

Legal Profession Gender Parity Requires Equal Parental Leave

By **Ali Spindler** (December 5, 2023, 3:04 PM EST)

It's no secret that parenting and practicing law are both huge responsibilities. And as attorneys who are parents are making increasingly clear, to truly foster equity in the legal profession, workplaces need to better support all parents, regardless of gender.

Fathers need the same parental leave as mothers, and they need to be supported in their role as equal parents.

This argument was highlighted in a motion for summary judgment filed by two former Jones Day associates against the firm. A judge in the U.S. District Court for the District of Columbia heard oral argument on the motion, as well as on Jones Day's own motion for summary judgment, on Oct. 12.[1]

The plaintiffs, Mark Savignac and Julia Sheketoff, sued Jones Day in 2019. The married couple alleges the firm's parental leave policy is discriminatory for giving new mothers eight more weeks of leave than new fathers.

The firm contends that mothers are entitled to eight weeks of disability leave, in addition to the family leave offered to all attorneys.

The court's upcoming summary judgment rulings will be significant for legal employers to evaluate and manage their parental leave policies.

But more broadly, the lawsuit exemplifies a larger issue for the profession: how to better support and retain attorneys after they become parents.

Maternity Leave vs. Paternity Leave

Throughout the legal industry, parental leave is not created equally. Even employers that offer generous leave for birthing parents don't offer nearly the same amount of leave for non-birthing parents.

This summer, I conducted an informal survey of lawyers via LinkedIn regarding their views on parental leave and family-related policies at work. The anonymous survey included lawyers in private practice, government, nonprofit and in-house roles.

More than 60% of the 71 survey respondents reported that their workplaces allow paid maternity leave



Ali Spindler

of three months or more.

Paternity leave, on the other hand, ranged from nothing at all, to the same length as maternity leave. The largest number of respondents, approximately 20%, reported paternity leave of just two weeks.

Unfortunately, these numbers aren't unique to the legal profession. A 2020 study of Fortune 500 companies published in the journal *Community, Work & Family* showed that top U.S. employers provide, on average, substantially more leave time to mothers than fathers.[2]

Even more concerning is the discrepancy between mothers and fathers in taking their paid leave. More than 85% of survey respondents agreed or strongly agreed that, in their workplaces, women generally take off the full duration of their maternity leave. By contrast, only 30% agreed that men in their workplaces use all their paternity leave.

Professional Impact of Differences in Leave Time

At first glance, the difference may seem logical: Cisgender men don't have to physically or mentally recover from pregnancy and childbirth, so one might argue they don't need that much time off. The difference in leave duration is also relatively short, as we're talking about a few weeks or months of leave time, not years.

But this discrepancy in maternity and paternity leave sends a subtle but troubling message, which creates a significant impact. From the day a child is born, our workplaces treat that child's parents differently.

And that seemingly small difference, from day one, can foster long-term, unsustainable inequities between working parents; perpetuate the gender pay gap and implicit biases toward mothers; and contribute to women disproportionately leaving their jobs after becoming moms.

As one survey respondent noted, "Forcing fathers back to work a week or two after their child is born puts a huge burden on the mother, who then becomes basically the primary parent."

For example, when a mother is the only parent at home with a new baby, she often becomes the one to restock diapers and baby supplies, because she is the one using them most. She becomes the one to do the baby's laundry, because she's at home. She becomes the one to notice when it's time for pediatrician checkups.

And when it's time for a mother to return to work, those tasks that seemed manageable during maternity leave can quickly add up to a significant responsibility, which can be unsustainable while also working full time as a lawyer.

In turn, women become the ones more likely to seek other jobs or leave the workforce entirely.

Put bluntly, current policies set up women, from the beginning, to be primary caregivers, while setting up men to be secondary caregivers.

Not only is this bad for individual families, but it's also bad for business. The cost of losing experienced attorneys, coupled with hiring laterals to replace them, is significant.[3] Legal employers need to carefully weigh the cost of offering better parental leave against the greater cost of employee turnover.

A Necessity for All Parents

So how did we get here? In short, the prevailing model for parental leave hasn't caught up with the reality that most families have two working parents who share in family and professional responsibilities.

Likewise, the current model does little to recognize the mental or emotional aspects of becoming a new parent, which apply equally to birthing parents and non-birthing parents.

Parental leave is an important time for new parents to bond with their baby, learn to care for their newborn and adapt to their new lifestyles, with much less personal time. Those first few months with a baby are challenging, and they can significantly shape the family's dynamic.

Critically, parental leave also allows time to address postpartum depression and anxiety, which are common in both mothers and fathers. Postpartum depression affects 10% of new dads, as well as more than 10% of new moms, and it typically appears in the first three months after birth.[4]

Given these numbers, it's clear that forcing any parent back to the office within a few weeks of welcoming a new baby is simply too soon.

To quote another survey respondent, "While industries, such as law firms, might be beginning to offer a small amount of paid leave, the culture still does not support taking full leave. There's intense pressure to return sooner, which falls on both men and women."

Finding Solutions for Meaningful Change

What will help? First, as Savignac and Sheketoff emphasize in their suit, offering equal leave to all parents is an important starting point.

When workplaces don't differentiate between birthing parents and non-birthing parents, it enables employees to better share responsibilities with their partners. Not only does this help reduce stress at home — which is good for all employees — it also helps promote equity at home and at work by moving away from outdated gender roles.

And, when equal leave is both offered and encouraged, workplaces need to ensure that new parents' work will be covered by someone else during their leave.

If new parents come back to the office with weeks or months of work to catch up on, that is overwhelming for new parents and disincentivizes them from taking leave at all.

Likewise, it's important for leaders to promote equity between birthing parents and non-birthing parents, destigmatize parental leave and lead by example. This means that men in leadership positions actually need to take paternity leave when it's offered, regardless of how they think it may be perceived by their superiors, coworkers or clients.

To that end, several large firms have implemented expanded, gender-neutral parental leave policies in recent years.[5] And while data is limited on whether new fathers are yet taking the full extent of their leave, fathers are becoming more vocal about the benefit of meaningful paternity leave.

A 2021 McKinsey & Co. Inc. study on working fathers reported that a full 100% of men who took paternity leave were glad they took the leave and would take it again.[6]

Finally, legal employers who want to retain employees with kids should carefully consider ways to support them in the long term.

As one survey respondent said, "I left BigLaw after having two kids. The parental leave was amazing. 16 weeks paid. But the support thereafter was minimal, and the expectations of a partner like me [were] unsustainable or I did not want to sustain them."

Policies like remote work, flexible hours or reduced hours for the first year or two after a baby is born — when implemented without judgment or stigma — can make all the difference for workplaces to keep employees after they become parents.

For example, some offices claim to support attorneys working from home or even working part time, but discreetly penalize parents for doing so when it comes to compensation, promotions and opportunities for professional development.

And attorneys who work remotely or flexible hours to juggle family responsibilities may be perceived by their employers and clients as less dedicated or valuable than those who keep more traditional schedules.

To prevent that, workplaces should be proactive in setting, enforcing and respecting clear policies for measures like remote work, flexible hours and reduced hours.

When legal employers enact these policies to support working parents — and actually follow through on them — the profession can begin to see meaningful improvement, both at work and at home.

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[1] The case is Savignac et al. v. Jones Day et al., case number 1:19-cv-02443, in the U.S. District Court for the District of Columbia.

[2] Kaufman & Petts, Gendered parental leave policies among Fortune 500 companies, 25 Cmty., Work & Family 603 (2020); see also theSkimm #ShowUsYourLeave Database, theSkimm, https://docs.google.com/spreadsheets/d/1ycmPpaeUXwYkkXpR_K8kvQF2wCJ4eFZFfejwy56qGg4 (last visited Nov. 18, 2023).

[3] Rushing, S., The Cost of Law Firm Associate Turnover, Above the Law, May 13, 2022, <https://abovethelaw.com/2022/05/the-cost-of-law-firm-associate-turnover> (estimating the cost of replacing an associate between \$200,000 and \$500,000) (citing Update on Associate Attrition (Calendar Year 2017), NALP Found., 2017, <https://www.nalpfoundation.org/product-page/update-on-associate-attrition-calendar-year-2017>).

[4] Horsager-Boyer, R., 1 in 10 dads experience postpartum depression, anxiety: How to spot the signs, Univ. Tex. Sw. Med. Ctr., Aug. 17, 2021, <https://utswmed.org/medblog/paternal-postpartum-depression>; Depression During and After Pregnancy, Ctrs. for Disease Control & Prevention, May 1, 2023, <https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>.

[5] Family Leave and Related Policies by Firm, Above the Law, <https://abovethelaw.com/careers/family-leave-and-related-policies-by-firm> (last visited Nov. 18, 2023).

[6] A fresh look at paternity leave: Why the benefits extend beyond the personal, McKinsey & Co., Mar. 5, 2021, <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/a-fresh-look-at-paternity-leave-why-the-benefits-extend-beyond-the-personal>.