

## Labor & Employment News Alert

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### Governor O'Malley Signs New Parental Leave Law Expanding Requirements for Maryland Small Businesses

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On May 5, 2014, Governor Martin O'Malley signed the Maryland Parental Leave Act (MPLA) into law, expanding compliance requirements for Maryland small business owners beyond the current requirements of the federal Family and Medical Leave Act (FMLA). This new law requires small business owners employing between 15 and 49 employees in the state of Maryland to provide employees six workweeks of unpaid leave during any 12-month period for the birth of an employee's child or the placement of a child with an employee for adoption or foster care. The new law exposes small business owners to new burdens and potential litigation as employers and employees adjust to the newly expanded parental leave rights.

Prior to this new law, Maryland small business owners were exempt from similar requirements under the FMLA, which excludes employers with fewer than 50 employees. Although the MPLA is similar to the FMLA in that employees must: (1) have worked for a qualifying employer for a 12-month period; (2) worked 1,250 hours during the 12 months prior to the requested leave; and (3) be employed at a work site where at least 15 employees work within a 75-mile radius to be eligible to take leave under this new policy, the MPLA imposes the obligation to provide leave on employers employing less than 50 workers and down to as few as 15 workers. The new law permits employers to require eligible employees to give at least 30 days written notice before commencing leave unless the leave is due to premature birth or unexpected adoption or foster placement. An employer may deny leave to an eligible employee only where denial of leave is necessary to prevent "substantial and grievous economic injury to the operations of the employer." In a provision likely to generate disputes and litigation, the MPLA provides that an employer can only terminate an employee who is out on parental leave for cause.

Additionally, the MPLA, like the FMLA, requires Maryland small business owners to maintain group health care coverage for the duration of parental leave in the same manner the employer would have provided coverage had the employee not taken leave. If an employee fails to return to work after the period of parental leave has expired, the MPLA permits the employer to recover the premium paid for maintaining health coverage during the period of parental leave, unless the employee's failure to return to work is because of circumstances beyond the employee's control. It is unclear at this point what circumstances might fall within this category, and small business owners will likely face difficulties recouping premiums advanced to employees who subsequently do not return as well as the possibility of litigation as the courts and the Maryland Department of Labor, Licensing, and Regulation (DLLR) attempt to define circumstances that are beyond an employee's control.

Like the obligations imposed on employers under the FMLA, unless doing so will result in substantial and grievous injury and the employee was so advised, an employer is required to either: (1) restore a returning employee to the same position held by the employee before parental leave began; or (2) place the employee in an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. However, small employers may find the equivalent position alternative somewhat illusory, particularly as the size of the employer approaches 15.

Finally, the MPLA imposes FMLA-like costs on employers who fail to comply with its provisions and mandates that a court is *required* to award reasonable attorney's fees and other costs to the employee if an employer is found to have violated the Act. The key provisions of this new law become effective October 1, 2014.

To find out if this new law impacts your business, if you are facing litigation due to this new law, or for assistance in updating your employee manual to best protect your business under this new law, please contact [Ronald Taylor](#) at or [Sandi Pessin Boyd](#) at .