leave program demonstrates that it is possible to provide benefits to new parents at a minimal cost. The state's paid family leave program costs employees less than $2.25 per employee per month. Experts estimate that a paid family and medical leave proposal being considered in Illinois in 2005 would cost less than 60 cents a week per worker.

United States Lagging

The United States lags far behind the rest of the world in providing paid parental leave to new parents. A Harvard University study of 168 countries found that 163 guarantee paid leave to women in connection with childbirth, and 45 guarantee paid paternity or parental leave. The United States does not guarantee any leave. In fact, the U.S. and Australia are the only two industrialized countries that do not provide new parents with paid parental leave. However, Australian parents enjoy much more generous job-protection benefits than American moms and dads.[16]

Most high-income countries that offer paid leave for women provide 100 percent wage replacement for at least some portion of this leave. Of those countries that provide paid paternity leave, most also provide 100 percent wage replacement. More than half the countries that provide paid leave to new mothers offer at least 14 weeks of paid leave.[17]

International studies have shown that providing paid parental leave benefits helps keep parents in the workforce and significantly increases the likelihood of a return to the pre-birth job, in the same position. Within a year after childbirth, more than 60 percent of moms with paid maternity leave had returned to work at their old jobs, compared to only 50 percent of mothers without benefits.[18] Wage replacement, not simply having time off work, increases the likelihood that women will work later into their pregnancies and return to work faster.[19]

Americans Supportive of Stronger Leave Policies

Surveys consistently find that Americans want to spend more time with their families and overwhelming numbers support paid parental or family and medical leave programs.

- Eighty-four percent of adults support expanding disability or unemployment insurance as a means of providing paid family and medical leave.[20]
- Eighty-one percent of working women say that paid leave to care for a family member is somewhat or very important, yet only 42 percent of working women report that they have some type of paid leave to care for family members.[21]
- A majority of men define success as “being a great father and husband” (87 percent) and “raising happy, successful children” (85 percent).[22]
- Eighty-two percent of employees age 18 to 34 support expanding the FMLA to provide paid leave.[23]
- Younger Americans, women and men, are more likely to place the same priority on their job and family, rather than placing a higher priority on work over family.[24]

Solutions Exist

Several states are leading the way with examples of policies that work. They have crafted

programs that provide paid family and medical leave benefits to new parents or that extend the scope of job-protected leave. While no state guarantees all its workers paid leave and job protection, many promising programs provide both paid leave benefits and additional job protection. They can serve as models.

Methodology

This report discusses federal and state laws that guarantee job protection to women and men who take a leave of absence from the job for family or medical reasons. Some state laws allow for a combined period of job-protected family and medical leave. Others separate parental leave and family leave from medical leave.

This report answers the following questions:

Private Sector Employees

Benefits

- Does the state guarantee workers access to paid family/parental leave?
- Does the state guarantee workers access to paid medical/maternity disability leave?
- Does the state have an At-Home Infant Care program designed to help low-income parents care for their infants?
- Does the state have a flexible sick leave program that allows workers to use accrued paid leave for family leave?

Job Protection

- Does the state guarantee more workers access to job-protected family/parental leave than the federal FMLA?
- Does the state guarantee more workers access to job-protected medical/maternity disability leave than the federal FMLA?
- Does the state provide workers with a longer period of job-protected time off than the federal FMLA?
- Does the state have its own laws providing job-protected leave?

State Employees

Benefits

- Does the state provide its employees with paid family and/or medical leave?

Job Protection

- Does the state provide its employees with a longer period of job-protected time off than the federal FMLA?

To answer these questions, the authors consulted a variety of sources:

- As part of its Campaign for Paid Leave Benefits, the National Partnership for Women & Families tracks state developments on paid family and medical leave laws and publishes this information annually in a State Round-Up. For information on which states guarantee leave to private sector workers, the authors relied on the most recent version of the State Round-Up (2004), that reviews state activities regarding access to paid family leave benefits and paid sick days.

- The authors consulted relevant state statutes, regulations and state web sites.

- For information about benefits provided by each of the 50 states to state employees, the authors primarily relied on the 2004 State Employee Benefits Survey published by Workplace Economics Inc. In cases where the National Partnership's State Round-Up included a state law governing state employees, the authors consulted the relevant state statute or regulation.

Authors awarded points to each state or entity based on the programs it makes available to private and state employees. As most employees work in the private sector, the point system favors laws that provide protection and benefits to private sector employees.

No state guarantees workers who are new parents both benefits and job protection after the birth of a child. But, in a variety of ways, states from California to South Carolina and Louisiana to Minnesota are creating programs to support new parents and their babies. A handful of states provide paid benefits to new parents. Others provide job protection to employees not covered by the FMLA because they work for small companies. These states provide real examples of policies that work.

Benefits Provided to Private Sector Employees

This report reviews three different, but overlapping, job protection and benefit programs to help new parents. It examines laws governing private sector employees as well as state laws, regulations and programs governing state employees. It is the most comprehensive assessment to date of state and federal measures governing access to paid and job-protected maternity and paternity leave.

Family Leave Benefits

25 points were awarded to each state with a program that provides paid parental leave to new parents caring for newborns, newly adopted children or newly placed foster children. Benefits may also cover taking leave to care for a spouse or partner with a maternity related disability. California is the first state to enact such a program; it took effect in July 2004. New parents in California can receive 55 to 60 percent of their income for up to six weeks of family leave.

Medical/Maternity Leave Benefits

20 points were awarded to each state with a program that provides paid medical leave for new birth moms placed on pregnancy disability leave (bed rest) and for recovery after childbirth. California, Hawaii, New Jersey, New York and Rhode Island have short-term disability programs that provide paid leave to women who are temporarily disabled due to pregnancy and for recovery after childbirth.

Flexible Sick Days

15 points were awarded to states that allow workers to use accrued paid leave to care for a new child or a spouse/partner with a maternity disability. Connecticut, Hawaii, Washington and Wisconsin allow employees to use their leave for either a new child or another family member. California received five points for adopting a law that permits employees to use leave to care for an ill family member such as a spouse or partner with a maternity related disability, but not to care for a healthy new infant.

At-Home Infant Care Benefits

15 points were awarded to states with At-Home Infant Care (AHIC) programs. (AHIC) programs provide eligible, lower-income working parents with some wage replacement to provide care for their newborns or newly adopted children. AHIC diminishes public and private costs of child care for families and states by offering an affordable alternative for those unable to find quality infant care or to those who wish to provide the care themselves. Minnesota and New Mexico currently have AHIC programs. Montana was awarded only five points for its AHIC program because its operation has been suspended due to a budgetary shortfall.

Expanded Job Protection for Family Leave

25 points were awarded to states that provide additional job protection, broader than that provided by the federal FMLA, to new parents caring for infants. Five states (Maine, Massachusetts, Minnesota, Oregon and Vermont) plus the District of Columbia provide additional job protection for new parents who work for businesses with fewer than 50 employees.

Expanded Job Protection for Medical/Maternity Leave

20 points were awarded to states that provide job protection to women for pregnancy-related disabilities and recovery from childbirth that is more expansive than the federal FMLA.

Thirteen states and the District of Columbia provide expanded job protection to female employees who become pregnant. The states are: California, Connecticut, Hawaii, Iowa, Louisiana, Maine, Massachusetts, Montana, New Hampshire, Oregon, South Carolina, Vermont and Washington.

Extended Length of Family and Medical Leave

20 points were awarded to states that give workers a longer period of job-protected leave to care for new babies or recover from maternity disability than the federal FMLA. Eight states (California, Connecticut, Louisiana, New Jersey, Oregon, Rhode Island, Tennessee and Washington) and the District of Columbia provide new parents with job-protected leave that is greater than the 12 weeks granted in the federal FMLA.

State Family Leave Laws

10 points were awarded to states that have their own family and medical leave laws addressing parental leave. These laws give state residents additional rights recognized under state law to ensure their access to job-protected leave after the birth or adoption of a child. Eleven states and the District of Columbia have their own family and medical leave laws addressing parental leave. The states are: California, Connecticut, Hawaii, Maine, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington and Wisconsin.

Benefits Provided to State Employees

Paid Family and Medical Leave Benefits

15 points were awarded to states that provide their own employees with paid family and/or medical leave that covers pregnancy disability and recovery from childbirth. These five states are California, Hawaii, Illinois, New Jersey and Ohio.

Extended Length of Family and Medical Leave

10 points were awarded to states that provide their own employees with more than 12 weeks of job-protected parental leave. Twenty-seven states and the District of Columbia provided this addition leave to state employees. The states are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington and Wisconsin.

REPORT CARD

A-	Points Awarded
California	125
B+	
Hawaii	90
Washington DC	85
Oregon	85
B	
Connecticut	75
New Jersey	75
Washington	75
B-	
Maine	65
Vermont	65
Minnesota	60
Rhode Island	60
C+	
Massachusetts	55
Louisiana	50
C	
Wisconsin	35
New Hampshire	30
New York	30
Tennessee	30
C-	
Illinois	25
Montana	25
Ohio	25
D+	
Iowa	20
South Carolina	20
D	
New Mexico	15

D-	Points Awarded
Alaska	10
Arizona	10
Colorado	10
Florida	10
Indiana	10
Kentucky	10
Michigan	10
North Dakota	10
Utah	10
F	
Federal Government	0
Alabama	0
Arkansas	0
Delaware	0
Georgia	0
Idaho	0
Kansas	0
Maryland	0
Mississippi	0
Missouri	0
Nebraska	0
Nevada	0
North Carolina	0
Oklahoma	0
Pennsylvania	0
South Dakota	0
Texas	0
Virginia	0
West Virginia	0
Wyoming	0

FMLA and State Laws

The Family & Medical Leave Act (FMLA) protects private and public sector employees who need time off from work after the birth or adoption of a child, for pregnancy disability or to recover from childbirth. Many states have laws that are more expansive than the federal FMLA, or that intersect or complement the FMLA to provide private and state employees with additional benefits and/or job protection.

In 2003, the U.S. Supreme Court ruled that the federal FMLA covers state employees who need to take family leave. In *Nevada Department of Human Resources v. Hibbs,* a state employee from Nevada had been fired for taking family leave to care for his ailing wife. He was told that the FMLA did not cover state employees. The Supreme Court ruled that the FMLA did apply to state employees because it was a remedy for a long history of gender discrimination. In a 6-3 opinion written by Chief Justice William Rehnquist, the Supreme Court found:

"Stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. Because employers continued to regard the family as the woman's domain, they often denied men similar accommodations or discouraged them from taking leave. These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver, and fostered employers' stereotypical views about women's commitment to work and their value as employees. Those perceptions, in turn, Congress reasoned, lead to subtle discrimination that may be difficult to detect on a case-by-case basis."[25]

As a result of this ruling, there is no longer any doubt about whether state employees are entitled to take job-protected family leave under the FMLA. There is still debate, however, over whether the federal protections of the FMLA cover state workers who take time off from work to recover from their own illness, including pregnancy disability and recovery from childbirth.

Many state workers have a state right of action if they are denied leave because of state laws, regulations, or contracts that guarantee them the right to take parental leave. In this report, states receive points if they have programs in place that provide job protection and/or benefits to private sector employees who take maternity or paternity leave. State laws that protect state employees' rights to take parental leave but provide no additional benefits beyond those in the federal FMLA receive no points but are still mentioned in the analysis below. Employers are required to comply with the relevant provisions of both state and local laws as well as the federal FMLA.

The Pregnancy Discrimination Act also protects employees. Passed in 1978, the law makes it illegal for employers to fire, refuse to hire, or deny a woman a promotion because she is pregnant. It also provides that an employer must treat a pregnant woman in the same manner as

it would treat any other employee who becomes sick or temporarily disabled. If the employer provides benefits such as paid sick days or disability, it must cover pregnancy related disability and recovery from childbirth.

Title VII of the Civil Rights Act expressly prohibits treating employees differently based on gender. While it is legal to have a program that grants women additional parental leave for pregnancy disability and recovery from childbirth, it is not legal to grant women and men different amounts of leave to care for an infant or newly adopted child. This report does not review the legality of individual programs.

ALABAMA F

Private Sector Employees

Alabama has no laws guaranteeing job protection or benefits for new parents.

State Employees

Alabama state employees have no additional benefits beyond the federal FMLA.

ALASKA D-

Private Sector Employees

Alaska has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Family and Medical Leave

Alaska's family leave law provides state and other public employees up to 18 weeks of unpaid job-protected leave every 24 months to care for a spouse with a serious health condition, a worker's own serious health condition (including pregnancy disability and recovery from childbirth) or to care for a newborn or newly adopted child.[26]

ARIZONA D-

Private Sector Employees

Arizona has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Family and Medical Leave
Arizona state employees are entitled to 12 weeks of unpaid job-protected family leave each year, which can be used to care for a newborn or newly adopted child, and up to 36 weeks of unpaid medical leave for an employee's own health condition, which can include pregnancy disability and recovery from childbirth.[27]

ARKANSAS F

Private Sector Employees

Arkansas has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Parental and Maternity Leave
Arkansas state employees may request a maximum six-month unpaid leave of absence for parental and maternity leave. The leave must be approved by the employee's agency director.[28]

CALIFORNIA A-

Private Sector Employees

Family and Parental Leave Benefits
California's law provides working parents up to six weeks of paid leave to care for a newborn, newly adopted child or foster care-placed child. The law also affords leave to care for a seriously ill family member, including a spouse or partner, who is temporarily disabled due

to pregnancy or who is recovering from childbirth. An expansion of California's State Disability Insurance program, the program provides partial wage replacement and is funded through employee payroll deductions. Employees cannot receive benefits under California's short-term disability program and the family leave program at the same time, but they can receive short-term disability and then be eligible for family leave benefits after recovery from childbirth. California's paid family leave law does not provide workers with any additional job protection.[29]

Medical/Disability Leave Benefits

California's State Disability Insurance (SDI) covers nearly all private sector employees for non-work-related illness, injury, or a medically disabling condition resulting from pregnancy or childbirth. The SDI program is employee-funded and covers all California employees, including temporary and part-time employees, who pay into the disability fund. The SDI program covers most of California's workforce; currently, about 13 million of the state's 16 million employees are paying into this fund. The typical disability period for pregnant workers is up to four weeks before and six weeks after the birth of the child. Some state workers are entitled to SDI benefits as a result of collective bargaining. California's SDI program does not provide workers with any additional job protection when taking medical leave.[30]

Flexible Use of Sick Days

California has a flexible sick leave law that entitles all workers who have access to sick leave the option of using it to care for a spouse or domestic partner who is temporarily disabled due to pregnancy or recovery from childbirth. While the law allows parents and their partners to use sick leave to care for a sick child, it does not require employers to let workers use their sick leave to care for a healthy newborn.[31]

Job-Protected Medical Leave

California's Fair Employment and Housing Act (FEHA) requires all private employers with five or more employees to provide up to four months of unpaid job-protected leave for pregnancy-related disability, regardless of the amount of time the woman has worked for the employer and the number of hours she has worked. Once an employee's pregnancy disability leave is over, she may request up to 12 additional weeks of leave to care for or bond with her baby immediately following pregnancy disability leave, if she meets the requirements of California's Family Rights Act (CFRA).[32]

State Employees

Family and Medical Leave Benefits

Temporarily disabled state employees, including those disabled as a result of a pregnancy or recovering for childbirth, are eligible for up to 26 weeks of benefits. State employees who contribute to the State Disability Insurance Program are eligible for the same family and medical leave benefits as workers in the private sector.[33]

Job-Protected Family and Medical Leave

State employees may be entitled to up to one year of unpaid maternity leave, paternity leave or adoption leave.[34]

California state employees are also covered by California's Family Rights Act (CFRA), which mirrors the federal FMLA in its job-protections for family leave. California's Fair Employment and Housing Act (FEHA) requires all state employers with five or more employees to provide up to four months of unpaid job-protected leave for pregnancy-related disability, regardless of the amount of time the woman has worked for the employer and the number of hours she has worked. Once a state employee's pregnancy disability leave period is over, she may request up to 12 additional weeks of leave to care for or bond with her baby immediately following pregnancy disability leave, if the employee meets the requirements of California's Family Rights Act (CFRA).[35]

COLORADO D-

Private Sector Employees

Family and Medical Leave Job-Protection and Benefits

Colorado requires all employers providing paternity or maternity leave to employees for the birth of a child to offer equivalent benefits for the adoption of a child.[36]

State Employees

Job-Protected Family and Medical Leave

Full-time state employees are entitled to a maximum of 520 hours, or 13 weeks, of family and medical leave per fiscal year. Family and medical leave is granted to qualifying employees for the birth and care of a child within one year of birth, adoption, or foster care placement. This leave can also be used to care for the serious health condition of a spouse who is temporarily disabled due to pregnancy or recovery from childbirth.[37]

CONNECTICUT B

Private Sector Employees

Flexible Use of Sick Days

Connecticut's flexible sick leave law entitles workers with access to sick leave to use up to two weeks of accumulated leave to care for a new baby or a seriously ill spouse who is temporarily disabled due to pregnancy or recovery from childbirth. The law covers women and men working at companies with at least 75 employees.[38]

Job-Protected Family and Medical Leave

Connecticut employers with 75 or more employees must provide employees with 16 work-weeks of leave during any 24-month period for birth, adoption or placement of a foster child. State law also provides this leave for one's own serious illness, including a maternity-related disability, and/or to care for a spouse temporarily disabled as a result of pregnancy or childbirth.[39]

Job-Protected Medical/Maternity Leave

Connecticut employers with three or more employees must grant employees a reasonable leave of absence for pregnancy-related disabilities.[40]

State Employees

Job-Protected Family Leave

Permanent state employees are entitled to 24 weeks of unpaid leave in any two-year period for the birth or adoption of a child. This leave is also available to employees to recover from their own serious illness, including maternity disability, and/or to care for a spouse with a serious illness, including pregnancy disability and recovery from childbirth.[41]

Job-Protected Medical/Maternity Leave

Connecticut state employers with three or more workers must grant employees a reasonable leave of absence for pregnancy-related disabilities.[42]

DELAWARE F

Private Sector Employees

Delaware has no laws guaranteeing job protection or benefits for new parents.

State Employees

Delaware state employees have no additional benefits beyond the federal FMLA.

FLORIDA D-

Private Sector Employees

Florida has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Family Leave
Florida state employees are entitled to a maximum of six months of unpaid parental or family leave to care for a newborn or newly adopted child, or to care for one's own or a spouse's pregnancy disability or recovery from childbirth.[43]

GEORGIA F

Private Sector Employees

Georgia has no laws guaranteeing job protection or benefits for new parents.

State Employees

Georgia state employees have no additional benefits beyond the federal FMLA.

HAWAII B+

Private Sector Employees

Medical/Disability Leave Benefits

Any private sector employee who suffers a disability from pregnancy, termination of pregnancy, or recovery from childbirth is entitled to temporary disability benefits. The maximum benefit period is 26 weeks.[44] Employers in Hawaii are permitted to charge employees up to half the cost of the temporary disability insurance.

Flexible Use of Sick Days

Private and state employers with 100 or more employees must allow workers with accrued and available sick leave to use their paid sick days to care for a newborn or newly adopted child, or to care for a spouse with a pregnancy related disability or who is recovering from childbirth.[45]

Job-Protected Medical Leave

All female employees are entitled to job-protected leave "for a reasonable period of time" determined by the employee's physician, for disability due to pregnancy, childbirth or related medical conditions.[46]

State Employees

Medical/Disability Leave Benefits

Any public employee who suffers a disability from pregnancy or recovery from childbirth is entitled to temporary disability benefits. The maximum benefit period is 26 weeks.[47]

Job-Protected Family and Medical Leave

Hawaii state employees are entitled to one year of unpaid parental leave.[48]

IDAHO F

Private Sector Employees

Idaho has no laws guaranteeing job protection or benefits for new parents.

State Employees

All Idaho state employees are eligible for up to 12 weeks of job-protected family and/or medical leave.

ILLINOIS C-

Private Sector Employees

Illinois has no laws guaranteeing job protection or benefits for new parents.

State Employees

Family and Medical Leave Benefits

State employees who are members of the state employees' group insurance program may be eligible for family and medical leave benefits. Eligible female state employees who pre-certify their pregnancy within the first trimester are entitled to three workweeks (15 days) of paid maternity leave. Eligible male state employees who pre-certify their spouse's pregnancy within the first trimester are entitled to two workweeks (10 days) of paid paternity leave. Eligible state employees who can show that a formal adoption process is underway are entitled to two workweeks (10 days) of paid adoption leave, with the leave beginning when the employee receives physical custody of the child.[49]

Job-Protected Family Leave

Illinois state employees are entitled to one year of family leave to care for a newborn infant.[50]

INDIANA D-

Private Sector Employees

Indiana has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Medical/Maternity Leave

Indiana state employees disabled by pregnancy, childbirth or related medical conditions are entitled to up to one year of job-protected leave.[51]

IOWA D+

Private Sector Employees

Job-Protected Medical/Maternity Leave

Iowa's Civil Rights Act of 1965 requires an employer with four or more employees to grant pregnant employees eight weeks of leave for pregnancy, childbirth or related medical conditions.[52]

State Employees

Job-Protected Medical/Maternity Leave

Iowa's Civil Rights Act of 1965 requires state employers with four or more workers to grant pregnant employees eight weeks of leave for pregnancy, childbirth or related medical conditions.[53]

Job-Protected Family Leave

State employees may request up to 12 months of unpaid leave. If this initial request is granted, employees can request an additional 12 months. The state appointing authority determines whether or not to award this leave.[54]

KANSAS F

Private Sector Employees

Kansas has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Family and Medical Leave

Kansas state employees may be granted unpaid leave, not to exceed one year, for illness or disability, including pregnancy, childbirth or related medical conditions. This leave also covers care for a family member with a serious health condition and care for a newborn, newly placed adopted or foster child. Probationary or conditional employees may also be granted leave without pay for up to 60 calendar days. The state appointing authority determines whether or not to award leave to an employee.[55]

KENTUCKY D-

Private Sector Employees

Adoption Leave Benefits
All employees who have recently adopted a child are entitled to six weeks of parental leave.[56]

State Employees

Job-Protected Family Leave
Kentucky state employees are entitled to up to one year of parental leave.

LOUISIANA C+

Private Sector Employees

Job-Protected Medical/Maternity Leave
Louisiana guarantees up to four months of short-term disability leave to employees who are temporarily disabled because of pregnancy, childbirth or related medical conditions. Employers with more than 25 employees are covered by the law.[58]

State Employees

Job-Protected Medical/Maternity Leave
Louisiana guarantees up to four months of short-term disability leave to state employees who are temporarily disabled because of pregnancy, childbirth or related medical conditions. Employers with more than 25 employees are covered by the law.[59]

MAINE B-

Private Sector Employees

Job-Protected Family and Medical Leave
Private employers with at least 15 employees must grant a maximum of 10 consecutive weeks

of family and medical leave in any two-year period for the birth or adoption of a child under age 16 and for an employee's serious health condition including pregnancy disability and recovery from childbirth.[60]

State Employees

Job-Protected Family and Medical Leave

Maine state employees are entitled to one year of parental leave.[61] Maine state employers with 25 or more employees must grant up to 10 consecutive weeks of family and medical leave in any two-year period for the birth or adoption of a child under age 16 and for an employee's serious health condition including pregnancy disability and recovery from childbirth.[62]

MARYLAND F

Private Sector Employees

Adoption Leave Benefits

A private employer who provides "leave with pay" to an employee following the birth of a child must provide the same "leave with pay" to an employee following the adoption of a child.[63]

State Employees

Maryland state employees have no additional benefits beyond the federal FMLA.

MASSACHUSETTS C+

Private Sector Employees

Job-Protected Family and Maternity Leave

The Massachusetts Maternity Leave Act (MMLA) requires private sector employers with at least six employees to grant female employees up to eight weeks of maternity leave for childbirth or the adoption of a child under age 18 (or age 23, if the child is mentally or physically disabled).[64] The Massachusetts Commission against Discrimination recommends that all employers covered by the law give similar leave to all members of their workforce in order to avoid a legal challenge of gender discrimination.

State Employees

Job-Protected Family and Medical Leave

Full- and part-time Massachusetts state employees are entitled to up to one year of unpaid leave for the birth and care of a newborn, or newly placed child. This leave can also be used to care for one's own pregnancy disability and recovery from childbirth, and/or to care for a family member with a maternity-related disability.[65]

The Massachusetts Maternity Leave Act (MMLA) requires all public sector employers to give female employees up to eight weeks of maternity leave for the birth of a child or adoption of a child under age 18 (or age 23, if the child is mentally or physically disabled).[66]

MICHIGAN D-

Private Sector Employees

Michigan has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Family Leave

Michigan state employees are entitled to 26 weeks of unpaid job-protected parental leave.[67]

MINNESOTA B-

Private Sector Employees

At-Home Infant Care (AHIC)

In the spring of 2004, Minnesota's AHIC program was re-established and signed into law. This program provides benefits to eligible, low-income parents to care for infants at home.[68]

Job-Protected Family Leave

Private sector employers with at least 21 employees at one site must grant up to six weeks leave to an employee for the birth or adoption of a child.[69]

State Employees

Job-Protected Family Leave

Minnesota state employees are entitled to up to six months of unpaid parental leave. The leave may be extended to a maximum of 12 months at the employer's discretion.[70]

State employers with at least 21 employees at one site must grant up to six weeks leave to an employee for the birth or adoption of a child.[71]

MISSISSIPPI F

Private Sector Employees

Mississippi has no laws guaranteeing job protection or benefits for new parents.

State Employees

Mississippi state employees have no additional benefits beyond the federal FMLA.

MISSOURI F

Private Sector Employees

Missouri has no laws guaranteeing job protection or benefits for new parents.

State Employees

Missouri state employees have no additional benefits beyond the federal FMLA.

MONTANA C-

Private Sector Employees

At-Home Infant Care (AHIC)

Montana's AHIC program was established in 2003, following a successful pilot program. It gives benefits to lower income parents who provide full time care for children under age two. Funding for the program must come from a specific appropriation to the General Appropriations Act or by budget amendment if funds become available from federal or private sources. To date, the program remains unfunded.[72]

Job-Protected Medical/Maternity Leave

It is unlawful for any Montana employer with one or more employees to deny a female employee who is disabled as a result of pregnancy "a reasonable leave of absence" for such pregnancy.[73]

State Employees

Job-Protected Medical/Maternity Leave

Montana state employees are permitted to take a reasonable leave of absence, not to exceed 15 days, immediately following the birth or placement of a child.[74]

NEBRASKA F

Private Sector Employees

Nebraska has no laws guaranteeing job protection or benefits for new parents.

State Employees

Nebraska state employees have no additional benefits beyond the federal FMLA.

NEVADA F

Private Sector Employees

Nevada has no laws guaranteeing job protection or benefits for new parents.

State Employees

Nevada state employees have no additional benefits beyond the federal FMLA.

NEW HAMPSHIRE C

Private Sector Employees

Job-Protected Medical/Maternity Leave
Private employers with six or more employees must allow a female employee to take time off from work for disability resulting from pregnancy, childbirth or related medical conditions.[75]

State Employees

Job-Protected Medical/Maternity Leave
New Hampshire state employees are entitled to up to six months of unpaid maternity leave.[76]

NEW JERSEY B

Private Sector Employees

Medical/Disability Leave Benefits
Employees in New Jersey are entitled to short-term disability benefits if they are unable to work because of a non-job related sickness, including pregnancy and recovery from childbirth.[77] New Jersey's Temporary Disability Insurance program is funded by contributions from both employers and employees. The maximum length of benefits is 26 weeks.[78]

Job-Protected Family Leave

The New Jersey Family Leave Act guarantees employees who work for employers with 50 or more workers up to 12 weeks of unpaid family leave in any 24-month period to care for a newborn, newly adopted, or newly placed foster child, or for a seriously ill spouse who is temporarily disabled as a result of pregnancy or recovery from childbirth.[79] This leave can be used in addition to job-protected medical leave under the Family & Medical Leave Act. Eligible birth mothers may be entitled to up to 12 weeks of parental leave after they have taken time off for a pregnancy disability and/or recovery from childbirth.

State Employees

Medical/Disability Leave Benefits

State employees in New Jersey are entitled to disability benefits if they are unable to work because of a non-job related sickness, including pregnancy and recovery from childbirth.[80] New Jersey's Temporary Disability Insurance program is funded by contributions from both employers and employees. The maximum length of benefits is 26 weeks.[81]

Job-Protected Family Leave

The New Jersey Family Leave Act guarantees state employees who work for employers with 50 or more workers up to 12 weeks of unpaid family leave in any 24-month period to care for a newborn or newly placed child, or for a seriously ill spouse who is temporarily disabled as a result of pregnancy or recovery from childbirth.[82] This leave can be used in addition to job-protected medical leave under the Family & Medical Leave Act. Eligible birth mothers may be entitled to 12 weeks of parental leave after they have taken time off for a pregnancy disability and/or recovery from childbirth.

NEW MEXICO D

Private Sector Employees

At-Home Infant Care (AHIC)

In the spring of 2004, New Mexico established an AHIC pilot program providing benefits to eligible lower income parents to care for their infants.[83]

State Employees

New Mexico state employees have no additional benefits beyond the federal FMLA.

NEW YORK C

Private Sector Employees

Medical/Disability Leave Benefits
Employees in New York are entitled to 26 weeks of leave for pregnancy disability and recovery from childbirth. The law covers all employers with one or more employees. New York's Temporary Disability Insurance program is funded by contributions from both employers and employees. The maximum leave is 26 weeks.[84]

State Employees

Job-Protected Parental Leave
New York state employees are entitled to seven months of unpaid parental leave from the date of delivery.[85] The period of medical disability following delivery is included in this seven-month period. New York state employees may be granted up to two years of unpaid leave for pregnancy or childbirth.[86]

NORTH CAROLINA F

Private Sector Employees

North Carolina has no laws guaranteeing job protection or benefits for new parents.

State Employees

North Carolina state employees have no additional benefits beyond the federal FMLA.

NORTH DAKOTA D-

Private Sector Employees
North Dakota has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Family Leave

North Dakota state employees can receive four months of unpaid parental leave during any 12-month period.[87]

The North Dakota State Employees Family Leave Law provides state employees with similar benefits and coverage to those available under the federal FMLA.[88]

OHIO C-

Private Sector Employees

Ohio has no laws guaranteeing job protection or benefits for new parents.

State Employees

Parental Leave Benefits

Ohio state employees are entitled to six weeks of leave upon the birth or adoption of a child, including four weeks of benefits at 70 percent of the employee's regular rate of pay. These six weeks of parental leave count against the 12 weeks of leave provided by the FMLA.[89] Ohio state employees are also entitled to six months of unpaid parental leave.[90]

Medical/Disability Leave Benefits

Ohio state employees are eligible for benefits at 70 percent of the employee's regular rate of pay for up to six months, and 50 percent of pay for up to an additional 18 months. These benefits apply to complications during pregnancy that require time off from work, and for six weeks after a vaginal birth or eight weeks after a Caesarean delivery if there are no additional complications.

OKLAHOMA F

Private Sector Employees

Oklahoma has no laws guaranteeing job protection or benefits for new parents.

State Employees

Oklahoma state employees have no additional benefits beyond the federal FMLA.

OREGON B+

Private Sector Employees

Job-Protected Family and Medical Leave

Private sector employers with 25 or more employees must provide workers with 12 weeks of unpaid family and medical leave within any one-year period. This leave can be used for one's own medical condition, including pregnancy disability and recovery from childbirth, as well as to care for a spouse with a serious health condition. If an employee uses this leave for her own pregnancy-related disability and/or recovery from childbirth, it is not counted against job-protected parental leave.[91]

Job-Protected Parental Leave

Employees that work for companies with 25 or more employees are entitled to 12 weeks of job-protected leave to care for an infant, newly adopted child or newly placed foster child under 18 years of age. The law further provides an additional 12 weeks to care for a child who is suffering from an illness, injury or condition that is not a serious health condition, but that requires home care within the same one-year period for a total of 24 weeks.[92]

State Employees

Job-Protected Family and Medical Leave

State employers with 25 or more employees must provide workers with 12 weeks of unpaid family and medical leave within any one-year period. This leave can be used for one's own medical condition, including pregnancy disability and recovery from childbirth, as well to care for a spouse with a serious health condition. If an employee uses this leave for her own pregnancy-related disability and/or recovery from childbirth, it is not counted against job-protected parental leave.[93]

Job-Protected Parental Leave

Oregon state employees are entitled to 12 weeks of job-protected leave to care for an infant, newly adopted child or newly placed foster child under 18 years of age. The law further provides the same leave to care for a child who is suffering from an illness, injury or condition that is not a serious health condition, but that requires home care within the same one-year period, for a total of 24 weeks.[94]

PENNSYLVANIA F

Private Sector Employees

Pennsylvania has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Parental Leave

Pennsylvania state employees who become parents through childbirth, formal adoption, or foster care placement may request up to six months of unpaid parental leave. The agency head determines whether or not to award leave to an employee.[95]

RHODE ISLAND B-

Private Sector Employees

Medical/Disability Leave Benefits

Private sector employees are entitled to up to 30 weeks of benefits for maternity disability if they have been medically certified as unable to work. Rhode Island's short-term disability program is financed by employee payroll tax deductions.

Job-Protected Parental Leave

Private employers with at least 50 workers are required to offer employees 13 weeks of parental leave in any two calendar years for childbirth or the adoption of a child age 16 or younger.[96]

State Employees

Job-Protected Parental Leave

State employees are entitled to up to one year of job-protected parental leave.[97]

SOUTH CAROLINA D+

Private Sector Employees

Job-Protected Medical/Maternity Leave
South Carolina's Human Affairs law prohibits employers with 15 or more employees from terminating an employee who takes leave for a pregnancy disability or to recover from childbirth.[98]

State Employees

Job-Protected Medical/Maternity Leave
South Carolina's Human Affairs law prohibits state employers with 15 or more employees from terminating an employee who takes leave for a pregnancy disability or to recover from childbirth.[99]

SOUTH DAKOTA F

Private Sector Employees

South Dakota has no laws guaranteeing job protection or benefits for new parents.

State Employees

South Dakota state employees have no additional benefits beyond the federal FMLA.

TENNESSEE C

Private Sector Employees

Job-Protected Medical/Maternity Leave
In Tennessee, employers with 100 or more workers must provide female employees with four months of maternity leave for pregnancy, childbirth and nursing an infant if they have worked full-time for the company for at least 12 consecutive months.[100]

State Employees

Job-Protected Medical/Maternity Leave

Female state employees are entitled to up to four months of job-protected leave for pregnancy, childbirth and nursing if they have worked full-time for at least 12 consecutive months. This four-month leave period includes leave required before and after the birth of a child.[101] Female state employees who have worked for less than one year are entitled to up to 30 days of unpaid job-protected maternity leave following the birth of a child.

TEXAS F

Private Sector Employees

Texas has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Parental Leave

Texas state employees are entitled to up to 12 weeks of parental leave for the birth of a child or for the adoption or foster care placement of a child younger than three.[102]

UTAH D-

Private Sector Employees

Utah has no laws guaranteeing job protection or benefits for new parents.

State Employees

Job-Protected Medical/Maternity Leave

Utah state employees may be granted up to 12 months of unpaid medical leave, including leave for pregnancy disability and recovery from childbirth, if a registered health practitioner certifies than the employee is temporarily disabled.[103]

VERMONT B-

Private Sector Employees

Job-Protected Parental and Medical Leave

Private sector employers with 10 or more workers must provide with up to 12 weeks of leave per year for an employee's pregnancy, to care for a newborn, or to care for a newly-adopted child under age 16 within the first year after placement. Leave can be used during pregnancy and after birth.[104]

Private sector employees at companies with at least 15 employees are eligible to take 12 weeks of leave per year to care for a spouse or civil union partner with a maternity-related disability.[105]

State Employees

Job-Protected Family Leave

State employees are entitled to four months of unpaid parental leave.

State employers who employ 10 or more workers must provide employees with up to 12 weeks of leave per year for an employee's pregnancy, to care for a newborn, or to care for a newly-adopted child under age 16 within the first year after placement. Leave can be used during pregnancy and after birth.[107]

State employers with at least 15 employees must provide up to 12 weeks of leave per year to care for a spouse or civil union partner with a maternity-related disability.[108]

VIRGINIA F

Private Sector Employees

Virginia has no laws guaranteeing job protection or benefits for new parents.

State Employees

Virginia state employees have no additional benefits beyond the federal FMLA.

WASHINGTON B

Private Sector Employees

Flexible Use of Sick Days

Employees who have any type of accrued paid leave can use it to care for a newborn or newly adopted child as well as a seriously ill family member, including a spouse with a pregnancy related disability or who is recovering from childbirth. Washington's law covers all employees regardless of employer size.[109]

Job-Protected Medical/Maternity Leave

Employees in Washington are entitled to job protection for the period of disability due to pregnancy and childbirth. This law covers employers with eight or more employees.[110]

Employees in Washington are entitled to job-protected leave for sickness and temporary disability as a result of pregnancy or childbirth in addition to 12 weeks of family leave to care for a new child. The law covers employers with more than 100 workers, and employees who work a minimum of 35 hours a week.[111]

State Employees

Job-Protected Medical/Maternity Leave

Washington state employees are entitled to job-protected leave for sickness and temporary disability as a result of pregnancy or childbirth in addition to 12 weeks of federal family leave. The law covers employers with more than 100 employees and employees who work a minimum of 35 hours a week.[112]

Job-Protected Parental Leave

Washington state employees are entitled to six months of unpaid parental leave to care for a newborn, newly adopted child or newly placed foster child if they have worked for the state for 12 months and for at least 1250 hours.[113]

WEST VIRGINIA F

Private Sector Employees

West Virginia has no laws guaranteeing job protection or benefits for new parents.

State Employees

West Virginia state employees have no additional benefits beyond the federal FMLA.

WISCONSIN C

Private Sector Employees

Flexible Use of Sick Days

Employees who have any type of accrued paid leave can use it to care for a newborn or newly adopted child as well as a seriously ill family member, including a spouse with a pregnancy-related disability or who is recovering from childbirth. The law covers employers with 50 or more workers.[114]

State Employees

Job-Protected Family Leave

Wisconsin state employees are entitled to six months of unpaid parental leave.[115]

WYOMING F

Private Sector Employees

Wyoming has no laws guaranteeing job protection or benefits for new parents.

State Employees

Wyoming state employees have no additional benefits beyond the federal FMLA.

DISTRICT OF COLUMBIA B+

Private Sector Employees

Job-Protected Family Leave

Employers with 20 or more workers must grant up to 16 weeks of family leave during any 24-month period to care for a newborn, newly adopted child or newly placed foster child. The law also protects workers caring for a family member, relative or domestic partner who is temporarily disabled due to pregnancy or is recovering from childbirth. The family leave must be taken within the first year of the child's birth or placement in the home.[116]

Job-Protected Medical Leave

Employers with 20 or more employees must grant up to 16 weeks of medical leave in a 24-month period for a serious health condition including pregnancy disability and recovery from childbirth. This medical leave is separate from the 16 weeks of job-protected leave guaranteed under the family leave provisions of the D.C. law.[117]

City Employees

Job-Protected Family Leave

All city employers within the Washington, D.C. city limits must grant up to 16 weeks of family leave during any 24-month period for the care of a newborn, newly adopted child or newly placed foster child. The law also protects workers caring for a family member, relative or domestic partner who is temporarily disabled due to pregnancy or recovery from childbirth. The family leave must be taken within the first year of the child's birth or placement in the home.[118]

Job-Protected Medical/Maternity Leave

All city employers within the Washington, D.C. city limits must grant up to 16 weeks of medical leave in a 24-month period to address a serious health condition including pregnancy disability and recovery from childbirth. This medical leave is separate from the 16 weeks of job-protected leave guaranteed under the family leave provisions of the D.C. law.[119]

FEDERAL GOVERNMENT F

Private Sector Employees

The Family & Medical Leave Act and the Pregnancy Discrimination Act provide job protection

and protection from gender discrimination to new mothers and fathers.

Federal Employees

Federal employees have no additional benefits beyond the federal FMLA.

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Disclaimer

The text, citations and data for this report are, to the best of the author's knowledge, current as of the printing date of *Expecting Better: A State-by-State Analysis of Parental Leave Programs*. This report does not constitute legal advice. Individuals and organizations should consult their own legal counsel for legal advice.

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State by State Comparison

	Paid Leave for Private Sector Employees		
	Family Leave Benefits	Medical/ Maternity Leave Benefits	Flexible Sick Days
Alabama			
Alaska			
Arizona			
Arkansas			
California	●	●	*
Colorado			
Connecticut			●
Delaware			
Florida			
Georgia			
Hawaii		●	●
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland			
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana			
Nebraska			
Nevada			
New Hampshire			
New Jersey		●	
New Mexico			
New York		●	
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Rhode Island		●	
South Carolina			
South Dakota			
Tennessee			
Texas			
Utah			
Vermont			
Virginia			
Washington			●
West Virginia			
Wisconsin			●
Wyoming			
District of Columbia			
Federal Employees			

*California has a flexible sick leave law that entitles all workers that have access to sick leave to use it to care for a seriously ill spouse or partner temporarily disabled due to pregnancy or recovery from childbirth but not to care for a newborn. See California Labor Code 233.

** To date, Montana's AHIC program remains unfunded.

	Extension of Unpaid Job-Protected FMLA			State Laws	State Employees	
At-Home Infant Care Benefits	Expanded Job-Protected Family Leave	Expanded Job-Protected Medical/ Maternity Leave	Extended Length of Job-Protected Family and Medical Leave	State Family Medical Leave Laws	Paid Family and Medical Leave Benefits	Extended Length of Job-Protected Family and Medical Leave
						●
						●
		●	●	●	●	●
						●
		●	●	●		●
						●
		●		●	●	●
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Paid Family Leave in the United States

Time for a New National Policy

Julia Isaacs, Olivia Healy, and H. Elizabeth Peters

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With both Republicans and Democrats talking about paid family leave, the time is ripe for a new national policy. The current patchwork of public and private policies does not meet the needs of mothers in the labor force. Positive outcomes from paid family leave are emerging from programs in California, New Jersey, and Rhode Island. Yet, policy choices must be made to refine and implement a national program of paid family leave. These choices include who should be covered, how high should benefit amounts be, how long should they be paid, how should benefits be funded and administered, and should job protections be expanded? We review evidence from current state programs to help policymakers as they consider plans for a national paid leave policy.

Higher Levels of Bipartisan Support than in the Past

Polls suggest that both Democrat (88 percent) and Republican (71 percent) voters are in favor of "requiring employers to offer paid leave to parents of new children and employees caring for sick family members."[1] During the most recent presidential campaign, candidates from both parties proposed plans for paid family leave to allow workers to take time off to care for a new baby without losing their full paycheck. In September 2016, candidate Donald Trump announced his support for a paid family leave plan under which working mothers would qualify for six weeks of unemployment insurance benefits after childbirth. Other presidential candidates proposed plans ranging from a tax credit to encourage employers to offer at least four weeks of paid leave (Marco Rubio) to plans for a national program of 12 weeks of paid leave (Hillary Clinton and Bernie Sanders).

Republican support for family leave marks a departure from the past. President George H. W. Bush twice vetoed the Family and Medical Leave Act, which provided up to 12 weeks of unpaid family leave, before President Bill Clinton signed it in 1993. Even so five Republican congresswomen attended the campaign event where Donald Trump unveiled his proposal on paid family leave. Ivanka Trump, who accompanied her father when he announced his maternity leave plan, highlighted the need for supports for working mothers in her speech to the Republican National Convention and has met with members of Congress to further discuss paid leave. Senator Deb Fischer (R-NE) has introduced the Strong Families Act, which would provide a tax credit to encourage employers to provide 2 to 12 weeks of paid leave. The bill is cosponsored by Senators Marco Rubio (R-FL) and Angus King (I-ME).

Many congressional Democrats support a more expansive program of paid family leave than envisioned by Trump or other Republicans. Senator Kirsten Gillibrand (D-NY) and Representative Rosa De Lauro (D-CT) introduced the Family and Medical Insurance Leave or FAMILY Act (S. 337/H.R. 947) with 27 cosponsors in the Senate and 130 cosponsors in the House.[2] This bill would provide up to 12 weeks of paid family benefits and would offer benefits to mothers after childbirth (as in the Trump plan) and to fathers, adoptive parents, and people caring for ill family members. Benefits would equal two-thirds of previous wages, a higher wage-replacement rate than in Republican plans.

The differences between Republican and Democratic approaches to paid leave are significant. Yet with proposals under consideration in both the administration and Congress, the time may be ripe for developing and enacting the first national program of paid leave in the United States. Increasing frustration with the landscape of paid leave and the growth of state and local plans add further impetus for change.

Inadequacy of Existing Patchwork of Leave Policies

Many American women need family leave. Two-thirds of first-time mothers worked during their pregnancy in 2002–08, compared with 44 percent in the early 1960s (Laughlin 2011). Even so, the United States is one of two countries that do not have a national paid leave policy to allow mothers to spend time caring for their newborn and regain their health after childbirth. Almost all other countries provide paid maternity leave, and many countries also provide paid paternity leave and the guarantee that the parent can return to the same (or comparable) job (Addati, Cassirer, and Gilchrist 2014).

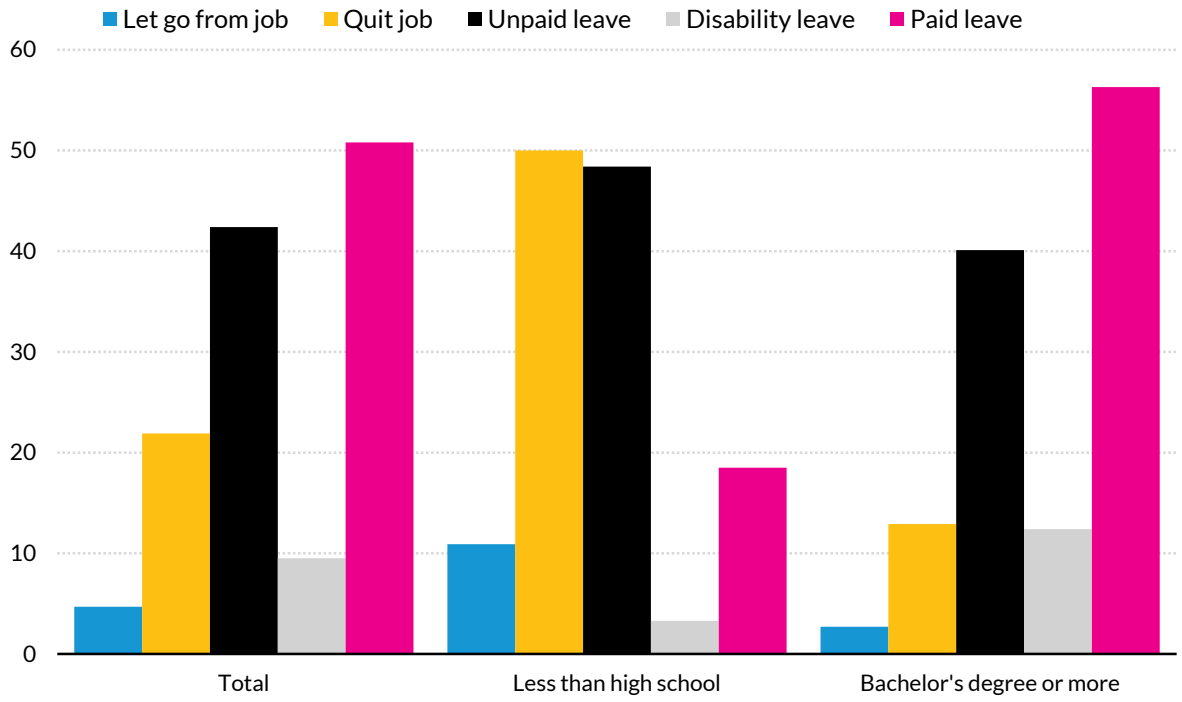
In the United States, **working parents struggle to patch together paid and unpaid leave** that varies depending on type of work, employer size, work history, state of residence, and other factors. In 2016, only one in seven US civilian workers (14 percent) had access to paid family leave as an employee benefit. About two-thirds of employees (68 percent) had access to paid sick leave, and 38 percent had access to short-term disability benefits (Bureau of Labor Statistics 2016).[3] Some parental leave is offered by private- or public-sector employers as part of their employee benefits package. In addition, five states and the District of Columbia have enacted or implemented statewide family leave programs, and six states and one territory offer partial wage-replacement benefits for pregnant women under temporary disability insurance programs established in the 1940s and 1960s.[4]

Working mothers with few or no options for paid leave may have to return to work immediately after childbirth, quit employment, or take unpaid leave. Such unpaid leave may result in job loss, because not all unpaid leave is job protected. Although the Family and Medical Leave Act of 1993 requires employers to guarantee job-protected, unpaid leave up to 12 weeks after the birth or adoption of a new child, an estimated 41 percent of employees in the United States were not covered by the Family and Medical Leave Act in 2012 (Klerman, Daley, and Pozniak 2012).[5] Five percent of first-time mothers who worked during their pregnancy in 2006–08 were let go from their job during pregnancy or within six months of childbirth, 22 percent quit their job, 42 percent took unpaid leave, 10 percent took disability leave, and 51 percent used paid maternity, sick, vacation, or other paid leave. These percentages add to more than 100 percent because many mothers use a combination of arrangements (Laughlin 2011).

Workers with less education and lower wages tend to have the least access to paid leave. Mothers without a college degree are less likely to take paid leave than mothers with a college degree or higher (19 versus 66 percent) (figure 1). They also are more likely to be let go from their job or quit their job during pregnancy or shortly after childbirth (11 and 50 percent, respectively) (Laughlin 2011). Comparisons of access to leave by wage levels or family income shows similar patterns.[6] Absent a national policy, access to paid leave is inadequate and inequitable.

FIGURE 1

Leave Arrangements Used before or after Childbirth by Women Who Worked during Their Pregnancy preceding Their First Birth, by Education Level



Source: Lynda Laughlin, "Maternity Leave and Employment Patterns of First-Time Mothers: 1961–2008" (Washington, DC: US Census Bureau, 2011), drawing on the Survey of Income and Program Participation, 2008 panel, wave 2.
Notes: The total exceeds 100 percent because mothers take multiple leave arrangements. Leave arrangements may have been used before or up to 12 weeks after the birth.

Job loss and unpaid leave impose a financial hardship on many families right when they have additional expenses. One study found that US households experienced a 10 percent decline in income after childbirth, and single mothers who live without other adults face a 42 percent drop (Stancyzk 2016a). Families who took unpaid leave after childbirth reported using multiple strategies to pay their bills, including cutting back on spending, using savings, taking on debt, cutting leave short, postponing bill payment, receiving gifts or loans from friends and family, and going on public assistance (21 percent of those taking unpaid leave and 48 percent of those with income less than $30,000 a year reported going on public assistance) (Horowitz et al. 2017).

Increase in States and Municipalities Providing Paid Family Leave

More states and municipalities have moved forward on paid family leave. California enacted paid family leave legislation in 2002, New Jersey in 2008, Rhode Island in 2013, and New York in 2016 (the New York plan goes into effect in January 2018).[7] These state programs, described in the implementation section and in table 1, generally provide 55 to 67 percent of wages for 10 to 12 weeks

(generally composed of six weeks of temporary disability insurance and four to six weeks of additional paid family leave). In April 2016, San Francisco enacted a citywide paid parental leave program, funded by employee and employer contributions, to cover wages not replaced under California's state program. In December 2016, the District of Columbia passed legislation authorizing eight weeks of paid family leave, effective July 2020.[8] More than 50 municipalities provide paid leave for municipal workers, with at least two dozen cities and counties adopting such legislation in 2016 or early 2017 (National Partnership for Women and Families 2017). Proposals to develop a national plan of paid family leave can learn from the experience of existing programs, both in their empirical outcomes on employment, families, and businesses, and in the choices made about operational details.

Emerging Outcomes of Paid Family Leave

Increasing evidence shows the effects of state-level, paid family leave programs on women, children, families, and employers. We summarize this evidence, focusing on outcomes related to mother's leave-taking and employment decisions, health and developmental outcomes, and effects on employers and labor markets.

What Are the Effects on Mothers' Labor Market Outcomes?

State programs have encouraged leave-taking among mothers and increased the likelihood that they return to work after having a child. Recent studies using strong research methods show that paid maternity leave in California increases the duration of mothers' leave three to five weeks (Baum and Ruhm 2016; Rossin-Slater, Ruhm, and Waldfogel 2013) and increases the probability that a woman is employed in the 3 months before childbirth and 9 to 12 months after childbirth (Baum and Ruhm 2016). Another analysis finds that paid leave laws in New Jersey and California increase women's labor force attachment in the months surrounding a birth (Byker 2016). This analysis is consistent with earlier research showing that women with *private* paid leave were more likely to take maternity leave in the month after childbirth and return to the labor force within a year (Joesch 1997). As such, paid leave increases labor force attachment for women who would have otherwise exited work around childbirth.

Paid leave policies also affect a family's finances after childbirth, through the direct payment of leave and increased likelihood of mothers remaining in the labor force. Stancyzk (2016b) finds that California's paid leave program reduces mothers' risk of poverty following a birth, particularly among disadvantaged mothers. Research on the long-term employment consequences of state paid leave programs is not yet available, but an increase in short-term attachment is likely to translate into long-term employment gains.

The positive effects of paid leave appear strongest for less-advantaged mothers. Women without a bachelor's degree in California and New Jersey were likely to have an increase in the number of weeks "with a job" around childbirth and a decrease in time spent looking for a job 6 to 12 months after childbirth for this same group (Byker 2016). Similarly, evidence suggests the increase in leave-taking under California's policy was large for disadvantaged mothers (less-educated and minority women),

who may be less likely to take time off absent paid leave because of financial constraints (Rossin-Slater, Ruhm, and Waldfogel 2013).

What Are the Effects on Health and Developmental Outcomes?

Paid leave may improve health and developmental outcomes, though evidence is still emerging. Paid time off after a birth might increase the likelihood of breast-feeding, reduce parental stress that may adversely affect children's health and well-being, and promote healthy parent-child relationships. Though the number of studies in this area is limited, the best evidence shows weakly positive or no effects of paid maternity leave on maternal physical and mental health (Aitken et al. 2015; Chatterji and Markowitz 2012).[9] Studies suggest breast-feeding rates are higher in states where paid leave is offered and among women receiving the benefit (Appelbaum and Milkman 2011; Huang and Yang 2015), and other research links breast-feeding with positive health outcomes for children and mothers (Ip et al. 2007; US Department of Health and Human Services 2011). Research also shows paid leave may improve birth outcomes and infant health (Bullinger 2015; Stearns 2015). Whether paid parental leave has long-term benefits on children's outcomes past infancy remains unanswered, in part because of the recent implementation of such laws in the United States.

What Is the Effect on Employers and Labor Markets?

Paid leave policies were less onerous on employers than they expected. Some employers in California, New Jersey, and Rhode Island were initially resistant to implementing a paid family leave policy. But after implementation, surveys of employers showed they were more likely to have positive or neutral views than negative views (Bartel et al. 2016).[10] California employers found the new policy less onerous than expected, and 90 percent or more of employers reported no changes or positive effects on employee turnover, profitability, and productivity (Appelbaum and Milkman 2011).

Employers also can benefit from family-friendly policies through greater employee satisfaction and reduced turnover. That mothers with access to paid family leave are more likely to return to their employer suggests benefits to mothers (increased labor market attachment) and to employers (reduced costs from not having to replace that employee, which are estimated to be about 20 percent of a worker's salary) (Boushey and Glynn 2012). There is limited direct evidence about turnover for firms before and after implementation of paid family leave, but one study using California data finds no adverse effect on firm turnover or wage costs when leave-taking rates rise (Rossin-Slater 2017).

Evidence is mixed on whether paid family leave improves or reduces overall employment rates of young women. On one hand, family-friendly policies, including paid family leave, can increase the likelihood that women will enter the labor force. Blau and Kahn (2013) argue that the lack of family-friendly policies partially explains why female labor force participation rates are falling in the United States relative to rates in other advanced western economies. On the other hand, implementing paid parental leave could reduce women's employment if these benefits increase the cost of hiring women, who are most likely to take up benefits. The empirical evidence is mixed. Das and Polachek (2015) find that paid family leave was associated with an increase in labor force participation among young women

in California, but unemployment rates and unemployment duration for young women increased. Reed and Vandegrift (2016) estimate that implementing paid family leave in New Jersey reduced employment rates for 22- to 34-year-old women 8 to 9 percent, and Sarin (2016) finds that the cost (and reduced employment) is greater for those with job-protected leave.

Evidence is also mixed on how paid leave affects the nature of women's employment. Blau and Kahn (2013) suggest that family-friendly policies may unintentionally encourage women to work part-time and in low-skill occupations, but these results were found for countries outside the United States, where leaves are generally longer than what is proposed in the United States. Other studies have found that employers may use family-friendly policies such as paid family leave to attract high-skilled women (Bailey and DiPrete 2016; Wasserman 2015).[11]

In sum, emerging evidence about the positive effects of paid family leave, combined with concerns about the inequity and inadequacy of the current leave arrangements of working women facing childbirth, have contributed to national proposals for paid family leave.

Implementation Choices for a National Paid Family Leave Policy

As the Trump administration refines the plan outlined during the campaign and as members of Congress develop and debate alternative plans, they must address key questions about implementation. Who can take leave, and for how long? What percentage of wages will be replaced, and what is the maximum benefit that will be paid? How will benefits be paid for and administered? Is there a guarantee to go back to the same or comparable job? Below, we outline these choices and how they have been addressed by existing US programs. Our goal is to clarify the choices and trade-offs in developing a national program of paid family leave.

Who Should Be Covered?

Under the Trump plan, working mothers would qualify for six weeks of unemployment insurance benefits after childbirth if they do not have access to paid maternity leave through their employer. Under the more comprehensive FAMILY Act favored by Democrats, family leave could be taken by mothers or fathers after the birth, adoption, or fostering of a new child or to care for a seriously ill family member.

The Trump proposal targets maternity leave, which has broader public support and a greater uptake than paternity leave. More Americans support paid maternity leave following birth or adoption of a child than paid paternity leave (82 versus 69 percent) (Horowitz et al. 2017). Currently, paid leave offered through private employers is more often available to new mothers than to new fathers. When it is offered, men are less likely to take leave and take it for shorter periods (Gault et al. 2014).

Many argue for paternity leave on equity grounds and because of evidence of benefits for families. States that have enacted paid family leave provide paid paternity and maternity leave, and fathers are treated the same as mothers under the Family and Medical Leave Act. In addition, 42 percent of countries (70 of 167 countries with data available) provide paid paternity or shared parental leave (Addati, Cassirer, and Gilchrist 2014). Among younger Americans, support for paternity leave is strong: 82 percent of Americans ages 18 to 29 believe fathers should have paid leave after birth or adoption of a child, compared with 55 percent of Americans ages 65 and older.

Although most studies have focused on the consequences of maternal leave-taking, a few studies have documented the consequences of paternal leave-taking. Research has demonstrated that when fathers take leave, there are positive consequences for the mother, including fewer days of work lost because of illness, reductions in depression, and increased earnings (Harrington et al. 2014). Other studies find that when paternity leave is available, fathers are more likely to provide child care even after the leave is over (Boll, Leppin, and Reich 2014; Nepomnyaschy and Waldfogel 2007; Tanaka and Waldfogel 2007).

Another key coverage decision is whether to cover family leave for employees caring for sick family members. Existing state programs provide such family leave, and such coverage would be consistent with the unpaid leave provisions of the Family and Medicaid Leave Act. In California, roughly 88 percent of family leave claims filed between July 2015 and June 2016 were for the birth or adoption of a new child, and 12 percent were because of the illness of a spouse, parent, or child.[12] Extending paid leave to all employees taking leave to care for qualifying relatives would increase costs and potential benefits of paid family leave.

Part-time and low-wage workers are less likely to be covered if the plan has high work requirements and restrictions on employer size. A higher percentage of the workforce is covered in California than in New Jersey because of the difference in work requirements ($300 in earnings in California versus $8,300 or $165 a week for a minimum of 20 weeks in New Jersey, as shown in table 1).

How Long Should Leave Be?

Another notable difference between the Trump proposal and the FAMILY Act favored by many Democrats is the maximum amount of leave covered. The Trump plan would cover up to six weeks, and the FAMILY Act would cover 12 weeks. **Little empirical evidence shows the effects of 6 compared with 12 weeks of leave, because few programs offer less than 10 weeks of effective coverage.** The programs in California and New Jersey offer workers up to six weeks of partial paid leave after the birth or adoption of a child (table 1). For biological mothers, this is in addition to pregnancy- and childbirth-related temporary disability leave. In Rhode Island, benefits are provided up to four weeks (in addition to six to eight weeks of temporary disability leave), for up to 12 weeks.

Duration of leave is an aspect of family leave policy that affects workers and firms differently. Although workers may prefer longer leaves, firms must cover the employee's work for the duration of the leave, and longer leaves may be more costly for employers. Employers can benefit from a family

leave policy if it increases the likelihood that an employee will return to her job, eliminating the cost of hiring and training a new worker. But if the leave is too long, the employer may incur the costs of hiring and training a replacement while the employee is on leave.

Leave duration under consideration in the United States is shorter than leave allowed in other countries. A study of 185 countries found that 32 percent provide 12 to 13 weeks of paid maternity leave, 30 percent provide 14 to 17 weeks, 23 percent provide 18 weeks or more, and 15 provide fewer than 12 weeks (Addati, Cassirer, and Gilchrist 2014).

TABLE 1

Key Parameters of Four State Family Leave Programs

	California	New Jersey	Rhode Island	New York
Date implemented	2004	2009	2014	2018
Reasons for leave	Birth, family, adoption, fostering, serious illness of family member	Birth, family, adoption, fostering, serious illness of family member	Birth, family, adoption, fostering, serious illness of family member	Birth, family, adoption, fostering, serious illness of family member
Work requirements	Earnings of $300 in 12-month period	Earnings of $8,300 in 12-month period or at least $165 a week for 20 weeks	Earnings of $10,800 in 12-month period or $3,600 in 12-month period and ≥ $1,800 in one quarter and total earnings ≥ 150 percent higher than highest quarter earnings	Part- or full-time employees who worked 26 or more consecutive weeks
Maximum length of paid leave	6 weeks[a]	6 weeks[a]	4 weeks[a]	8 weeks, rising to 12 weeks by 2021[a]
Wage-replacement rate	55 percent, increasing to 60 and 70 percent in 2018[b]	67 percent	55 percent	50 percent, rising to 67 percent by 2021
Maximum weekly benefit	$1,104	$605	$795	Capped at 50 percent of *statewide* average weekly wage rising to 67 percent cap by 2021[c]
Financing of benefits	Employee payroll tax of 0.9 percent	Employee payroll tax of 0.34 percent	Employee payroll tax of 1.2 percent	Employee payroll tax (percentage not yet issued)
Is paid leave job protected?	No (workers may be covered by FMLA and California Family Rights Act)	No (workers may be covered by FMLA and New Jersey FMLA)	Yes	Yes

Source: Sarah Jane Glynn, "Administering Paid Family and Medical Leave: Learning from International and Domestic Examples" (Washington, DC: Center for American Progress, 2015); "State and Family Medical Leave Laws," National Conference of State Legislatures, July 19, 2016, http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx; National Partnership for Women and Families (NPWF), "State Paid Family Leave Insurance Laws" (Washington, DC: NPWF, 2017); "Paving the Way to the Nation's Strongest Paid Family Leave Policy," New York State, accessed April 20, 2017, https://www.ny.gov/programs/new-york-state-paid-family-leave.

Note: FMLA = Family and Medical Leave Act.

[a] Biological mothers also are typically eligible for six to eight weeks of leave after childbirth under temporary disability insurance programs in these four states.

[b] The wage-replacement rate in California will increase to 70 percent for low-income workers and 60 percent for other workers, effective 2018.

[c] The New York average weekly wage was $1,306 in fiscal year 2010, suggesting a cap of $653.

What Should Benefit Amounts Be?

Benefit levels were not detailed in Trump's 2016 plan. But if benefits follow the model of current unemployment benefits, they would be roughly half a working mother's previous wages, up to state-established caps. The FAMILY Act provides benefits equal to two-thirds of average wages, with a monthly maximum of $4,000. Current state plans have wage-replacement rates between 55 and 67 percent, with *weekly* benefit caps ranging from $605 to $1,104 (table 1).

Setting wage-replacement rates and maximum caps affects program costs. **Trade-offs between higher wage replacement rates and higher caps also shape who is likely to benefit from policies and who will take them up.** A higher wage-replacement rate but lower maximum benefit cap, as in New Jersey, is more favorable to low-wage workers because they are less likely than other workers to be affected by the cap. Another option for assisting low-wage workers while controlling costs is to provide them with higher replacement rates than other workers. Graduated wage-replacement rates—to go into effect in California in 2018 and included in DC's current legislation—could increase participation in paid leave programs by making leave-taking more affordable for low-wage employees.

How Will Benefits Be Funded and Administered?

Both the Trump plan and the FAMILY Act follow a social insurance model, where workers contribute pooled resources through payroll taxes to a government-run social insurance fund, and replacement wages are paid to workers who take leave for a qualifying reason (Glynn 2015). This is in contrast to employer mandates (used for the Family and Medical Leave Act), tax credits to encourage employer plans (favored by Senators Rubio and Fischer), or financing benefits through general funding (proposed by Secretary Clinton[13]). Most countries use a social insurance model to administer paid family leave, as do the four existing state plans.[14]

Employee payroll contributions fund state programs, with the payroll tax ranging from 0.34 percent to 1.2 percent of earnings (table 1).[15] For a worker with median annual earnings, the tax amounts to between $109 and $384 a year (Montana Budget and Policy Center 2015). The proposed payroll tax for the FAMILY Act is 0.2 percent. The details of how benefits would be funded under Trump's paid leave proposal were not clear from materials released in September 2016, except for references to reducing unemployment fraud. If the proposed six-week maternity benefits were funded through an employee payroll tax, the rate would likely be lower than existing plans, given the more modest scope of coverage and benefits.

Building on existing social insurance programs can ease the administration of family leave benefits. Current state family leave programs are built on temporary disability programs, allowing states to take advantage of disability insurance infrastructure for collecting payroll contributions, processing claims, and administering benefits. Because most states do not have temporary disability insurance programs, national proposals suggest alternate platforms. The Trump proposal would have maternity benefits administered through unemployment insurance programs (administered by state

departments of labor), whereas the FAMILY Act proposed a national plan of parental benefits administered by a new office of the Social Security Administration.

There is precedent for considering unemployment insurance to provide paid family leave. From 2000 to 2003, 15 states considered legislation to enact "baby UI" programs authorizing the payment of unemployment insurance benefits to eligible parents after the birth or adoption of a child.[16] The US Department of Labor regulations authorizing such programs were controversial and were repealed in 2003 before any state enacted legislation (though California did enact its family leave program based on temporary disability insurance, another program administered by its state department of labor).

A key advantage of building on unemployment insurance programs is that state departments of labor have the quarterly earnings data to determine work history, and they are accustomed to reviewing applications and issuing benefit checks relatively quickly (Winston 2014; Zielewski and Waters Boots 2010). Yet many state unemployment compensation programs are on unstable financial footing, without sufficient reserves to weather a recession (Vroman and Woodbury 2014). Using the unemployment insurance system for family leave benefits may be further complicated by distinctions between state and federal unemployment trust funds.[17] Alternate programs within state departments of labor, such as workers compensation, have been proposed in bills before state legislatures (Montana Budget and Policy Center 2015).

Finally, a key decision is whether parental leave benefits should vary from state to state (like unemployment benefits) or whether there should be a national policy with uniform coverage rules and wage-replacement rates (like Social Security benefits). One middle-ground option is to have a national policy on coverage and benefit amounts, but have it administered by state agencies (as occurs in the Supplemental Nutrition Assistance Program).

What Should Job Protections Be?

An important consideration is whether paid leave laws provide workers the promise of their old jobs upon return to the labor force. The Rhode Island law mandates job-protected leave, but such provisions exist in California and New Jersey only for workers covered under the Family Medical Leave Act. Coverage under the act is more restrictive than coverage for paid family leave in California and New Jersey, and some California workers have taken leave under the false belief their jobs would be protected only to find out after taking leave that they had been let go (Firestein, O'Leary, and Savitsky 2011). Job protection, or lack thereof, affects who can access benefits. Workers with lower education or income are less likely to qualify for job-protected, unpaid leave under the Family and Medical Leave Act (Jorgensen and Appelbaum 2014; Ross Phillips 2004). Without this guarantee, low-wage workers with limited financial security may forgo benefits rather than risk losing their jobs because of leave. Job protection is also a key aspect of family leave policies that can promote female attachment to the labor market, because it enables a worker to return to the same employer, so the worker does not lose job- and firm-specific human capital (Stearns 2016).

Conclusion

The Trump proposal for paid maternity leave, as well as growing interest among national and state legislators, offers the possibility of moving forward on family leave policies. A national policy could address the inadequacies and inequities of current leave options facing parents of newborn children. Existing state paid family leave has had positive effects on mothers' labor market outcomes. Strong evidence shows it induces more mothers to take leave and for longer periods and increases the likelihood that women return to work after having a child. Paid leave also can have positive effects on mothers' physical and mental health, as well as young children's health outcomes. Improvements across these domains appear to be larger for disadvantaged families, who are especially constrained without access to paid leave benefits. Paid family leave also can improve worker retention, and employers in states that have implemented such policies are generally neutral or positive toward public programs of paid family leave. Finally, building upon existing social insurance programs could ease implementation of a new program of paid family leave.

Notes

1. "Americans' Views on Income Inequality and Workers' Rights," *New York Times*, June 3, 2015, https://www.nytimes.com/interactive/2015/06/03/business/income-inequality-workers-rights-international-trade-poll.html?_r=1.
2. Family and Medical Insurance Leave Act, H.R. 947, 115th Cong. (2017).
3. In 1978, the Pregnancy Discrimination Act granted women the right to use their sick leave and disability benefits for pregnancy-related medical conditions, including childbirth.
4. States and territories with temporary disability insurance programs include California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island. Mothers are generally allowed six to eight weeks of temporary disability insurance leave after childbirth. Some states allow additional leave before delivery date. In others, the total leave before and after delivery date is six to eight weeks, barring pregnancy complications (Stearns 2015). Four of these states (California, New Jersey, New York, and Rhode Island) have used their temporary disability insurance programs as a springboard for paid family leave programs (the New York program goes into effect in January 2018).
5. Receiving coverage under the Family and Medical Leave Act requires that an employee work in a firm with 50 or more workers, work 1,250 or more hours annually, and work for a firm for 12 months before taking leave.
6. Only 6 percent of workers in the bottom income quartile have access to paid family leave (compared with 22 percent of workers in the top quartile), and workers in the bottom quartile also have lower access to sick leave (41 versus 87 percent) and temporary disability benefits (18 versus 53 percent) (Bureau of Labor Statistics, 2016, tables 16 and 32).
7. Washington State also enacted a program in 2007, but it has never been funded or implemented.
8. Implementation remains uncertain. The mayor neither signed nor vetoed the bill passed by the city council, allowing it to become law without her signature. An alternate plan with a lower payroll tax was introduced to the city council in February 2017, adding further uncertainty to the status. If adopted as enacted in 2016, the program would be one of the nation's most generous, providing a wage replacement of up to 90 percent.
9. See also Mary C. Schroeder, "The Economics of Mandated Paid Leave" (PhD dissertation, Emory University, 2010).
10. See also "Paid Leave Research," National Partnership for Women and Families, accessed April 20, 2017, http://www.nationalpartnership.org/issues/work-family/paid-leave-resources.html.
11. See also Julia Greenberg, "Tech's Selfish Reasons for Offering More Parental Leave," *Wired*, August 13, 2015, https://www.wired.com/2015/08/techs-selfish-reasons-offering-parental-leave/; and Patricia Garcia, "Why Silicon Valley's Paid Leave Policies Need to Go Viral," *Vogue*, August 6, 2015, http://www.vogue.com/article/paid-parental-leave-netflix-silicon-valley.
12. "Paid Family Leave (PFL) Program Statistics," California Employment Development Department, accessed April 20, 2017, http://www.edd.ca.gov/Disability/pdf/qspfl_PFL_Program_Statistics.pdf.
13. "Paid Family and Medical Leave," HillaryClinton.com, accessed April 21, 2017, https://www.hillaryclinton.com/issues/paid-leave/.
14. The second-most-common model in other countries is employer mandates, followed by publicly funded programs (Addati, Cassirer, and Gilchrist 2014).
15. In California and Rhode Island, the same mechanism—employee payroll contributions—finances the state's paid family leave and disability insurance systems. In New Jersey, employee payroll contributions finance paid family leave insurance, but the disability insurance program is funded by *employer* contributions.
16. States were allowed to enact such programs under US Department of Labor regulations issued in June 2000 (20 CFR Part 604), which established an option for Baby and Adoption Unemployment Compensation, allowing family paid leave at levels and duration set by participating states (Franco 2004; Vroman 2001).

17. Mark Gimein, "Why Trump's Maternity-Leave Plan Won't Work," *New Yorker*, September 16, 2016, http://www.newyorker.com/business/currency/why-trumps-maternity-leave-plan-wont-work.

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About the Authors

Julia B. Isaacs is a senior fellow in the Center on Labor, Human Services, and Population at the Urban Institute. She is an expert in child and family policy with wide-ranging knowledge about government programs and budgets. She is codirector of the Urban Institute's Kids in Context initiative.

Olivia Healy is a former research associate in the Center on Labor, Human Services, and Population, where she contributed to research on publicly funded programs designed to support low-income families. She is now a PhD student in the Department of Human Development and Social Policy at Northwestern University.

H. Elizabeth Peters is the director of the Center on Labor, Human Services, and Population. Her research focuses on family economics and family policy, and she has published on topics related to work and family balance, child care policy, family formation and dissolution, child support policy, welfare reform, family investments in children, child well-being, and father involvement.

Acknowledgments

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May 16, 2017

VIA EMAIL and U.S. MAIL

William Schifino, President
The Florida Bar
651 E Jefferson Street
Tallahassee, FL 32399

Re: Unanimous Support of the YLD Board for the proposed Parental Leave Continuance Rule

Dear President Schifino:

At its most recent board meeting on May 5, 2017, **The Florida Bar Young Lawyers Division Board of Governors voted unanimously to support the proposed Parental Leave Continuance Rule** pending before The Florida Bar Board of Governors. This followed the unanimous recommendation of the rule from the Young Lawyers Division Executive Committee a month before the meeting.

While the YLD board took careful consideration of the arguments against such a rule, we see the rule as groundbreaking and necessary. The rule is consistent with issues the YLD has prioritized, such as supporting women in the profession and encouraging health and wellness of all attorneys. Our board members, through personal experience and/or the experiences of family members, friends, and constituents, including the responses to our 2015 survey, are aware of a number of situations where continuances were denied for expecting parents, as well as similar situations where new and expectant mothers were treated poorly in the courtroom. How attorneys are treated in the courtroom – and particularly the trial experience they develop – affects how they are perceived by their clients, their peers, and their employers for the rest of their career.

The rule as written balances the interest of the attorney, the client, and the opposing party. The rule only applies to lead trial counsel making a request within a reasonable time after learning of the basis of the continuance, and the attorney seeking the continuance must show a lack of substantial prejudice if challenged by an opposing party proffering a basis for a claim of substantial prejudice. Although I believe many members of our board would support an even broader rule, we wholeheartedly support the current version and ask the Board of Governors to vote in favor of it and send it to the Florida Supreme Court.

If you have any questions about the YLD board's unanimous vote in favor of the

proposed Parental Leave Continuance Rule, please feel free to contact me by phone at 386-428-3311 or by email to kmiller@surfcoastlaw.com.

Sincerely,

Katherine Hurst Miller
President

cc: Jack Harkness (via email)
Michael Higer (via email)
Michelle Suskauer (via email)
Krys Goodwin (via email)
Zack Zuroweste (via email)
Christian George (via email)

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F. Scott Westheimer

From: adam@portnowlaw.com
Sent: Wednesday, May 17, 2017 4:09 PM
To: F. Scott Westheimer
Subject: RE: Proposed Parental Leave Rule

Scott,

I strongly support the concept of the Parental Leave Rule and urge you to support it and do whatever you can to get others on the BOG to get behind this rule. The "examples" starting on page 11 of the special committee's report are all the reason we need to have this rule. These are nothing less than horror stories that should never happen in a self-governing profession that prides itself on ethics, professionalism and civility. Being a female attorney is hard enough without having to deal with the humiliation of being denied a continuance due to a pending childbirth or adoption. Not only common sense, but compassion and quality of life considerations require that a rule be in place to protect attorneys and their clients in these situations.

Sincerely,
Adam Portnow

Adam B. Portnow, Esq.
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From: F. Scott Westheimer [mailto:swestheimer@smrl.com]
Sent: Monday, May 01, 2017 2:43 PM
To: sierra@butlerelderlaw.com; LoriDorman@BPDLawOffice.com; anne.douglass@verizon.net; robert.eschenfelder@mymanatee.org; JFowler-Hermes@WilliamsParker.com; jgoethe@barneswalker.com; paul@bradentonfamilylawyer.com; andrea@amjlawfirm.com; mpowers@blalockwalters.com; rproctor@rebeccaproctor.com; astpaul@dyefirm.com; Charlie Telfair <cwtelfair@lutzbobo.com>;

F. Scott Westheimer

From: Sara Castro <scastro@farr.com>
Sent: Wednesday, May 17, 2017 12:13 PM
To: F. Scott Westheimer
Subject: RE: Proposed Parental Leave Rule

I am in favor of this rule change. Please let me know if you would like any more detail. Thank you.

Sara Castro | Associate
FARR, FARR, EMERICH, HACKETT, CARR & HOLMES, P.A.
99 Nesbit Street, Punta Gorda, Florida 33950
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From: F. Scott Westheimer [mailto:swestheimer@smrl.com]
Sent: Monday, May 01, 2017 2:43 PM
To: sierra@butlerelderlaw.com; LoriDorman@BPDLawOffice.com; anne.douglass@verizon.net; robert.eschenfelder@mymanatee.org; JFowler-Hermes@WilliamsParker.com; jgoethe@barneswalker.com; paul@bradentonfamilylawyer.com; andrea@amjlawfirm.com; mpowers@blalockwalters.com; rproctor@rebeccaproctor.com; astpaul@dyefirm.com; Charlie Telfair <cwtelfair@lutzbobo.com>; abreitinger@blalockwalters.com; ryanc@legalaidofmanasota.org; nchipurnoi@boyerboyer.com; ac@harlleebald.com; cucinotta.kristina@gmail.com; sean@espositolegal.com; jhorne@kallinsandlittle.com; ajohn@blalockwalters.com; Jlevy@blalockwalters.com; jel@harlleebald.com; tquinlan@manateelegal.com; grace@leglerflynn.com; bgs@phkhlaw.com; atullidge@blalockwalters.com; ineedjusticenow@gmail.com; Kerry@macklawfirm.org; sboone@boone-law.com; dan@danpolicastrolaw.com; susan@ctrust.com; bob@k-rlaw.com; jjdulmer@aol.com; Kelley@mdhpa.com; bryan@kesslerlawvenice.com; tony@mowrylawoffice.com; ekdubose@matthewseastmoore.com; kbruning@bentleyandbruning.com; Chip.gaylor@mgswlaw.com; Nancy E. Cason <ncason@smrl.com>; dcherry@slk-law.com; aarchbold@fergesonskipper.com; jcarroll@jud12.flcourts.org; dclayton@claytonlawyers.com; stacy.dillard@flalandlaw.com; haskins@lumpkinhaskins.com; dbk@keaneandkeane.com; jlessinger@icardmerrill.com; tonya@mcintyrefirm.com; Jonathan Whitney <JWhitney@lutzbobo.com>; adam@portnowlaw.com; kerry@macklawfirm.org; adam@portnowlaw.com; Amanda King <aking@smrl.com>; bgoodrich@bentleyandbruning.com; Cathy.Kenney@swfwmd.state.fl.us; cunkel@mctlawyers.com; echristy@williamsparker.com; erin@ittslaw.net; hagenbrody@gmail.com; isayeg@mctlawyers.com; jbutler@dglawyers.com; mgood@matthewseastmoore.com; Sara Castro <scastro@farr.com>; zbuffington@williamsparker.com
Cc: HLipps@jud12.flcourts.org; Graceann Frederico <mcba@manateebar.com>
Subject: Proposed Parental Leave Rule

Dear Manatee County Bar and Sarasota County Bar leaders

Good afternoon everyone. I am sending this email to you in your capacity as a leader of either the Manatee County Bar Association , Sarasota County Bar Association, South County Division of the Sarasota County Bar Association, or their respective YLD Board of Directors. As some of you may have read in prior issues of the Florida Bar News , on the Bar's website, or on its social media pages, The Florida Bar Special Committee on Parental Leave in Court Actions (A joint committee appointed by President Schifino consisting of members of the Diversity and Inclusion Committee and the Rules of Judicial Administration Committee), has recommended draft Rule 2.750 on Parental Leave. Our own Robert

F. Scott Westheimer

From: Margaret Good <mgood@matthewseastmoore.com>
Sent: Thursday, May 18, 2017 2:48 PM
To: F. Scott Westheimer
Subject: TFB Parental Leave Rule
Attachments: Parental Leave letter to Schifino.pdf

Hey Scott,

I hope all is well with you! I saw you from a distance last night at the judicial reception, but didn't make it over to say hi! I want to touch base with you about the parental leave rule. You may have heard that at our last YLD Board meeting, our board voted unanimously to support the rule. I know TFB Board is voting on it at their next meeting and I wanted to make sure you knew how important the rule is to the young lawyers in the state. I've attached the letter that Katherine sent to Bill Schifino with our official position. If you are interested, I would be happy to talk to you about the reasons our board voted in favor of it.

Thanks for being a great representative of the 12th Circuit!
Margaret

Matthews Eastmoore
TRIAL LAWYERS

MARGARET ROWELL GOOD
Attorney at Law

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May 19, 2017

Via E-Mail – swestheimer@smrl.com

Scott Westheimer, Esq.
12th Circuit BOG Representative
Syprett Meshad, et al.
1900 Ringling Blvd.
Sarasota, FL 34236

Re: Proposed Rule 2.570 – Parental Leave

Dear Scott,

At our last Sarasota County YLD Board meeting, the Board held a vote regarding the proposed rule on parental leave continuances that will be brought before the BOG for a vote this month. I am honored to report that the Sarasota County YLD Board voted *unanimously* in support of proposed Rule 2.570. As you know, the Florida Bar YLD Board of Governors also voted *unanimously* in support of this rule at its last meeting.

I hope that as our Board of Governor Representative from the 12th Judicial Circuit you will vote in favor of the proposed rule as well. If you want to discuss the proposed amendment further, I would be happy to share my thoughts and the thoughts of our Board as to why we believe this is a positive rule.

Sincerely,

Jesse R. Butler
President, Sarasota County Bar Association YLD
12th Circuit Representative, BOG Florida Bar YLD

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Godwin, Krys

From: Scott, Rosalyn
Sent: Friday, May 19, 2017 11:16 AM
To: Godwin, Krys
Subject: FW: Parental Leave Continuance Rule

another

_____
Rosalyn A. Scott
(850)561-5759 phone

From: Adam G. Rabinowitz [mailto:arabinowitz@broadandcassel.com]
Sent: Thursday, May 18, 2017 4:09 PM
To: Scott, Rosalyn <rscott@floridabar.org>
Subject: FW: Parental Leave Continuance Rule

Here is an e-mail I just received and thought it should be shared on this issue. Probably too late to be included in the BOG materials…

From: Benjamin Angela [mailto:ABenjamin@broward.org]
Sent: Thursday, May 18, 2017 3:37 PM
To: Adam G. Rabinowitz <arabinowitz@broadandcassel.com>
Subject: Parental Leave Continuance Rule

Dear Adam:
I hope you are doing well. I am an Assistant County Attorney in Broward County, and I am writing you to indicate my support of the Proposed Parental Leave Continuance Rule. Initially, I was anticipating writing this email to tell you about my experience as a young female litigator, practicing while pregnant with my two children. But, in retrospect, I realize that the benefits of this rule for women are clear. Instead, I want to tell you about the benefits that this rule will have for male attorneys with families. Oftentimes male attorneys also would like time with their newborn children. Such requests are stigmatized by our society in general, and our profession more specifically. I remember being a young lawyer and hearing of partners in big law firms that would make fun of men requesting such leave, and of other male attorneys having to run from their wife and newborn child in the hospital to court the next day, because a judge refused to grant such lawyer a continuance.

These examples are more wide-spread than people think. In addition, these examples are not simply bad or sad for the particular lawyer and their family, but rather are bad for our profession. We cannot possibly sustain quality-members of our profession if we are telling lawyers that they must choose between being with their newborn child and being successful in their careers. This tension is simply not tenable.

I understand that some people are claiming that the proposed Rule should not be approved because it either takes away discretion from the judges or it will allow lawyers to "game the system." But, the Rule itself is drafted to require reasonable notice, thereby providing the Judge some discretion as to determine the reasonableness of such notice, and preventing a lawyer from making such a request on the eve of trial, simply to "game the system."

As my representative with the Board of Governors, I therefore ask you to support the proposed Rule. Please feel free to reach out to me if you would like to discuss my position any further. I look forward to seeing how you vote on this important issue.

Angela F. Benjamin
Office of the County Attorney, Assistant County Attorney
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