

Juggling Act

The Challenge of Taking Family Leave

By Ann Farmer

When health care lawyer Maureen Testoni gave birth to her first child seven years ago, she was working for the Chicago-based law firm Gardner Carton & Douglas LLP. She took the 12 weeks of paid family leave allowed. When it ended, she immediately returned to working full time. “I hit the ground running as soon as I came back,” recalls Testoni, who is very passionate about her work, but says it was a tough transition. “It was too big a shift.”

So when she became pregnant with her second child while working as director for regulatory development for the American Psychological Association in Washington, D.C., she was pleased when her supervisors encouraged her to transition more gradually, stretching her leave over a longer period. “I had so much flexibility,” says Testoni, explaining how she slowly ratcheted

up her schedule, starting out working one day a week from home about a month after giving birth. One year later, she works four days at the office and one day at home. “I’m not sure how it could have been better.”

Disparate Policies

Not all lawyers refer so positively to their parental leave experiences. Family leave policies and flexibility vary from firm to firm, as well as among the different legal practice settings and within legal academia. In addition, some lawyers say taking family leave has negatively affected their careers; many have experienced biases or subtle discrimination during and after taking time off to give birth or to care for a dying parent.

In general, the most generous leave policies tend to be found at large firms, which are naturally better equipped to cover absent employees,

says Cynthia Thomas Calvert, codirector of the Project for Attorney Retention, an initiative of The Center for WorkLife Law of the University of California Hastings College of the Law. Calvert, based in Washington, D.C., says medium and large firms there, and in most big cities, tend to offer three months of paid leave and the option of taking three additional months unpaid.

A Delicate Balance

At the other end of the scale, some firms have no family leave policy or choose to administer such leaves on an ad hoc basis. This practice leaves a company open to a pregnancy discrimination suit, according to Calvert, who practices employment law and counsels small businesses on such matters.

Some firms unwittingly refer to such policies as “maternity” leaves. “It’s called parental leave,” Calvert corrects, explaining that when policies apply only to women, women are stigmatized as being “more expensive” to employ as lawyers. “It’s very backward,” adds Calvert, who often gets inquiries from young male lawyers asking which firms offer the most liberal policies. “Men may not, at this point in time, be taking as much time off as women are,” Calvert says. “But a lot of them want to. It’s in women’s interest to encourage men to take paternity leaves to level the playing field.”

It wasn’t that long ago that family leave wasn’t even on the agenda. “Women lawyers had trouble getting jobs, much less family leave,” says Cynthia Fuchs Epstein, a distinguished professor of sociology at New York’s CUNY Graduate Center and a longtime expert on the work/life balance issues surrounding female lawyers.

What facilitated more family leave options was the 1993 Family and Medical Leave Act (FMLA). This federal act requires that companies of 50 or more employees within a 75-mile radius allow employees who’ve

worked for at least one year (and 1,250 hours during that year) to take 12 weeks of unpaid leave per year to care for a sick relative, their own serious medical condition, or a new child through birth, adoption, or foster care.

However, many women lawyers were still reluctant to take leaves for fear that they would compromise their job situation. "We found there were some serious negative consequences," says Epstein, who wrote *The Part-time Paradox: Time Norms, Professional Life, Family and Gender*, which discusses how women were viewed as less committed when they took family leaves.

Two ways women were penalized: (1) They were set back on the partnership track and (2) they were given more routine grunt work. "When women came back, they were viewed as lesser colleagues," Epstein observes.

While women lawyers today are unlikely to experience this overt sexism, many still find themselves subtly discriminated against after returning from family leave. They may not be invited to attend certain meetings, for instance, or they receive fewer high-profile cases. "In some ways, it's sent out through modeling," says Calvert, explaining that oftentimes the biggest bonuses go to lawyers who work all the time.

Some women lawyers are able to take leaves or maintain flex schedules and still reach the upper echelons of their profession. "But a very few," points out Epstein, who contends that those female lawyers tend to be more highly valued either because they have a specialty that's in high demand or they've brought in lots of clients.

Parental Leave Impacts

Pamela Berman managed to take three family leaves and still become partner. She is a litigator at Adler Pollock & Sheehan and cochair of the Equality Commission, which commissioned a recent law career

study (see sidebar on page 14).

In 1991, she was a senior associate at another general practice firm, and on the verge of partnership, when she became one of the first women in her firm to nervously take family leave. "I think a lot of women, including me, were scared of taking it for fear that they would never regain their footing," says Berman, who

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needed time off to bond with her newly adopted son, just brought to the United States from Colombia. But she kept getting called back to the office on legal matters. "So I kept coming in and coming out. By the time we got to our second kid, I learned that you just don't do that."

By that time, she'd also made partner, which set her apart from younger or mid-level associates, who she's observed have more difficulty getting back on cases of importance after taking parental leaves. "They'd get sort of marginalized on smaller cases, or smaller matters, or pieces of cases," Berman says. "I didn't have as much of a problem because I was a partner and I had some of my own work."

She says the billable hours requirement, which has increased significantly through the years, puts additional pressure on associates. "While they definitely take the allowed amount of time that is paid, I think when they come back, they feel this incredible pressure to get right back up to speed."

Berman says another phenomenon that often occurs after a woman

returns from parental leave is that coworkers automatically assume any office absence indicates a parenting conflict. "If a man is out, they assume he's taking a deposition or caught in traffic. If a woman is out, it's because she had to drop the kids off at school."

One thing Berman didn't anticipate was the solicitous attitude by colleagues who initially avoided asking her to take on cases that required travel. "It did take saying to my partners, 'I had a baby; I didn't lose any part of my brain. I am able to travel,'" says Berman, who felt confident as an equal partner to be able to say, "Don't protect me. Ask me."

Flexibility Matters

Some lawyers contend that building more flexibility into family leave options can help alleviate the backlash and negativity associated with taking them. For instance, in the year

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How Does Legal Academia Dole Out Leaves?

Paid Family Leave in American Law Schools: Findings and Open Questions, a study by Associate Professor Laura T. Kessler of the S.J. Quinney College of Law at the University of Utah, determined that almost three-quarters of the U.S. law schools surveyed provided at least six weeks of paid family leave to tenure-track or tenured women faculty members, usually negotiated on an ad-hoc basis. Non-tenure-track faculty members are generally not eligible for paid family leave. Faculty at lower-ranked and public law schools are less likely than their peers at top-tier and private law schools to receive paid leave. See Laura T. Kessler, *Paid Family Leave in American Law Schools: Findings and Open Questions*, 38 ARIZ. ST. L.J. 661 (2005).

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before Congress passed the 1993 Family and Medical Leave Act, Shirley Higuchi, who was practicing corporate law at the time, became pregnant with her first child. There was no parental leave policy in effect at her workplace, so she ended up authoring a policy that permitted leave-takers, like her, three straight months off.

“I found it really difficult,” says Higuchi, noting that she lost all client contact during that period and decided it was too long for her to be out of the loop. “I feel that for a person taking parental leave who is planning to come back, it’s in their best interests to find a structure that keeps them plugged into the office.”

Several years later, after she’d moved on to the American Psychological Association, where she heads its office of legal and regulatory affairs, Higuchi became pregnant

with her second child. Again she was asked to create the association’s formal leave policy. This time she created a flexible policy that allows employees to transition back to work on a part-time basis, similar to what she encouraged her association colleague Maureen Testoni to do last year.

Higuchi believes that some employers get too nervous about family leaves. “I look at it differently,” she says, describing the positive changes in lawyers returning from family leaves, including improved organizational and communication skills. “They become more realistic in terms of dealing with real-life issues,” she says. “They become better lawyers.” 

New Study on Women Lawyers and Obstacles to Leadership

A 2007 survey on comparative career decisions and attrition rates of women and men in Massachusetts law firms can be found at:

http://web.mit.edu/workplacecenter/docs/law-report_4-07.pdf.

Read a brief article about the MIT study on page 15 of this issue.

Ann Farmer is a freelance journalist who lives in New York City. She works as a breaking news reporter for the New York Times, and writes about television, law, dance, women’s issues, and other topics for EMMY Magazine, Court TV, Dance Magazine, Women’s eNews, and others.