



# Putting Parenting on a Firm Basis

Gay C. Grunfeld and Jenny S. Yelin

**A**ssociate attrition is high, particularly for young female attorneys who too often leave their law firms when they become mothers. This hurts employers as well as employees because, among other reasons, training new associates is expensive. Clients also suffer when they lose the expertise of attorneys who know their files.

Young lawyers and the profession should take some obvious steps to reduce costly and unnecessary departures due to parenthood. Attorneys who are becoming parents should familiarize themselves with key provisions of employment law prior to the arrival of their child. Law firms should also review these provisions to create and implement policies designed to retain their pool of talented associates.

## BEFORE THE CHILD ARRIVES

Attorneys who are about to become parents should inform their employer as early as possible to allow the firm and its clients sufficient time to plan for the employee's absence. While many attorneys enjoy more generous benefits than legally required because of their law firms' paid leave policies, at a minimum, employees in California are entitled to the following coverage.

### Pregnancy Disability Leave

California's Pregnancy Disability Leave Law (PDLL) mandates that most employers provide up to four months of leave for employees who are "disabled by their pregnancy," in the opinion of their health-care provider. PDLL leave is generally unpaid, but state disability payments may be available for a portion of the leave (see "Paid Parental Leave"). 2 Cal. Code Regs., tit. 2, § 11044(a), (b).

### Unpaid Job Protection Parental Leave

The federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) entitle both male and female employees to twelve weeks of unpaid leave upon the birth, adoption, or placement of a foster child. 29 U.S.C. § 2612(a)(1); Cal. Gov. Code § 12945.2. These

laws apply only to companies with at least fifty employees and only to employees who have worked for at least 1,250 hours during the preceding twelve months. The employer must reemploy the parent in the same or a comparable position at the end of the leave, and must continue the parent's health benefits. 29 U.S.C. § 2614(a)(1), (c)(1); Cal. Gov. Code § 12945.2(a), (f)(1). CFRA requires that any leave related to a new child must be concluded within one year of the birth or placement. Cal. Code Regs., tit. 2, § 11090(d).

### Paid Parental Leave

Federal law does not require government or employer-funded payment during a parental leave. However, California has two complementary programs that offer new parents some financial assistance. Pregnant women are entitled to receive temporary State Disability Insurance (SDI) as partial wage replacement—in a normal pregnancy, for four weeks before her delivery and six weeks after (eight if by Cesarean section). The predelivery benefits cannot be used after the baby is born. To receive SDI, the applicant must have a doctor's certification. An employee will receive approximately 55 percent of her salary, up to a cap of \$1,104 per week. The benefits are not taxable.

All new parents are entitled to six weeks of California Paid Family Leave (PFL) for bonding within the first

year after a child's birth, adoption, or foster care placement. The six weeks do not have to be taken consecutively. The benefit amounts are the same as for SDI. The federal government does tax PFL benefits, but the state does not. Receipt of paid leave from an employer may affect PFL benefits. For more information regarding SDI and PFL, visit the Employment Development Department's website at [www.edd.ca.gov](http://www.edd.ca.gov).

## PREPARING TO RETURN TO WORK

Finding appropriate child care is the factor most likely to enable an easy transition for a new parent returning to work. Certain employment laws apply to protect an in-home caregiver, including federal and state taxation laws, wage and hour protections, and workers' compensation laws.

### Researching and Hiring a Caregiver

The California Department of Social Services maintains a database of nannies and babysitters who have cleared criminal background checks called the Trustline Registry; it uses fingerprint records from the California Department of Justice and the FBI in the process. To find out whether an applicant is on the registry, call 1-800-822-8490 with the applicant's

full name and driver's license number. Parents hiring a nanny should make sure that the applicants obtain their driving histories from the DMV and provide them during the hiring process. Parents should ensure that nannies who will be using the family's car or cars are covered under the family's car insurance, and parents employing a nanny should add a workers' compensation rider to their homeowner's or renter's policy.

It is illegal to require a job applicant to provide his or her passwords for social media sites, although parents may review any information that the applicant has chosen to make public. See Cal. Labor Code § 980. Parents desiring a more comprehensive background check must obtain their potential employee's written authorization. See Cal. Civil Code § 1786.16; 15 U.S.C. § 1681b(b)(2)(A)(ii).

## Pay and Benefits for Caregivers

To avoid possible legal and ethical issues and professional embarrassment, parents should report all payments to nannies or other caregivers, complying with withholding and tax reporting requirements. Both the parent/employer and the nanny could be audited by the IRS or the State of California Franchise Tax Board and forced to pay back taxes, interest, and penalties. Plus, the nanny or other caregiver will not qualify for benefits such as unemployment insurance and state disability insurance

if she is paid under the table. There are payroll services available to help household employers. The parents' personal accountant also can do what is necessary to make tax withholdings and reports.

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Parents are also exposed to liability when they do not pay caregivers in accordance with wage and hour laws. All employees must be paid at least minimum wage, which in San Francisco for example is \$12.25 as of May 2015, with subsequent annual increases. Under California law, household employees are entitled to overtime pay of 1.5 times the regular rate of pay for all hours worked over nine in a day or forty-five in a week. Cal. Labor Code § 1454. Employers must also comply with federal law, which requires overtime pay for all hours worked

over forty in a week. See 29 U.S.C. § 207(l). Families are not required to provide meal and rest breaks to a child-care provider. IWC Wage Order 15, § (1)(B). Failure to pay minimum wage or overtime could result in a State of California Labor Commission charge or a lawsuit and involves the risk of having to pay a significant sum in back pay and penalties.

Effective January 1, 2015, California's sick leave law requires *all* employers to provide paid sick leave. Cal. Labor Code § 246. The law allows employers to limit their employees to no more than three paid sick days (twenty-four hours) a year, but San Francisco's local ordinance allows the employee ten paid days. *Id.* at § 246(d); <http://sfgsa.org/modules/ShowDocument.aspx?documentid=1309>. Although employers are not required to provide paid vacation, those who do must pay out the accrued but unused vacation time upon the nanny's or caregiver's termination. Cal. Lab. Code § 227.3.

## RESUMING PROFESSIONAL LIFE

It is imperative to set reasonable expectations for one's new dual roles as a parent and a working attorney. It may not be possible to attend every late meeting or be present for every bedtime, but with proper planning and organization, you can be both a

good parent and excel at work. Parents should use technology to their advantage and communicate with their employer early and often about competing work and child-care deadlines. Remember, caregiving and coverage require a partnership between spouses or parenting partners. It is important that both partners understand how they are sharing responsibilities and covering for one another, particularly if neither is a strictly stay-at-home parent.

If a flexible schedule is or becomes necessary, under San Francisco's Family Friendly Workplace Ordinance,

employees of organizations with at least twenty employees can request a flexible work arrangement to assist with caregiving responsibilities for family members. See San Francisco Administrative Code §§ 12Z.1 *et seq.* The employer must consider such a request in good faith and provide a response. Employees who experience disparate treatment at work because of their caregiving responsibilities may have claims for discrimination. See [www.eeoc.gov/policy/docs/caregiving.html](http://www.eeoc.gov/policy/docs/caregiving.html).

With careful planning, and armed with knowledge of federal and state

laws governing parental leave and household employees, parents can balance the demands of family with continued growth and responsibility as lawyers. The more lawyers who become parents and press for appropriate accommodations, the better it will be for all lawyers and the profession.

*Gay C. Grunfeld is a partner and Jenny S. Yelin is an associate of Rosen Bien Galvan & Grunfeld, where they practice complex litigation. Both authors have returned to work in law firms after giving birth.*

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