

Insights, News & Events

“CONGRATULATIONS – NOW, BACK TO WORK!” WHAT EMPLOYERS NEED TO KNOW ABOUT THE FIFTH TRIMESTER

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Parents everywhere are familiar with the joys and trials of the three trimesters of pregnancy. The term “fourth trimester” has also gained widespread recognition, that three-month period when a baby gets used to living outside the womb and the mother recuperates from childbirth.

A new book authored by [Lauren Smith Brody](#), “The Fifth Trimester,” has introduced the titular concept of an additional phase in a mother’s life. Specifically, this is the period of time when a new mom first leaves her newborn to return to her job. Employers should be aware that this transition can come with growing pains on all sides, and therefore consider strategies for easing the process.

THE STRUGGLE IS REAL: RETURNING TO WORK AFTER GIVING BIRTH

Coupled with the struggle of leaving a baby in the care of others, women thriving in their careers prior to the birth of their children often find it difficult – physically and emotionally – to adjust to all of their former workplace duties on top of young motherhood. Of the hundreds of women surveyed or interviewed for Brody’s book, 75% expressed they wished they had a longer maternity leave. On average, they stated they felt physically back to “normal” 5 1/2 months after delivery, and mentally six months after delivery.

Notably, one in seven mothers reports experiencing some form of postpartum depression, and that number is higher still among those with a relatively short maternity leave. Of

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course, many mothers do not get the benefit of maternity leave and must return to work soon after delivery, either to avoid losing their job or because they cannot afford a period of unpaid leave. This means many moms return to work before they feel restored physically or emotionally. It should come as no surprise that, generally speaking, the shorter the maternity leave period, the tougher the transition on both the new mom and the employer.

FIRST THINGS FIRST: LEGAL REQUIREMENTS

In order to provide a workplace that is welcoming to new mothers (and those considering growing their family at some future point), you should first be aware of the benefits an employer is legally required to provide. The federal Family and Medical Leave Act (FMLA) provides 12 weeks of job-protected, unpaid leave during any 12-month period to eligible employees for, among other things, “the birth of a son or daughter of the employee and in order to care for such son or daughter” and “because of the placement of a son or daughter with the employee for adoption or foster care.”

However, FMLA leave only applies to individuals employed by the same employer for at least 12 months within the relevant statutory period, and who have worked at least 1,250 hours during the 12-month period immediately preceding commencement of the leave, and where the employer has 50 or more employees within a 75-mile radius. Thus, whether the FMLA is applicable should be determined as quickly as possible after an employee announces her pregnancy.

That’s not to say you’re off the hook if FMLA doesn’t apply; many states, such as California and Oregon, require some form of maternity leave in other circumstances as well, and some dictate the leave be paid.

You should be familiar with which laws apply to your workplace, and how their applicability might vary depending on different situations. For instance, New Jersey provides for six weeks of leave with payments from the state of up to \$633 per week after a vaginal delivery, and eight weeks of such payments following a caesarian section. To add to the confusion, the state of the law is constantly in flux, so there may be new laws in place that did not exist the last time an employer had an employee on maternity leave.

Washington, D.C.'s Universal Paid Leave Amendment Act just went into effect April 7, 2017, and constitutes one of the most expansive paid leave laws in the country. Specifically, it provides for up to 16 weeks of **paid** family and medical leave, including up to eight weeks of parental leave, to be used within one year of the birth of a child, the placement of an adopted or foster child, or the assumption of legal guardianship of a child.

BEST PRACTICES FOR EMPLOYERS

Regardless of whether a state or federal law applies to your workplace, there are some best practices you can follow in order to provide a welcoming workplace. You would be wise to speak with employees about post-delivery workplace accommodations before they start their leave, including the anticipated length of leave and whether more flexible work hours will be needed upon their return.

You must also consider your own workplace policies and determine what kinds of medical leave you have provided to employees in the past. For example, while Florida does not have a state law requiring employers to provide maternity leave, employers are legally charged to act consistently when providing leave to employees. This means if you provided a leave of absence for an employee recovering from a car accident, you must likewise provide leave to someone recuperating from childbirth or risk facing a discrimination claim.

If an employee is on leave following the birth of her child, you should reach out to her as the end of the leave period approaches to firm up a definite return date. This also allows the employee an opportunity to voice any concerns associated with her return. In some situations, a simple solution, such as installing a lock on an office door to allow for privacy to express breastmilk, could go a long way to ease the transition.

TRANSITION TIME

Once a new mother returns to her job, whether she has been out for 12 weeks on FMLA leave or for a significantly shorter period, there will likely be a transition period for both you and the employee. It is not unusual for new moms to need some additional time off for medical appointments or flexibility of hours as they manage child care. For example,

business meetings that start very early in the morning or extend past normal business hours can cause extreme stress for parents with children in daycare, and managers might not otherwise consider such concerns unless they are aware of the fifth trimester burdens.

Some jobs, by their nature, lend themselves to easier solutions to these problems, which is why planning ahead and keeping open lines of communication are important. You may also consider whether offering employees the option to work from home, at least some of the time, would be realistic considering your business and the job duties at issue. Likewise, employees without young children may be frustrated by perceived special treatment for a returning parent. Allowing a forum to voice any and all concerns is important to avoid a problem festering into a bigger issue.

Further, some returning moms find it difficult to immediately fill their plate with work. When anticipating an employee's return, you should be prepared with assignments and tasks for her. Some employers may find it helpful to have a "ramp-up" period, where a returning employee gradually receives more and more work as they return to full capacity. If employees are measured by their output, such as in sales, reducing requirements during this ramp-up period can also help ease a transition. Similarly, some companies offer a "ramp-down" period, as employees nearing the birth of a child can start to transition some of their work before their leave begins. These measures help ease the transition for both the employer and the new mom, preventing a situation where she is desperately trying to complete assignments prior to her due date, or responding to work emails while she is in labor.

BREASTFEEDING CAN'T BE IGNORED

Another important topic to consider for returning moms is breastfeeding. The Fair Labor Standards Act (FLSA) provides that, for up to one year after a child's birth, a nursing mother must be provided a "reasonable break time" to express milk "each time such employee has need to express the milk." These breaks may be unpaid. You must also provide a private place for expressing milk, other than a bathroom, that is shielded from view and free from intrusion. Be aware that some state laws require even more of employers in this regard, so check in your local jurisdiction to determine if additional breastfeeding rules exist.

Further, in 2015 the Equal Employment Opportunity Commission (EEOC) officially adopted the position that lactation is protected by the Pregnancy Discrimination Act (PDA). Accordingly, failure to allow for time to express breastmilk could result not only in FLSA violations, but also a discrimination lawsuit under the PDA.

CONCLUSION

Like all transitions, the “fifth trimester” doesn’t last forever. As a baby begins sleeping through the night and child care becomes routine, parents often feel better equipped to manage their various roles. Employers that are flexible during this period may likewise be rewarded with more loyal, happy employees who are likely to remain in your service for years to come.

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