RESOLVED, That the American Bar Association urges all employers in the legal profession to implement, maintain, and encourage the use of paid family leave policies for the birth, adoption, or foster placement of a child.
REPORT

This resolution urges all employers in the legal profession to implement, maintain, and encourage the use of paid family leave policies for the birth, adoption, or foster placement of a child.

Relevance to this Association

The ABA is committed to the elimination of bias and the enhancement of diversity in the legal profession. This commitment is not only recognized in prior resolutions passed by the House of Delegates, but also by the adoption of Goal III, which promotes full and equal participation in the Association, the legal profession, and the judicial system.

The Association has long recognized the importance of equal rights for women and the need to protect women against employment discrimination because of their childbearing role, as well as the need for leave protections in the workplace. In 1987, the House of Delegates passed a resolution endorsing a public policy, in the form of a federal minimal requirement, of unpaid leave for a reasonable time following the birth or adoption of a child or to care for infants, newly-adopted children, or seriously ill children.¹ In 1988, the House endorsed a resolution that endorsed a broader public policy of job protection for leave related to one’s own disabilities and leave to care for family.²

While this resolution is similar to this long line of related Association policies, it does not have the same legislative language and scope as these prior resolutions. Rather, this resolution calls upon all employers, only within the legal profession, to implement, maintain, and encourage the use of paid family leave policies for the birth, adoption, or foster placement of a child. This resolution specifically calls for leave related to these specific circumstances, rather than the broader framework of the Family and Medical Leave Act (FMLA). This is not to dismiss the need for paid parental leave, and indeed paid family and medical leave period, in the broader legal framework of the country, but it is to encourage paid leave within a segment that needs the measure now and that is directly within the scope of this Association’s policies and members.

Importance of Paid Parental Leave in Improving the Legal Profession

Paid parental leave supports gender equality and working parents. It gives working parents the support they need to be there for their families and to adapt to their “new normal” during the first few months after a child’s birth, adoption, or foster placement.³ It also allows new parents time to bond with and encourage the growth and well-being of their children. Employers adopting paid parental leave telegraph that they care about the

¹ See 87A119, which was proposed by the ABA Young Lawyers Division.
² Resolution 88M111, which was proposed by the ABA Section on Individual Rights & Responsibilities.
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health and wellness of not only the attorneys who are crucial to the employers’ success but also the attorneys’ families. Full and equal access to paid leave for the birth, adoption, or foster placement of a child by employees of all genders aids in the retention of diversity of the profession by reducing turnover while boosting productivity and employee morale.

Lack of Institutional Support for Working Parents

According to the U.S. Department of Labor, in 2018, less than 17 percent of private sector workers in the United States work for employers that offer paid family leave.4 Employees of many employers may have access to up to 12 weeks of unpaid leave for the birth or adoption of a child under the Family and Medical Leave Act, depending on the size of the employer.5 Nevertheless, it does not apply to about 40 percent of workers,6 and millions of people cannot afford unpaid leave.7 Further, the U.S. is one of only two countries in the world, along with Papau New Guinea, that have no statutory national policy of paid maternity leave.8

This is not to say that state-mandated paid family leave across all professions is not gaining support. A number of states have adopted their own laws providing for paid family leave9 (not specific to but certainly inclusive of the legal profession), including: California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Washington, and the District of Columbia.10 These programs vary in application and requirements, but all provide at a minimum that leave for new parents be at least partially paid, funded mostly through employee contributions.11

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9 This leave is not limited to parental leave; it is defined as family and medical leave and typically allows employees to take leave that can be used to bond with a child within one year of the child’s birth or placement for foster care or adoption, to care for a family member with a serious health condition, to address certain military family needs, or to address certain medical and non-medical needs arising from domestic violence, also known as “safe time.” See, e.g., Conn. Gen. Stat. § 31-51pp et seq.; N.J. Stat. Ann. § 43-21-25 et seq.; see also infra note 8.
For the most part, these policies are gender-neutral. However, a look at the Chamber Associate Work/life chart shows that secondary caregiver leave is often a mere fraction of primary caregiver leave. Often, societal pressures have a chilling effect on employees—especially male employees—from taking parental leave under the Family Medical Leave Act, relevant state parental leave laws, or employer leave policies. In a survey by Dove Men+Care, 73 percent of fathers said there is little workplace support for them, and 21 percent said they feared losing their job if they took the full paternity leave available.12

Several states have enacted legislation that attempts to address these important issues. For instance, the Connecticut and Massachusetts laws provide 12 weeks of leave in any 12 month period—which can be taken intermittently or all at once—to any worker who works for an employer that employs at least one employee, regardless of sex or gender identity. Because the program is funded by a small payroll tax, it is the government, and not the employer, who pays benefits to the worker when the worker is on leave—in effect, treating the parental leave program similar to an insurance fund.13

The problem, however, cannot be cured simply by having leave being available. Many parents also struggle with the intense pressure to sacrifice everything for their jobs and taking leave can often be perceived as a lack of commitment to that job—which can have devastating effects on career progression and advancement. According to a PwC survey, 48 percent of new mothers said they were overlooked for advancement because they had children, and 42 percent said they were nervous about what having a child would do to their careers.14 These factors—no access to paid or unpaid leave policies, inability to afford unpaid leave and societal pressures have created a scenario where many parents lack the support needed to survive and thrive in the workplace.

Turning to the legal profession specifically, more employers are developing paid family leave policies.15 Law firms are increasing their paid leave,16 and a few governmental

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entities are even following suit. Yet, law firms are not immune from the internal and external forces that plague other industries and impact the way leave is taken.

The gender-role stereotypes exist in the legal professional as well. As Above the Law Editor Joe Patrice wrote,

> [s]o when making the rational decision as a family unit knowing that there’s a sentiment — so engrained in the machismo of the legal industry that it’s asserted as a no-brainer by the legal press — that attorneys all but deserve to have their careers derailed for taking leave, then dad’s going to be the one to keep working.

Gender-neutral, paid parental leave is critical to providing support to working parents in the legal profession.

While the ABA already has an active voice in seeking to eliminate the gender wage gap, the adoption of this Resolution will amplify that position. The voice of the American Bar Association is an important part of the effort to eliminate the gender wage gap. Through this policy, the ABA will be provide a means by which legal employers may lessen the gender wage gap in their organizations and continue to promote one of its goals in eliminating bias in the legal profession.

Respectfully submitted,

J. Logan Murphy
Chair, Young Lawyers Division
August 2020

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GENERAL INFORMATION FORM

1. Summary of Resolution

This resolution urges all employers in the legal profession to implement, maintain, and encourage the use of paid family leave policies for the birth, adoption, or foster placement of a child.

2. Approval by Submitting Body

The ABA Young Lawyers Division Assembly approved this resolution on February 15, 2020.

3. Has this or a similar Resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

Resolution 104D from the 2018 Annual meeting encouraged governments to enact legislation providing employees with job-guaranteed paid sick days and job-guaranteed paid family and medical leave. See 18A104D. This is ancillary to that resolution and that policy would not be affected by adoption of this resolution.

Resolution 119 from the 1987 Annual Meeting supported legislation for minimum requirements for unpaid parental leave. See 87A119. This outdated policy would be supplanted in part by the paid provisions of this resolution.

Resolution 111 from the 1988 Midyear meeting supported legislation for minimum requirements for reasonable, unpaid, family and medical leave act. See 88M111. This resolution builds on the issues identified in that 1988 resolution by urging legal employers to provide paid leave.

5. If this is a late Report, what urgency exists which requires action at this meeting of the House?

N/A.


N/A.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.
After adoption, the Young Lawyers Division will work with the Governmental Affairs Office to determine the most effective way to advocate for this Resolution.

8. Cost to the Association (both indirect and direct costs).

None.


None.

10. Referrals

Business Law Section
Center on Children and the Law
Criminal Justice Section
Government and Public Sector Lawyers Division
Judicial Division
Law Student Division
Section of Civil Rights and Social Justice
Section of Family Law
Section of Labor and Employment
Section of Litigation
Tort, Trial, and Insurance Practice Section
Commission on Women in the Profession
Solo, Small Firm and General Practice Division (GPSolo)
Law Practice Division
Civil Rights and Social Justice
National Association of Women Lawyers
National Conference of Women’s Bar Associations

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)

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Sheila M. Willis
ABA YLD Representative to the ABA House of Delegates
12. Contact Name and Address Information. (Who will present the Resolution with Report to the House?)

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EXECUTIVE SUMMARY

1. **Summary of the Resolution.**
   
   This resolution urges all employers in the legal profession to implement, maintain, and encourage the use of paid family leave policies for the birth, adoption, or foster placement of a child.

2. **Summary of the issue that the resolution addresses.**

   Reasonable paid leave for the birth, adoption, or foster placement of a child is limited within the legal profession. Use of paid leave for those fortunate to have the option is often stigmatized. This resolution seeks to have more employers in the legal profession adopt and encourage use of paid leave.

3. **Please explain how the proposed policy position will address the issue.**

   This policy seeks to have more employers in the legal profession adopt and encourage use of paid leave.

4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   No minority or opposing views have been identified.