

International HR Best Practices Tip of the Month

July 2007

This Month's Challenge

Outside the U.S., workers are often entitled by law to extensive paid maternity (and sometimes paternity) leave benefits.

Best Practice Tip of the Month

Trying to apply U.S. policies globally just won't work. Multinational employers need to find out the legal requirements in each country where they have employees.

Workers Abroad Enjoy Generous Family Leave Benefits

Recently, the U.S. Equal Employment Opportunity Commission released new enforcement guidelines addressing how disparate treatment of employees who have "caregiving responsibilities" for family members may constitute a violation of Title VII of the 1964 Civil Rights Act or the Americans with Disabilities Act. The EEOC was careful to clarify that it was not designating a new protected class of employees but, rather, was merely offering guidance on the ways that using stereotypes to predict how caregivers will or should balance their work and family responsibilities, or expressing hostility to workers based on their caregiving activities, could result in unlawful discrimination under the law's existing prohibitions regarding sex, race and disability discrimination.

Caregiving responsibilities fall disproportionately on women, the EEOC noted, and even more disproportionately on women of color - two categories that fall well within the EEOC's jurisdiction. As the ADA prohibits discrimination on the basis of an employee's *association* with a disabled person, caring for a disabled parent, for example, can bring an employee within the protection of the ADA.

This recent attempt in the U.S. to reinforce the protection of workers with caregiving responsibilities is rooted in the desire to stem discrimination based on sex, race, and disability. Abroad, however, “family friendly” employment policies go beyond mere protection against discrimination and are intended to promote the ability of women to enter the workforce and may, in some countries, operate as *incentives* for people to have children and increase birthrates, especially in Europe.

The “Nordic model,” for instance, which has been implemented in Sweden and Norway, is specifically meant to encourage couples to have more children. Under Swedish law, a parent is entitled to 18 months paid leave (paid by the government), public day care is heavily subsidized, flexible work schedules are the norm, and the law gives women with pre-school aged children the right to decrease their work hours. In Norway, the law grants mothers the option of 10 months leave at full pay or 12 months leave at 80% pay (funded by the mandatory national pension scheme) and allows fathers to take nearly all of that leave time in lieu of the mother.

Similarly, in the United Kingdom, new mothers are allotted 26 weeks paid leave and the option of 26 additional weeks of unpaid time off, while new fathers are permitted two weeks paid leave. In France, mothers are entitled to 16 weeks paid maternity leave in the event of a single birth and 34 weeks if there is a multiple birth. During this leave, the mother receives a daily maternity allowance equal to her average daily earnings for the three months immediately prior to her prenatal leave (with a cap of €2,682 per month). Fathers are also entitled to paternity leave of 11 consecutive days during the first four months following the birth of a child.

This concept of mandatory paid leave transcends European borders and exists in Latin America and Asia, as well. In Brazil, mothers have 120 days maternity leave, all of which are paid at 100% of the wages earned by the mother. In addition, fathers are granted five days of paid paternity leave. In Columbia, mothers are given 12 weeks paid at 100% of the mother’s wages, and fathers receive four to eight days paid leave. In Singapore, women get 12 weeks of paid maternity leave at 100% of their wages, while China gives mothers 90 days paid leave at 100% and Japan offers mothers 14 weeks of paid leave at 60%. New Zealand offers 14 weeks paid maternity leave. Notably, despite the spectrum of rights available in various countries, as a general rule, many more European countries offer at least some leave to fathers, whereas Asian and South American countries typically do not.

The mechanisms for paying for this largesse vary from country to country. In most cases, the benefits are paid through the governmental social security program; in others, the employer must foot the bill; and in some countries, both pick up a share of the benefit cost.

One country where no paid leave is guaranteed – for mothers or fathers – is the U.S. The Family and Medical Leave Act of 1993 only mandates that employees be allowed to take up to 12 weeks of *unpaid* leave in the event of a serious health condition rendering an employee unable to perform his job or to care for an ill family member or new son or daughter (be it by birth, adoption, or foster care). The U.S. is not alone in this position; Lesotho and Swaziland have similar laws.

For the multinational employer, applying a U.S.-based policy to global operations is simply not a viable option. Rather, it is essential to learn the laws and rules for each country where the company operates.