

Paid Parental Leave: What Employers Need to Consider

In the employee benefits world, 2016 could very well be called the “Year of Parental Leave.”

In 2015, Pacific Resources published a white paper that highlighted changing employer attitudes and benefit plans related to parental leaves. Since that initial publication, we have seen many more organizations expand parental leaves as well as continue employee salaries for the duration of some or all of the leave.

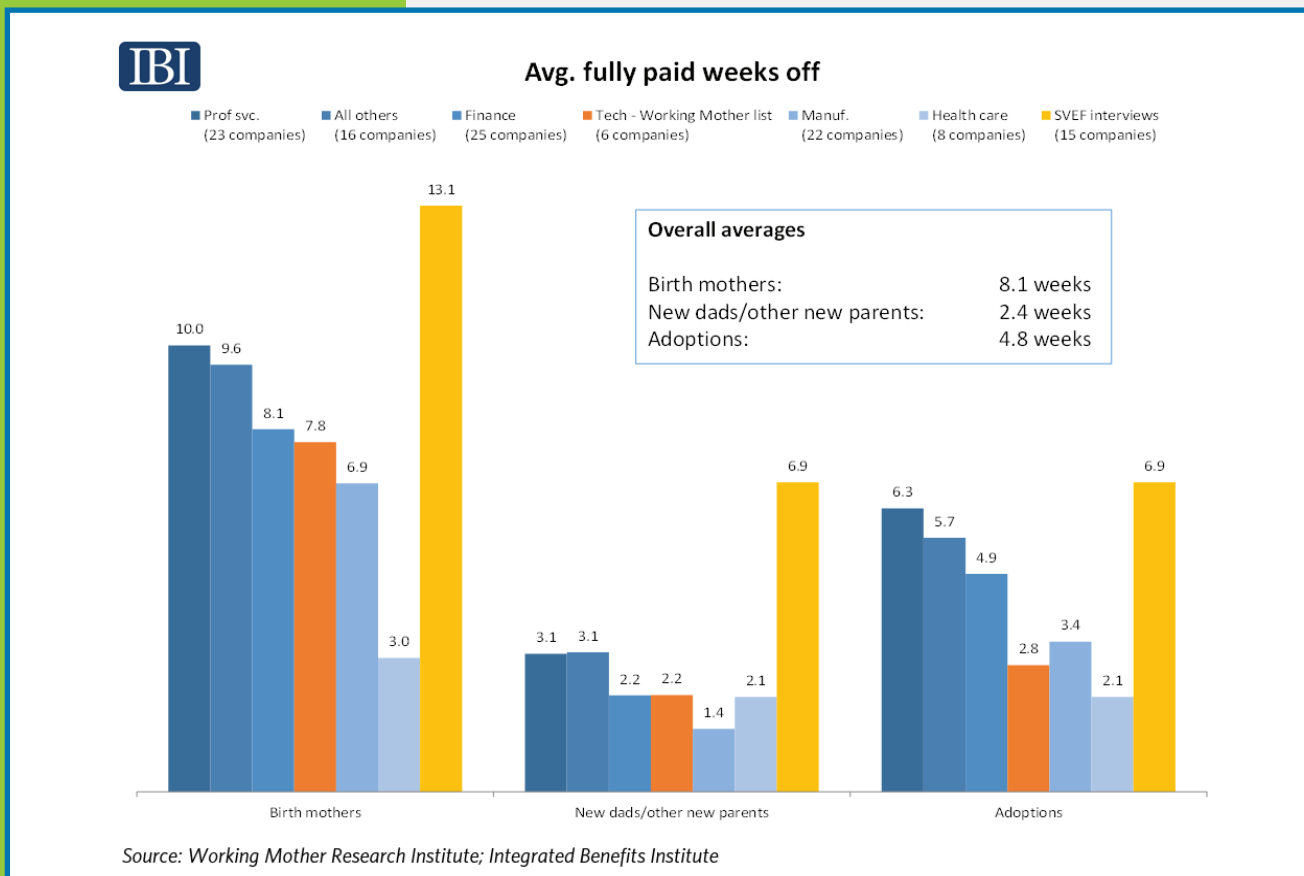
This paper offers an update to the 2015 paper and outlines what employers should consider given all the changes to paid parental leave in the past year.

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The Expansion of Paid Parental Leave

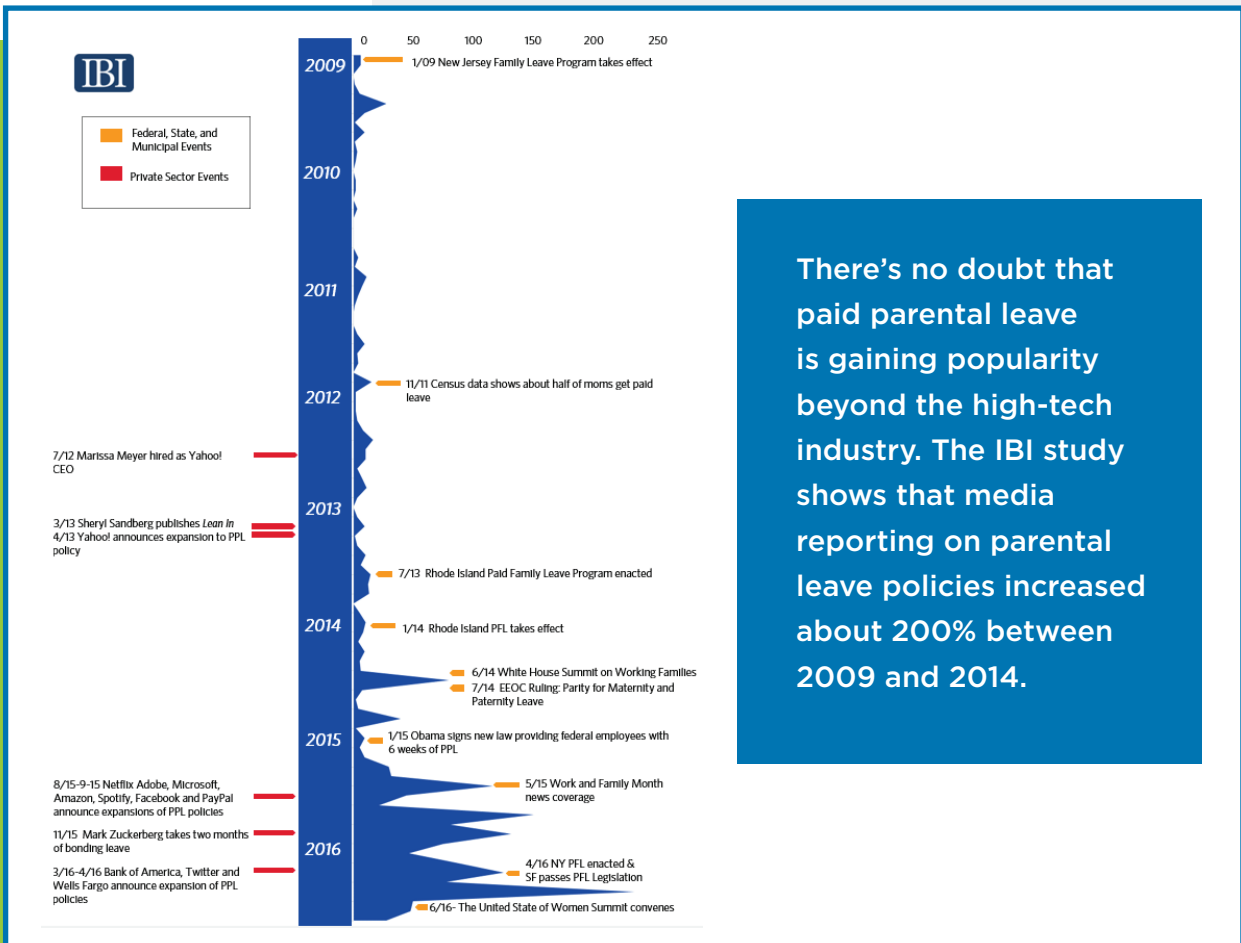
What started as a trend in the high tech sector has expanded throughout many industries in the United States, and the overall movement toward family-friendly benefits has increased dramatically. And while companies in all industries – Professional Services (Deloitte, Ernst & Young), Food & Beverage (Coca-Cola), Finance (Fidelity), Hospitality (Hilton) – have announced enhancements to their parental leave programs, as an industry, high tech still leads the charge. According to research conducted by the Integrated Benefits Institute, high tech companies have historically offered some of the richest parental leave programs and nearly all of them increased their benefits within the last year!



Paid Parental Leave: Soundbite or Sound Practice?

The tech companies that participated in the IBI survey indicated that they offer such generous leave policies because:

- they are trying to attract and retain top talent;
- these policies align with their social values;
- they want to simplify their leave policies; and
- they want to create a more equitable work environment (in some cases).



However, what makes for a sound practice can be complicated to implement. Employers need to determine:

- How they name the leave: Is it Maternity Leave? Paternity Leave? Parental Leave?
- How they pay for and administer the leave: Is it a stand-alone leave policy or short term disability (STD) or a combination?
- How they implement leave across different workforces and different locations: What is the company policy and how do they comply and/or align with state and municipal mandates?
- How they create an inclusive policy: Some companies have implemented a universal “family leave” policy that can accommodate elder care or address other stresses of family life and is open to all employees, not just new parents.

Are Maternity-only Policies a Lawsuit in the Making?

When companies only pay for pregnancy/childbirth time away from work under an STD plan or a sick time salary continuation plan, the rules are clear. The paid leave is based on a set of medical guidelines, is payable only for the duration of the disability, and is only applicable to females.

However, when companies expand paid leave beyond the confines of pre- and post-partum recovery, the policy needs to be more inclusive. As leading-edge companies begin paying for “parental bonding time” beyond the scope of any medical impairment, the intended audience becomes broader to include both mothers and fathers, whether biological birth parents or adoptive (including foster and surrogate) parents.

Even so, many companies still have policies that offer different lengths of leave for birth mothers, fathers, and adoptive parents. This may lead to trouble down the road for employers, particularly if they move away from paying for maternity leave with STD insurance.

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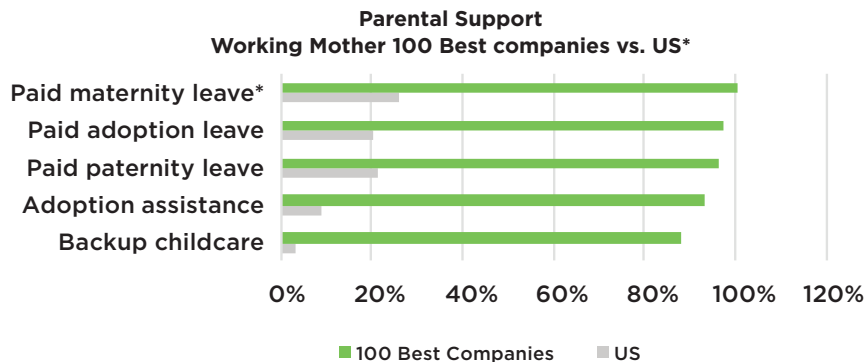


The U.S. Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance on Pregnancy Discrimination and Related Issues (Title VII), which prohibits discrimination on the basis of gender, has opened the door for lawsuits alleging that certain paid parental leave programs that do not offer equal time off policies for both parents are discriminatory. According to Title VII, "employers should carefully distinguish between leave related to any physical limitations imposed by pregnancy or childbirth (described ... as pregnancy-related medical leave) and leave for purposes of bonding with a child and/or providing care for a child (described ... as parental leave)."²

If an employer is offering a new mother eight weeks of maternity leave that is paid under STD insurance, the employer is not necessarily required to offer the same amount of paid leave to fathers or other caregivers who have not been pregnant and given birth. However, if the employer is providing paid leave to a new mother not as a disability benefit but for the purposes of bonding with the child, it is arguably discriminatory not to provide the same amount of paid leave to new fathers.

Leaders in Providing Paid Parental Leave

Working Mother Magazine has an annual list of the 100 best companies for working mothers, and paid leave benefits are a key reason that companies make the list. In 2016, the paid leave of their 100 best companies far outpaced the leave offered by other companies in the United States.³



*National numbers based on Society for Human Resource Management (SHRM) report 2016 Employee Benefits

Is Maternity Leave a Disability?

There is a growing understanding among employees, and now employers, that birth mothers do not want to consider a routine pregnancy and childbirth as a “disability.” Many individuals – particularly those in the millennial generation (who are now in their child-bearing years) – do not see pregnancy and delivery as disabling conditions and bristle at using the word “disability” or applying for a disability claim as a result of childbirth. In response, some employers are taking a closer look at their disability plans and their treatment of claims for pregnancy and childbirth. Recently, we have seen:

- Employers taking pre- and post-partum maternity claims out of their STD plans, although they still pay a “disability type” benefit to the employee (outside of their traditional STD plan).
- Employers increasing the payment amounts for STD maternity claims (often paying 100% income replacement for six or eight weeks – or even longer) even though the STD pays a lesser benefit percentage for other (non-maternity) claims.
- A combination of both of the above.

At first glance, it appears to be an innovative and logical move to take the maternity benefit out of the disability plan and make it entirely separate, or to create a separate class for birth mothers within the STD plan, as a means to provide a richer benefit to new mothers.

However, dig deeper into these options and you may find them to be potentially problematic:

“Many individuals do not see pregnancy and delivery as disabling conditions and bristle at using the word ‘disability’.”

Pregnancy and childbirth are medical events

Routine pregnancy and childbirth are considered to be medical events by physicians and disability carriers even if there are not additional complications, such as pregnancy-related carpal tunnel syndrome, gestational diabetes, pregnancy-related sciatica, pre-eclampsia and post-partum depression. Consequently, it is not always easy to distinguish when the STD plan applies and when it does not apply. This is the justification for including childbirth in a disability plan.

If not a disability, then what?



If an employer does not define pregnancy and childbirth as a disability, what is the basic purpose of the paid leave? If it is defined as a childcare leave – providing time for the primary caregiver(s) to bond with the new baby – should that not apply equally to both men and women, as well as to biological and adoptive parents?

Different treatments for different impairments

Another consideration for employers is the equity of treating one medical impairment differently from another. STD for a maternity leave is sometimes paid at 100% of salary, while other disability claims (e.g., cancer, stroke, surgery, etc.) are capped at a percentage of salary (frequently 60% or 70%). Because simply being pregnant is not considered a disability under the Americans with Disabilities Act, unless there are medical complications that require accommodations, childbirth is considered a covered medical claim under an STD plan. This disparity in benefits could be discriminatory or, at a minimum, it may send an unintended message to employees.

In addition, one could argue that maternity leave is often a planned event, where the impact on the individual's income and financial situation may have been contemplated – as opposed to an unexpected illness or accident. Does it make sense for employers to separate the benefits and make them greater for maternity?

We suggest that benefits leaders consult with their legal department to gain a full understanding of the potential risks and perceptions associated with providing a different level of disability for maternity claims versus other conditions. They should also consider their organizations' population and culture when designing their benefit programs.

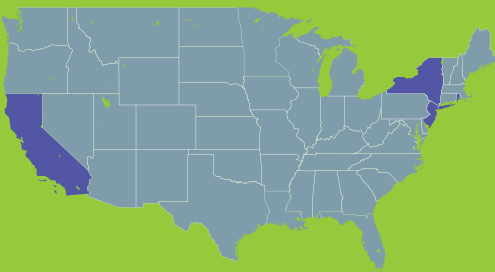


Company Policy vs. Different State Mandates

Whether they choose to or not, many employers will have to provide paid parental leave in some areas to comply with local and state laws. As of this printing, four states have mandated paid parental leave (California, New Jersey, New York (2018) and Rhode Island), as have many other cities and municipalities. It is anticipated that this legislative trend will continue, as President-elect Donald Trump has pledged to implement some form of national paid family leave, although details have not emerged at this time.

This has (at least) two implications for large employers that may operate across the United States:

1. Obviously, employers need to comply with the laws in the cities and states in which they operate, which means, at the very least, offering employees in those states the leave as mandated by the municipality in which they work.
2. Employers also may want to consider the parity of their benefits. For example, if they are complying with California state law, will employees who are working in other states without paid leave mandates feel they are being treated unfairly?



Family Extends Beyond Parents and Children

Employers have made dramatic steps over the past few years in recognizing the bonding needs of new parents with their children and helping to bridge the gap of parental leave policies in the United States with most other countries around the world (although the gap still exists). This movement toward more family-friendly workplace policies has raised the inevitable question of paid leave to care for other families members, in addition to children.

Some companies are tackling this issue head on. For example, when Deloitte recently introduced its new paid family leave policy, it was widely heralded as the next generation of family friendly benefits.

As described in the press release: “Deloitte professionals – from the parent celebrating the arrival of a new child, to the professional caring for a spouse or significant other, to the professional supporting aging parents – will have an extra layer of support from Deloitte’s new family leave program. This bold new step in the broader caregiving space recognizes the changing family dynamics and emerging needs of Deloitte’s professionals. Men and women alike will now be eligible for up to 16 weeks of fully paid family leave to support a range of life events impacting them and their families.”⁴

Many believe that a broader paid leave for specific family care is a practice whose time is coming, and is a more encompassing approach.

Again, we suggest that benefits leaders consult with their internal partners, including their legal resources, to consider whether or not a parental leave program or a broader family leave program is the most appropriate approach for the organization, both culturally and financially.



For more information on paid parental leave and other time off programs, contact your Pacific Resources Account Executive or email us at info@pacresbenefits.com.

cited sources

¹ Integrated Benefits Institute. [And a Baby Makes Three \(Months Off\): Paid Parental Leave at 15 High Tech Firms.](#) August, 2016.

² U.S. Equal Employment Opportunity Commission. [Enforcement Guidance on Pregnancy Discrimination and Related Issues.](#)

³ *Working Mother Magazine*. [2016 Working Mother 100 Best Companies.](#)

⁴ [Deloitte announces 16 weeks of fully paid family leave time for caregiving.](#) September 8, 2016.

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