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SUPREME JUDICIAL COURT LIMITS THE PROTECTIONS OF THE MASSACHUSETTS MATERNITY LEAVE ACT

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On Monday, the Supreme Judicial Court held that the protections of the Massachusetts Maternity Leave Act ("MMLA") are limited to a period of eight weeks. The MMLA provides that a female employee "who is absent from such employment for a period not exceeding eight weeks for the purpose of giving birth ... shall be restored to her previous, or a similar, position with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of her leave." In *Global NAPs, Inc. v. Awiszus*, the Court explained that a female employee who was terminated while on leave did not have a claim under the statute because her maternity leave exceeded eight weeks.

The history of the case is unusual in that the issue under the MMLA arose in the context of a legal malpractice claim against the employer's former lawyers. The lawyers had represented Global NAPs in a lawsuit brought by Sandy Stephens, a former employee. Stephens had sued Global NAPs, alleging that she had been terminated at the end of her maternity leave in violation of the MMLA. Although her maternity leave had lasted longer than 8 weeks, Stephens had alleged that she had been told by her supervisor that she could extend her leave by several weeks. After a trial, a jury had returned a verdict in her favor for over \$2.3 million. After a series of post-trial motions, Global NAPs' lawyers had filed a notice of appeal, but the Appeals Court had dismissed the appeal as untimely.

Global NAPs then sued its former attorneys in the Stephens case, Martha Awiszus and David Kerman, and their law firms, Winokur, Serkey & Rosenberg, P.C. and Jackson Lewis, LLP for malpractice, alleging that the defendants failed to timely file an appeal from the verdict. The Superior Court granted summary judgment to the defendants, and Global NAPs appealed the dismissal.

On appeal to the Supreme Judicial Court, the Court held that Global NAPs' malpractice claims should not have been dismissed because Global NAPs would have prevailed in the Stephens litigation had the lawyers filed a timely appeal. The Court explained that the statute makes clear that its protections are limited to eight weeks only. Thus, Stephens had no right under the MMLA to return to her position at the end of her leave once her leave exceeded that eight week period. The Court rejected the defendants' argument that guidelines issued by the Massachusetts Commission Against Discrimination required a different result. While the guidelines suggest that the protections of the MMLA can extend beyond the eight week period, the Court explained that the guidelines are inconsistent with the statute and do not have the force of law. The Court noted, however, that if an employer offers additional leave benefits to a female employee and subsequently takes an adverse employment action, the employee may have a claim for breach of contract, breach of an oral representation or detrimental

reliance. Because Stephens had pursued only a claim under the MMLA, an appeal of the jury verdict would have been successful. The Court concluded that the lawyers' failure to file a timely appeal constituted professional negligence as a matter of law.

The decision in *Global NAPs* limits the protections of the MMLA to the first eight weeks of maternity leave. However, employees on leave may have similar protections under the federal Family and Medical Leave Act, which permits up to twelve weeks of leave. Further, employees may have rights under the employer's policies or based upon promises regarding leave periods.