

MEMORANDUM

To: ES&A Clients and Friends
From: Anna Elento-Sneed, Esq.
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Date: 9/27/2017
Subject: **EEOC v. Estée Lauder Cos. Inc.**
Gender Discrimination in Parental Leave & Return to Work Benefits

SUMMARY OF THE CASE

The U.S. Equal Employment Opportunity Commission (EEOC) recently sued Estée Lauder for gender discrimination for failing to grant male employees with the same benefits as its female employees, through two separate policies/practices:

1. **Parental Leave.** Estee Lauder's parental leave policy provided "primary caregivers" with six weeks of paid leave and only two weeks of paid leave for "secondary caregivers" for child bonding. In practice, Estée Lauder did not recognize men as "primary caregivers" except in specified situations.
2. **Return to Work Benefits.** Estée Lauder also maintained a policy which provided female employees with flexible work arrangements when returning to work from leave, yet was silent on equivalent benefits for male employees.

EEOC asserts that the alleged policies and practices violated Title VII of the Civil Rights Act and Equal Pay Act.

LEGAL REQUIREMENTS

There is no legal requirement for employers to provide paid parental leave to employees. Similarly, there is no legal requirement that employers provide flexible work arrangements for new parents. The law only mandates that covered employers provide specific periods of *unpaid* leave for eligible employees:

- **Family and Medical Leave Act (FMLA)** – Covered employers (50+ employees) must provide eligible employees (worked 1250 hours in the last year) with at least 12 weeks of unpaid leave for birth or adoption or a child, pregnancy or pregnancy related condition.
- **Hawaii Family Leave Law (HFLL)** - Covered employers (100+ employees) must provide eligible employees (worked 6 months) with at least 4 weeks of unpaid leave for the birth or adoption of a child.

However, employers are required to provide both males and females with equal pay for equal work under the Equal Pay Act and cannot treat female employees better than similarly situated male employees under Title VII.

WHAT THIS MEANS FOR EMPLOYERS

While employers may offer employee benefits that are above and beyond the statutory requirements, when doing so, they must ensure that its policies and practices are applied equally to both male and female employees. In addition to gender discrimination, employers should watch out for inadvertent discrimination claims on the basis of sexual orientation, gender identity and/or gender expression.

To avoid gender discrimination claims in leave benefits:

- Provide employees with the minimum statutory benefits required by law
 - Be mindful of the applicability of benefits policies to same sex spouses
- Offer gender neutral benefits
 - Do not provide separate benefits for different genders
 - Title your policies "Maternity/Paternity" or "Parental" versus "Maternity" only
- Ensure equal access to all benefits offered to employees
 - Eliminate eligibility requirements which may inadvertently affect one gender
 - Encourage all employees to take advantage of available benefits
 - Elicit feedback from employees regarding access to and availability of benefits
- Address and eliminate gender bias in the workplace
 - Educate managers and employees about available benefits and gender bias
 - Eliminate bias which implies that females are the primary caregivers
 - Eliminate bias which dismisses the role of male employees as caregivers

For more information, please visit www.esandalaw.com.