

# Preparing to provide paid parental leave

Best practices for implementing a compliant and equitable policy



**Employees appreciate having clear guidelines on their time off and being encouraged to use it at their own discretion.**

In fact, research shows that 30% of employees said having paid time off could help them avoid burnout.<sup>2</sup>

**We've compiled some best practices for implementing a compliant and equitable policy for your employees.<sup>1</sup>** Navigating paid parental leave can be challenging for everyone involved. Having documented processes or procedures can help. They can give employees clarity on their eligibility, their entitlement and the overall process; remove potential compliance concerns and provide protection in the event of litigation.

## **Design your policy to be equitable across “similarly situated” employees**

While there are no federal laws specific to company-provided paid parental leave, the Equal Employment Opportunity Commission (EEOC) has provided guidance that company programs should not violate Title VII and state-specific anti-discrimination laws.

Pursuant to the EEOC, during a bonding leave event, birth parents and adoptive parents are considered to be “similarly situated” in regard to their need for leave, since they are bonding with the new child. Because of the “similarly situated” distinction, those covered under a company’s paid parental leave policy must be afforded the same benefits during leave—including eligibility criteria, duration of leave, paid benefit amounts, and transitional return to work/phase-back programs.

## **Bonding leave vs. pregnancy-related medical leave in paid parental leave (PPL) programs**

Paid parental leave over the years has been defined a number of ways. One of the more pressing questions is what period of time should be covered as “paid parental leave” for birth parents. Paid parental leave policies should outline which of the following will apply:

[Continued >](#)

### Option 1: Provide leave during bonding only (best practice)

➤ All employees eligible for bonding leave (whether birthing parent, non-birthing parent or adoptive parent) can take their paid parental leave for a bonding event. This means that for birth mothers, paid parental leave would not start until after the employee has moved from medical leave for recovery from childbirth (such as short-term disability or the “medical” portion of state paid family and medical leave programs) to bonding leave. This ensures alignment with the EEOC guidance to provide equitable PPL benefits to “similarly situated” individuals.

### Option 2: Provide additional maternity benefits to birthing parents during pregnancy-related medical leave in addition to bonding leave

➤ EEOC guidance does clarify that beyond Option 1, employers can provide additional benefits to birthing parents to provide paid leave for medical recovery from pregnancy and/or childbirth. Since non-birthing parents and adoptive parents would not require medical recovery from pregnancy and/or childbirth, they are not considered to be “similarly situated” individuals. Therefore, providing these additional benefits to birthing parents does not violate EEOC discrimination laws.

➤ If you’re considering providing birthing parents with additional benefits for medical recovery from childbirth, this should be outlined in a policy separate from your paid parental leave or short-term disability plans. This is a best practice to ensure you are not discriminating against other disabled individuals. For example, under your short-term disability plan, if you provide 100% pay only for childbirth and not for all other diagnoses, it’s considered discriminatory.

➤ It’s important to understand and outline in the policy how this additional “maternity benefit” will coincide with other programs offered, such as short-term disability coverage and/or state paid family and medical leave programs.

- Would the maternity benefit provide pay during the short-term disability/paid family and medical leave unpaid elimination period?
- Would the maternity benefit “top up” the short-term disability/paid family and medical leave benefit to make the employee whole?

➤ It is also important to ensure that your policy does not go against any requirements in the short-term disability policy or state regulations regarding concurrent company paid leave programs.



### Primary vs. secondary caregivers

Once the above guidance was outlined by the EEOC, and in light of recent lawsuits relating to inequitable parental leave policies, there was a push to create “primary caregiver” and “secondary caregiver” definitions in paid parental leave policies, which help avoid discriminatory practices of providing different benefits to mothers and fathers.

Typically, policies afford primary caregivers greater benefits than secondary caregivers, usually by providing additional paid time off and/or replacing a greater percentage of pay. These efforts slowed due to the difficulty of defining primary caregiver and secondary caregiver, in addition to creating ambiguity with gender-neutral policy language.

For example, mothers were frequently defaulted to being “primary caregivers” and fathers were defaulted to “secondary caregivers,” which perpetuated inequities. We recommend conferring with counsel if this is an approach you want to pursue.

## Paid parental leave checklist

Review the items below when implementing a paid parental leave policy

### Effective date of the program

- Be sure to specify the start date of the program, usually related to births or adoptions that happen on or after the effective date.
  - **What about employees who are out on a pregnancy or bonding leave as of the program effective date?**
  - **What about employees who have had a new child or adoption prior to the program effective date?**
- It's important to have a clear eligibility cutoff date for the paid parental leave benefits in the above scenarios. As always, employees should be treated the same in "similarly situated" scenarios.

### Employee eligibility

- Is there a minimum number of months that an employee must work before being eligible for paid parental leave?
- Are part-time/temporary employees eligible for paid parental leave, or just full-time employees?

### Length of leave

- Typically specified by the number of weeks

### Continuous vs. intermittent

- Can paid parental leave be used only in one continuous block of time, or can it be taken in smaller increments?
  - **If you allow intermittent leave**, the best practice is to require it be used in weekly increments. However, you may want to consider what the paid family and medical leave programs allow in any states where you have employees, and align yours to the smallest state-mandated increment to prevent stacking. You should also review your FMLA policy and whether you allow intermittent bonding.

### Period of time an employee has to use paid parental leave after a birth or adoption

- Best practice is to allow the employee up to 12 months from the date of birth/placement to use their paid parental leave. Be sure to specify in the policy that any unused time after the 12 months would be forfeited.

### Entitlement for paid parental leave "per child" or "per event"

- Best practice is to allow paid parental leave per birth/adoption event. For example, if an employee gives birth to twins, they would only be eligible for a single period of paid parental leave, not two separate periods of paid parental leave.

### Rate of pay

- What % of pay will your program provide to employees?
- Best practice is 100% of regular base salary/hourly rate

### Coordination with other paid programs

- How does the paid parental leave coordinate with other paid programs, such as short-term disability, state paid family and medical leave, local city ordinances, etc.?
- Best practice is to have paid parental leave run concurrently with bonding portions of other paid leave programs, and cap the employee's total benefit for the same period of time to 100% of their regular earnings.

### Coordination with unpaid programs

- How does the paid parental leave coordinate with unpaid leaves, such as the Family and Medical Leave Act or state unpaid leave?
- Can employees stack state and/or Family and Medical Leave Act leaves to run at different times than the company paid parental leave?
- Best practice is to have paid parental leave run concurrently with Family and Medical Leave Act or state unpaid leaves when the leave is for the same period of bonding.

### Job protection

- Will the paid parental leave provide job protection, or just income replacement?

### Request and documentation process

- Outline:
  - **How employees request paid parental leave**
  - **Their deadline for requesting the leave**
  - **What documentation is required to substantiate the leave?**
  - **The timeline in which documentation must be provided**
- Best practice is to mirror Family and Medical Leave Act guidelines set forth in your Family and Medical Leave Act policy. Many employers use the Family and Medical Leave Act request and documentation received from an employee to approve a paid parental leave benefit.



[www.symetra.com](http://www.symetra.com)  
[www.symetra.com/ny](http://www.symetra.com/ny)

Symetra® is a registered service mark of Symetra Life Insurance Company.

Symetra Life Insurance Company, 777 108th Avenue NE, Suite 1200, Bellevue, WA 98004.

First Symetra National Life Insurance Company of New York, New York, NY. Mailing address: P.O. Box 34690, Seattle, WA 98124.

Symetra Life Insurance Company is a direct subsidiary of Symetra Financial Corporation. First Symetra National Life Insurance Company of New York is a direct subsidiary of Symetra Life Insurance Company and is an indirect subsidiary of Symetra Financial Corporation (collectively, "Symetra"). Neither Symetra Financial Corporation nor Symetra Life Insurance Company solicits business in the state of New York and they are not authorized to do so. Each company is responsible for its own financial obligations.

<sup>1</sup> These are simply recommendations and do not guarantee a compliant leave policy, nor are they legal advice.

<sup>2</sup> "Leave management: The Ultimate Guide" Forbes Advisor. Published May 26, 2023. <https://www.forbes.com/advisor/business/leave-management/#:~:text=Research%20shows%20that%2030%25%20of.and%20physical%20health%20in%20check>.