

Vacation Policy

3.13 Vacation

A. Full-Time Employees (New Employees through Three Years)

A new full-time employee is eligible to take paid vacation benefits after completing six months of employment. The vacation benefit for new employees through the second full year of employment is equal to ten days per calendar year. The benefit is prorated for the first year of employment using a fraction where the numerator equals the number of months the employee has worked for the Firm and the denominator is 12. The employee will receive credit for a full month of work if the employee began working on or before the 15th day of the first month of his or her employment.

B. Full Time Employees Who Have Completed Three Years of Employment

A full-time employee receives an additional vacation day during the calendar year in which the employee's third anniversary of employment occurs, and an additional day of vacation each calendar year thereafter up to a maximum number of 20 vacation days per calendar year.

C. All Part-Time Employees

Part-time employees earn one hour of vacation time for each twenty-six hours worked. Vacation may not be taken until the part-time employee has completed six months of employment with the Firm.

D. Carry Over of Vacation Days

A maximum of five days of earned vacation time may be carried over from one calendar year to the next calendar year by non-exempt employees who have completed up to two years of employment. After three years of employment, up to 10 days of earned vacation time may be carried over from one calendar year to the next calendar year. At the end of each calendar year, any unused earned accrued vacation time is forfeited unless qualified for carry-over under this policy.

Non-attorneys who have completed at least six months of employment with the Firm will be paid upon termination of employment for any earned vacation time that has not been taken or forfeited. An employee whose employment is terminated before completing six months of employment will receive no vacation pay in his or her final paycheck.

A non-attorney employee's vacation time must be pre-approved by the Office Administrator and the employee's immediate supervisor(s). A request for vacation time must be made at least two weeks before the proposed vacation days.

If the vacation time is being used as a paid benefit for an absence that qualifies under the Family and Medical Leave Policy, that employee is required to inform the Office Administrator in writing. Notification forms may be obtained from the Office Administrator.

Vacation leave may not be used for absences caused by illness or injury, except when the leave is qualified under the Family and Medical Leave Policy. Non-exempt employees must use vacation leave in half-day increments unless otherwise approved by the Office Administrator, or when vacation leave is used for a qualifying reason under the Family and Medical Leave Policy. Exempt employees must use vacation leave in whole day increments, except when it is used for a qualifying reason under the Family and Medical Leave Policy.

E. Attorneys

Attorneys may take additional vacation time provided they meet their annual billable hours requirements. Vacation time taken by associate attorneys in excess of three weeks per year must be approved by the Executive Committee. If any attorney takes vacation time in excess of the applicable allocation set forth in this policy, and the attorney fails to meet his or her annual billable hours requirement for the year, that attorney's compensation may be reduced in accordance with other policies established by the Firm. Attorneys will not be paid for any vacation time upon termination of employment.

Sabbatical Program (Revised 5/2/2002)

Farleigh, Wada & Witt, P.C. ("FWW") believes it is in its best interests of the professional corporation that its shareholders take a sabbatical on a periodic basis in order to renew enthusiasm and explore opportunities outside the practice of law.

Therefore, FWW has adopted a sabbatical program by unanimous vote of its shareholders as stated below. This policy may be amended in writing at any time by appropriate shareholder approval.

1. *Entitlement.* Each shareholder of FWW shall be allowed to enjoy a sabbatical on the terms and conditions set forth herein.

2. *Purpose of Sabbatical.* The purpose of the sabbatical program is to allow shareholders an opportunity to revitalize their enthusiasm for the practice of law by being away from the practice of law for a period longer than a routine vacation. It is the express purpose of this sabbatical that it not be used for legally related activities and participants are encouraged to spend such time in nonlegal related activities.

3. *Length.* Each sabbatical shall be for a period of time not to exceed eight (8) weeks. If an attorney desires to take additional vacation time which is consecutive with the sabbatical leave, such attorney shall get specific Executive Committee approval prior to doing so.

Any shareholder who has worked a reduced hourly schedule for any year between the year immediately following the last sabbatical taken (or if there was no preceding sabbatical, for any year as a shareholder) through the year preceding the next sabbatical year, is subject to sabbatical reduction. This reduction is determined by calculating the average Reduced Time Percentage (as that term is defined in FWW's Reduced Hour Formula) for the years between the last sabbatical taken (or all years as a shareholder if no prior sabbatical has been taken) and the year preceding the next sabbatical year and multiplying that percentage by the number of weeks allowed full-time shareholders.

4. *Timing of Sabbatical.* Not more than three shareholders shall be entitled to a sabbatical in any one year. The shareholders shall be entitled to take his or her sabbatical anytime during the calendar year as approved by the Executive Committee of the firm. Absent an Executive Committee determination otherwise, there shall be five (5) years between sabbaticals. There should be no more than a two (2) week overlap of sabbaticals by shareholders sharing a sabbatical year without Executive Committee approval. The sabbatical schedule is subject to override and revision in any given year at the discretion of the shareholders.

5. *Order of Priority.* In the event two or more shareholders are in line for their sabbaticals in any given year and the Executive Committee determines that the sabbatical schedule will not accommodate all of them for the upcoming year, then the attorney who has not yet taken a sabbatical and has been a shareholder for the longest period of time shall have first priority to the sabbatical for the upcoming year. In addition, a shareholder must have been employed a minimum

of five (5) years as a shareholder to be eligible for a first sabbatical. In the event two shareholders have been shareholders for equal periods of time, the shareholder who has been with the firm the longest shall be first entitled to the sabbatical. In the event two shareholders have been with the firm for the same period of time and have been shareholders for an equal period of time, and in the event they cannot mutually agree as to who will take first priority, priority shall be decided by a flip of a coin.

6. *Election to Take Sabbatical.* Although strongly encouraged, the sabbatical program is not a mandatory program. In the event an attorney who is next eligible for sabbatical elects not to take it in the upcoming calendar year, such attorney shall have first priority for the next calendar year. In the event such attorney does not elect to take his or her sabbatical within the two (2) calendar years after eligibility, such attorney shall automatically drop to the lowest priority. Each attorney shall notify the firm by August 1 as to whether he or she will elect to take advantage of the sabbatical for the upcoming year. In the event such attorney elects to defer the sabbatical for an additional year, the next eligible attorney shall have thirty (30) days to notify the firm as to whether such attorney elects to take his or her sabbatical.

7. *Financial Arrangements.* FWW believes it is in the long-term interest of the firm that its attorneys take sabbaticals, and it is therefore encouraging such attorneys to do so without significant economic penalty. Except for the production bonus component of the shareholder compensation structure (which production bonus is modified in a sabbatical year pursuant to the Shareholder Production Bonus Formula adopted by FWW), any bonus or compensation structure (including but not limited to salary and profit share) which may be in place which depends upon reaching certain hourly goals shall *not* be altered or modified by the taking of a sabbatical. Furthermore, in setting compensation for the next year, the attorney's performance in the year in which the sabbatical is taken will be considered as if the attorney had practiced without taking off the sabbatical period.

8. *Firm Stability.* The sabbatical program shall continue so long as the stability of the firm is not threatened. The shareholders shall have the authority to cancel or modify the sabbatical program as the shareholders deem appropriate given the financial conditions of the firm at any time.

Sabbatical Leave Policy

Sabbaticals offer long-term, valued attorneys with the Firm an extended time away from work for community service, education travel or other outside interests. To be eligible, an attorney must have at least twelve years service¹ with the Firm and be performing satisfactorily.

Process:

Application for Sabbatical Leave should be submitted no later than six months before the proposed leave is to commence. The Management Committee will review each Application and approve or disapprove it upon such conditions and terms as necessary to ensure the work of the Firm is not compromised. Sabbatical Leave is not a vested right, and if circumstances warrant, the management Committee reviewing the Leave Application may approve, disapprove or delay the leave. Further, this Policy may be amended, suspended or terminated by the Board of Directors at any time without notice. The Management Committee shall give prompt consideration to all Leave Applications and, in most cases, will notify the attorney requesting leave within 30 days of submission of the request. A two-thirds vote of all members of the Management Committee is required for approval. Any disagreements over a decision of the Management Committee concerning sabbatical requests may be taken by the applying attorney to the Board of Directors.

Length of Leave:

After the completion of his or her twelfth anniversary with the Firm and during each seventh year thereafter, each attorney shall be granted an aggregate of forty working days (eight weeks) time off (the "Sabbatical Leave") under the conditions listed below:

1. Sabbaticals cannot accumulate. Unused sabbaticals will be forfeited by the time an attorney is once again eligible.
2. Four weeks regular vacation time must be taken consecutively with the Sabbatical Leave in any calendar year in which a Sabbatical Leave is taken. Vacation time shall be paid 100% while sabbatical leave is paid at 50% of salary.
3. Less than an 8 week sabbatical may be taken; however, the unused portion is forfeited.
4. No monies shall be paid in lieu of Sabbaticals not taken.
5. Sabbatical Leave must taken at one time.

¹ Twelve years of service at the Firm as a licensed, full-time attorney.

Return From Sabbatical Leave:

Sabbatical Leaves are granted on the assumption that the attorneys taking them will return to the firm thereafter. If an attorney fails to return to work and remain with the Firm for at least one year after the Sabbatical, the attorney shall be responsible to reimburse the firm for both salary and the cost of benefits during the Sabbatical.

Compensation:

Attorneys who have been approved for Sabbatical Leave will be paid 50% of their regular salary and be accorded full benefits during the Sabbatical. Year-end bonuses, if any, will be handled in accord with the recommendation of the Management Committee and as voted on by the Board of Directors. Eligibility for year end salary increases will be unaffected by Sabbaticals.

Limitation on Number of Attorneys:

No more than two attorneys may take a Sabbatical at the same time. The Management Committee will work with any attorney whose request has been approved to ensure proper scheduling, workload distribution, and transition, as well as client communications.

Purposes:

Sabbaticals may be taken for any purpose; however, the reason for the Sabbatical may be taken into consideration by the Management Committee in determining whether to approve the request. Attorneys submitting requests are encouraged to consider the purpose of an play their Sabbaticals carefully to maximize its effectiveness.

Permissive/Mandatory Nature of the Sabbatical:

Although Sabbaticals are permissive rather than mandatory in nature, the Firm reserves the right to request or direct any eligible attorney to utilize his or her Sabbatical Leave as circumstances merit. The firm may also direct an attorney to return from sabbatical if necessary.

SABBATICAL LEAVE APPLICATION

Name: _____

Date of employment with the Firm: _____

Date of last Sabbatical, if any: _____

Proposed commencement date of Sabbatical: _____

Proposed return date: _____

Number of days/weeks of Sabbatical requested: _____

Number of days/weeks vacation to be used consecutively with Sabbatical: _____

Proposed use of Sabbatical:

What do you hope to achieve or accomplish by taking this sabbatical?

Attorney Signature

Date

Reviewed by Management Committee on: _____

Approved: _____

Disapproved: _____

Conditions:

DISABILITY AS A RESULT OF PREGNANCY~ CHILDBIRTH AND RELATED MEDICAL CONDITIONS¹

A. Eligibility for Disability Benefits

An attorney disabled due to pregnancy, childbirth and/or any complications arising from those conditions is treated in the same manner as attorneys who are disabled for any other medical reason and is eligible to receive disability benefits according to the terms of the disability income benefits program of the firm.

[Alternative A (For Firms with Limited or No Disability Benefits): Eligibility for Disability Leave. An attorney disabled due to pregnancy, childbirth and/or any complications arising from those conditions is entitled to a paid leave during the period of the disability.]

B. Commencement Date and Presumptive Time Period

Given the demands of the job and the high expectations for performance placed on all attorneys, the firm presumes disability for a period of twelve weeks following the birth of a child, and grants paid disability leave for this period, without the need for independent medical verification of disability.

In addition, a pregnant attorney may elect to leave work up to two weeks prior to the anticipated date of birth without medical certification of disability. These two weeks are in addition to the regular disability leave outlined above.

In either instance, the attorney must notify the firm's benefits coordinator of the date of commencement of her disability leave and the date of the birth of her child, so that adequate records can be maintained.

C. Disability Before or After the Presumptive Time Period

Regardless of when the attorney elects to commence her presumptive disability period, disability leave in excess of the allotted number of weeks is granted only in the event that the employee provides the firm's benefits coordinator with the appropriate medical certification as required for other disabilities covered under the disability policy.

D. Effect on Partnership or Salary Increase

The use of disability leave as a result of pregnancy, childbirth and related medical conditions shall not be a factor in or affect a partnership (or other promotional decision) or salary increase determination. Pregnancy, childbirth and related medical conditions are an integral part of human existence; they are not to be considered as voluntary and optional undertakings by the affected lawyers.

¹ This sample policy was copied from the Philadelphia Bar Association's Model Policies. See http://www.philabar.org/member/governance/mp_parent1.asp (accessed September 14, 2005).

The use of disability leave as a result of pregnancy, childbirth and related medical conditions may affect the timing of the partnership (or other promotional decision) or salary increase determination only to the extent that other medical disabilities affect the timing of the partnership or salary increase determination. For example, if the use of medical leave to recover from gall bladder surgery would not affect the timing of the determination, neither can the use of medical leave for pregnancy or childbirth.

E. Leave Options

At the attorney's option, the attorney may also apply for a leave of absence under the firm's childcare leave policy as set forth in Policy 2 below.

COMMENTS

1. *Definition and Eligibility (Section A)*

This policy was originally developed to comply with the requirements of Title VII of the Civil Rights Acts of 1964. It is applicable to the medical conditions experienced as a result of being pregnant, of bearing a child, and of recovering from childbirth. This type of leave is sometimes referred to as maternity leave, but it should not be confused with leave to parents (male and female) for the purpose of caring for an infant or child after its birth. Those leaves are covered under Model Policy 2: Childcare Leave.

The Pregnancy Discrimination Act of 1978 requires employers who are covered by Title VII to treat women affected by pregnancy, childbirth and related medical conditions the same as non-pregnant persons who are "similar in their ability or inability to work . . . for all employment-related purposes, including receipt of benefits under fringe benefit programs."

This policy therefore simply restates the effect of that law. Thus, if the law firm has a disability benefit program which permits paid or unpaid leaves to persons with non-pregnancy disabilities, it must offer the same paid or unpaid leaves to women affected by pregnancy, childbirth or related medical conditions.

2. *[Alternative Section A]: Firms and Organizations without Disability Benefits or with Limited Disability Benefits*

If a firm does not have a general disability benefits program as assumed in section A, such a firm may nevertheless wish to consider offering a paid or unpaid leave for pregnancy, childbirth or related medical conditions, to the extent this is economically feasible. Alternative A has been drafted to serve that purpose.

The Supreme Court has held in *California Federal Savings and Loan Association v. Guerra*, 479 U.S. 272, 107 S.Ct. 683, 93 LEd.2d 613 (1987) that the Pregnancy Discrimination Act was intended by Congress to be "a floor beneath which pregnancy disability benefits may not drop -- not a ceiling

above which they may not rise.” 107 S.Ct. at 692 (approving the language of the Court of Appeals at 758 F.2d 390, 396 (9th Cir. 1985)). In that case a California statute which required employers to provide leave and reinstatement to employees disabled by pregnancy, but not by other conditions, was found not to be a violation of Title VII because of its provisions favoring pregnant workers above other disabled workers.

3. *Commencement Date and Presumptive Period (Section B)*

Because the period of disability for a normal, uncomplicated pregnancy and delivery can be generally approximated, many firms prefer to establish a presumptive period of disability for which the disabled attorney need furnish no medical verification. Such a presumptive period eases the administrative burden on both the firm and the affected attorney.

This policy uses the presumptive period of 12 weeks for all childbirth under the assumption that the work of an attorney may be so demanding in terms of time, commitment, stamina and potential stress that optimal physical fitness is necessary for performance of the job. Some firms may opt for a shorter presumptive period.

The firm may wish to require the attorney to prepare, when practicable, a “departure memorandum,” which outlines the attorney’s ongoing responsibilities and a plan for meeting those responsibilities during the attorney’s leave.

4. *Resignation or Termination*

This policy does not include any provision regarding the effect of the employee’s resignation or termination of employment upon the use of disability leave. Resignation or termination of employment at the end of the disability period in no way affects the use of the disability benefits since the employee has earned the right to those benefits by her work preceding the disability period.

Some organizations specify that the right to take childbirth disability leave is contingent upon the attorney advising the firm in advance that she intends to return to work on some basis at the end of the leave period. Such a provision is not permitted, however, unless such a requirement is also imposed on the use of other types of medical disability leave.

5. *Reinstatement*

This policy has no provision about reinstatement upon completion of the leave. The lawyer, however, must be reinstated when the leave is completed. Some organizations, especially those with highly structured departments, may prefer to include a provision indicating whether the attorney, upon return to work, will be placed in the same or an equivalent position.

6. *Application to Attorneys With Alternative Work Schedules*

Attorneys working on a reduced or flextime schedule or using a telecommuting arrangement who

are affected by pregnancy, childbirth and related medical conditions receive the same disability benefits that such attorneys with non-pregnancy disabilities receive under the general disability policy.

Where attorneys with reduced work schedules are not covered by a disability leave program, the firm or organization may nevertheless opt to institute such a leave for personnel affected by pregnancy, childbirth or related medical conditions.

CHILDCARE LEAVE¹

A. Paid Childcare Leave

1. *Eligibility:* Childcare leave is provided to allow attorneys, male and female, to care for children newly arrived in their families. Every attorney is entitled to a two-week paid leave for the following childcare purposes:

- (a) the birth of a child of the attorney;
- (b) the adoption of a child by the attorney;
- (c) the placement of a child for foster care in the family of the attorney.

2. *Special Provision for Adoptive Parents:* In addition to the leave in subparagraph A.1 above, an attorney who has adopted a child is entitled to six weeks of paid leave immediately prior to or following the adoption.

3. *Application:* The two-week paid childcare leave is not in addition to the disability leave as a result of pregnancy, childbirth and related medical conditions during the first year following the arrival of the same child.

B. Extended Unpaid Childcare Leave

1. *Eligibility:* In addition to any paid leave (including paid childcare leave and disability leave as a result of pregnancy, childbirth and related medical conditions described above), every attorney may request an unpaid leave of absence for a period of up to nine months for the following child care purposes:

- (a) the birth of a child of the attorney;
- (b) the adoption of a child by the attorney;
- (c) the placement of a child for foster care in the family of the attorney.

2. *Criteria for Granting Request:* This leave is available to attorneys who are in good standing with the firm regardless of the attorney's seniority, upon request to the appropriate department chair or firm decision maker. Approval will be given unless the leave would unduly disadvantage the firm as a whole, or the work of the department or practice group directly affected.

3. *Reduced Work Schedule:* An attorney may work on a reduced work schedule during the period when he or she otherwise could be totally absent from work pursuant to this Child Care

¹ This sample policy was copied from the Philadelphia Bar Association's Model Policies. See http://www.philabar.org/member/governance/mp_parent2.asp (accessed September 14, 2005).

Leave Policy, provided that the attorney's department has work for the attorney on this basis. The nature of the arrangement, including the attorney's schedule of hours, workload, compensation, and benefits, will be determined by [insert appropriate person] together with the attorney. Approval will be given unless the reduced schedule would unduly disadvantage the work of the firm as a whole or the department or practice group directly affected.

C. Effect on Benefits

1. *Paid Childcare Leave:* During the paid child care leave, the attorney will receive the same benefits she or he would have received had that attorney been working full-time.

2. *Extended Unpaid Childcare Leave:* The firm or organization shall maintain health insurance benefits during the unpaid extended family care leave, regardless of the attorney's level of seniority. Other benefits will be maintained during the unpaid extended family care leave at the discretion of and in the circumstances determined by the firm. All benefits shall be restored after the leave has ended.

D. Effect on Partnership or Salary Increases

1. *Paid Childcare Leave:* The use of paid childcare leave shall affect neither a partnership determination nor its timing, nor shall paid childcare leave affect any salary increase an attorney might receive.

2. *Extended Unpaid Childcare Leave:* Use of extended unpaid childcare leave shall not be a factor in any partnership or salary increase decision. Use of extended leave may affect the timing of the determination if:

(a) any other unpaid leave affects the timing of the partnership or salary increase determination; and,

(b) the extended leave is used i) for more than a period of one year during the time preceding the partnership or salary increase decision; or ii) for a substantial amount of time during the last year before the decision is made.

COMMENTS

1. *The Family Medical Leave Act*

The Family Medical Leave Act, 28 U.S.C.A. § 2601 *et seq.* (the “FMLA”) entitles covered employees to 12 work weeks of leave (either unpaid or paid) during any 12 month period (1) because of the birth of a child of the employee and in order to care for the child and (2) because of the adoption or foster care placement of a child. Under the FMLA, the leave may be unpaid. The FMLA applies to employers who employ 50 or more employees.

The protections of the FMLA will be referenced where applicable. However, it sets forth a “bottom level” of safeguards that is, or should be, exceeded by law firms.

2. *Eligibility*

Childcare leaves are available to all men and women attorneys. They are available not only to biological parents, but also to adoptive parents and to attorneys who are providing foster care to a child. The model policy provides a presumption that the request will be granted, but also allows for consideration of the working needs of the law firm in granting the request.

The FMLA requirements apply only to an employee with one year and 1250 hours of service. Such a limitation is not recommended in the model policy. Some firms may nonetheless opt to use a minimum employment period before an attorney becomes eligible for childcare leave. Those firms may want to leave it flexible. For example, one organization with a leave of absence policy provides that “normally” employees with less than one year of service are not eligible for extended leaves. Such phrasing of the policy allows the firm to extend the leave to employees with less than one year of service in appropriate circumstances.

3. *Paid Childcare Leave*

The policy provides for two weeks of paid leave. Some firms may opt to provide paid leave for longer periods of time, particularly since it is not in addition to childbirth disability leave.

Recognizing that adoption of a child can be an expensive and time-consuming process, that adoptive parents have physical and emotional stresses and bonding needs just as biological parents do, and that paid disability benefits typically will not be available, the policy provides an additional six weeks of paid leave to adoptive parents.

4. *Extended Unpaid Childcare Leave*

The extended unpaid childcare leave provides for a leave of absence of up to nine months for child care purposes. The most common use of this extension probably will be for the care of a newborn infant.

5. *Effect on Benefits*

It is crucial to the welfare of families that health insurance benefits be in effect at all times. This policy provides for their continuation during all childcare leaves. Some firms may find it necessary to require employee payment of the required premiums if the extended leave is for a long period of time. If this is necessary the firm should take all reasonable measures to insure that no lapse of coverage occurs.

The FMLA requires the employer to maintain eligibility for coverage under any “group health plan” during the employee’s FMLA leave. The taking of leave shall not result in the loss of any employment benefit accrued prior to the leave. 29 U.S.C.A. § 2614(a)(2) and (c)(1).

6. *Notice*

Some firms may choose to add a requirement that employees give advance notice of a leave. The FMLA requires that at least 30 days notice shall be given for leave which is foreseeable based on an expected birth or placement or “such notice as is practicable.” 29 U.S.C.A. § 2612(e).

The firm may wish to require the attorney to prepare, when practicable, a “departure memorandum,” which outlines the attorney’s ongoing responsibilities and a plan for meeting those responsibilities during the attorney’s leave.

7. *Return to Work and Reinstatement*

The policy contains no provision regarding the circumstances of the return to work of the attorney. It assumes reinstatement to former position upon return to work. The FMLA requires that employees returning from FMLA leave be restored to their position, or its equivalent, upon return from leave. 29 U.S.C.A. § 2614(a). Such “restoration” may be denied under certain economic circumstances, and as to employees who are among the highest-paid 10 percent of employees. 29 U.S.C.A. § 2614(b).

Some firms may opt to make the right to take leave contingent upon the attorney’s advising the firm in advance that she or he intends to return to work on a full or reduced basis upon the completion of the leave. If so, the firm should include that requirement in its written policy and the requirement should be discussed with the attorney before the leave is begun.

Some organizations, especially those with highly structured departments, may also prefer to include a provision stating whether the attorney, upon return to work, will be placed in the same or an equivalent position. In no circumstances, however, may the use of the leave be the basis for demotion or other retaliatory work action.

8. *Application to Attorneys with Alternative Work Arrangements*

A firm may opt to include a provision indicating the circumstances in which child care leave applies to attorneys with pre-existing alternative work arrangements. The FMLA does not provide for a “reduced leave schedule” for family leave unless the employee and the employer so agree. 28 U.S.C.A. § 2612(b).

PATERNITY LEAVE POLICY & PROCEDURE

1. **Statement:** It is the policy of [insert firm name here] (“firm”) to provide paternity benefits to all lawyer members of the firm. Paternity benefits are provided in addition to any benefits a lawyer may be entitled to under the Family Medical Leave Act, 29 U.S.C. §2601, *et seq.* Paternity benefits cannot be combined with any benefits available under the Firm’s Adoption Leave Policy or the Firm’s Maternity Leave Policy.

2. **Entitlement:** This policy applies to lawyer members of the firm, regardless of their length of service or status as a partner or associate, as stated below:

A male who is the: (a) biological father of a child, (b) mother’s husband or (c) mother’s partner and who anticipates having responsibility for the child’s upbringing.

A member of either sex who is adopting a child but who chooses not to use the Firm’s Adoption Leave.

3. **Length:** A lawyer may take up to two weeks paid paternity leave. The leave shall not commence before the child’s birth or, in the case of adoption, the placement of the child in the lawyer’s home. The leave must be taken, if at all, within four months of the event triggering the lawyer’s entitlement to the leave.

4. **Notice:** A lawyer should notify the Firm, in writing, as soon as possible of his/her intention to use Paternity Leave so that the lawyer’s responsibilities and duties may be reasonably reallocated to other members of the Firm. Where possible, the Firm requests, at a minimum, six weeks notice that a lawyer intends to utilize Paternity Leave.

FAMILY CARE LEAVE¹

A. Definition

Every attorney may request an unpaid leave of absence for a period of up to twelve weeks to care for the attorney's own health, or to care for the attorney's child, spouse, domestic partner, parent or member of the household who is ill or experiencing a serious health condition. The leave period need not be continuous, but may be taken in shorter occasional segments as needed.

B. Criteria for Granting Request

This leave will be granted to attorneys who are in good standing with the firm upon request to the appropriate department chair or firm decision-maker.

C. Effect on Benefits

The attorney will receive the same benefits she or he would have received if working full-time.

D. Discretionary Extension

1. *Time:* The length of the unpaid family care leave may be extended beyond twelve weeks at the discretion of the managing committee [or other appropriate decision-maker] of the firm.

2. *Reason:* Unpaid family care leave may also be granted for other difficult family situations needing the attention of the attorney at the discretion of the managing committee [or other appropriate decision-maker] of the firm.

E. Effect on Partnership or Promotion

The use of one twelve-week family care leave shall have no effect on the partnership or other promotional determination or its timing.

COMMENTS

1. *Eligibility*

Unpaid family care leaves are available to all men and women attorneys. This provision recognizes that newborn infant care is not the only family responsibility that attorneys have. An older child may be ill or handicapped. A seriously ill parent or spouse may require the care of the attorney, as may other family emergencies and difficulties. The attorney may have a serious health problem that requires an extended leave. Attorneys need the flexibility to be able to handle these family problems.

¹ This sample policy was copied from the Philadelphia Bar Association's Model Policies. See http://www.philabar.org/member/governance/mp_parent3.asp (accessed September 14, 2005).

The Family Medical Leave Act, 29 U.S.C.A. § 2601 *et seq.* (the “FMLA”) requires employers with more than 50 employees to grant 12 weeks of leave in any 12-month period to an employee (1) to care for a spouse, son, daughter or parent with a serious health condition, or (2) because of a serious health condition of the employee.

The FMLA requirements apply only to an employee with one year and 1250 hours of service. Such a limitation is not recommended in the model policy. Firms that do opt to use a minimum employment period may want to leave it flexible. For example, one organization with a leave of absence policy provides that “normally” employees with less than one year of service are not eligible for family care leaves. Such phrasing of the policy allows the firm to extend the leave to employees with less than one year of service in appropriate circumstances.

2. *Effect on Benefits*

It is crucial to the welfare of families that health insurance benefits be in effect at all times. This policy provides that all benefits continue in effect during a twelve-week (or less) leave. If the firm in its discretion allows a longer leave, health insurance benefits should remain in effect at all times. Some firms may find it necessary to require employee payment of the required premiums if the extended leave is for a long period of time. If this is necessary the firm should take all reasonable measures to insure that no lapse of coverage occurs.

The FMLA requires the employer to maintain eligibility for coverage under any “group health plan” during the employee’s FMLA leave. The taking of leave shall not result in the loss of any employment benefit accrued prior to the leave. 29 U.S.C.A. § 2614(a)(2) and (c)(1).

3. *Notice*

Some firms may choose to add a requirement that employees give advance notice of a leave. The FMLA requires that at least 30 days notice shall be given for leave which is foreseeable based on an expected birth or placement or “such notice as is practicable.” 29 U.S.C.A. § 2612(e).

The firm may wish to require the attorney to prepare, when practicable, a “departure memorandum,” which outlines the attorney’s ongoing responsibilities and a plan for meeting those responsibilities during the attorney’s leave.

4. *Return to Work and Reinstatement*

The policy contains no provision regarding the circumstances of the return to work of the attorney. It assumes reinstatement to former position upon return to work. The FMLA requires that employees returning from FMLA leave be restored to their position, or its equivalent, upon return from leave. 29 U.S.C.A. § 2614(a). Such “restoration” may be denied under certain economic circumstances, and as to employees who are among the highest-paid 10 percent of employees. 29 U.S.C.A. § 2614(b).

Some firms may opt to make the right to take leave contingent upon the attorney's advising the firm in advance that she or he intends to return to work on a full or part-time basis upon the completion of the leave. If so, the firm should include that requirement in its written policy and the requirement should be discussed with the attorney before the leave is begun.

Some organizations, especially those with highly structured departments, may also prefer to include a provision stating whether the attorney, upon return to work, will be placed in the same or an equivalent position. In no circumstances, however, may the use of the leave be the basis for demotion or other retaliatory work action.

5. *Application to Attorneys with Alternative Work Arrangements*

A firm may opt to include a provision indicating the circumstances in which family care leave applies to attorneys with pre-existing alternative work arrangements. The FMLA does not provide for a "reduced leave schedule" for family leave unless the employee and the employer so agree. 28 U.S.C.A. § 2612(b).

Alternative Work Arrangements¹

A. Simple Policy

Policy on Alternative Work Arrangements

(Firm/employer) recognizes that, in today's working and living environment, lawyers may have need to seek more flexible working arrangements for some period of time during their professional lives.

(Firm/employer) is committed to making reasonable efforts to accommodate a lawyer's request for an alternative work arrangement, assuming the arrangement (1) meets the legitimate needs and interests of the individual lawyer; (2) does not diminish or interfere with (firm/employer's) primary obligation to provide client service; (3) does not unfairly burden other lawyers in the (firm/employer); (4) permits the continued professional growth and development of the lawyer; and (5) is economically feasible.

Any lawyer who feels the need to explore the possibility of an alternative work schedule is encouraged to contact (designated individual) directly, or any other member of management. They will facilitate the process of discussing alternative work schedules with the lawyer, examining the feasibility and circumstances of such an alternative schedule, and working with the lawyer to reach conclusions concerning any arrangement determined by both the lawyer and (firm/employer) to be acceptable.

B. Sample Generic Policy: Child-Rearing

Policy on Alternative Work Arrangements for Child-Rearing Purposes

(Firm/employer) recognizes that an attorney should be permitted to work a flexible or reduced work schedule for reasons related to child-rearing. Alternative scheduling opportunities for child-rearing purposes promote the continued participation in the working life of (firm/employer) of attorney with significant responsibility for the care of natural, adopted or foster children. Additionally, alternative scheduling opportunities benefit both (firm/employer) and its clients by facilitating the recruitment of qualified and representative new attorneys and the retention of experienced attorneys.

(Firm/employer) expects that an attorney working an alternative work schedule will be flexible in his or her hours so as to provide quality and timely services to clients consistent with the area of practice and level of responsibility of the attorney involved. The attorney working an alternative work schedule recognizes that (firm/employer's) standard of professionalism and client loyalty must be maintained.

Various flexible work schedules can be developed to meet the varied requirements of different practice settings and different situations. The attorney and his or her supervisor should feel free

¹ This sample policy was copied from the Task Force on Women in the Law of the Indiana State Bar Association and was adopted by the ISBA House of Delegates on Oct. 20, 1994. See <http://womenlaw.stanford.edu/indiana.model.html> (accessed July 11, 2005).

to create the most mutually advantageous arrangement possible. The attorney should continue to perform work commensurate with her or his experience and skills. Competent and efficient performance of the appropriate level of work are to be maintained.

The following are examples of alternative work schedules:

Flextime - *The attorney continues to work a full-time schedule, but has some flexibility to choose when to fulfill work obligations.*

Part Time - *The attorney works a reduced schedule.*

Job Sharing - *Two part-time attorneys share one full-time position.*

Remote Work - *The attorney has the option to work at home or in another off-site work setting. The attorney will be linked to the office by telephone and/or by computers, facsimile machines and voice mail.*

Where it is feasible, (firm/employer) welcomes proposals for sharing of offices, secretaries, workload, and any other ideas for making the alternative work arrangement mutually effective.

An attorney may apply for an alternative work schedule for child-rearing purposes. Requests for alternative work schedules for reasons other than child-rearing will be considered on a case-by-case basis.

An attorney requesting an alternative work schedule should submit a proposal to (designated individual) as much in advance as possible. Requests for alternative scheduling arrangements related to child-rearing generally will be granted if the attorney is in good standing, if the request reasonably can be accommodated by the work area which directly is affected, and if the attorney and (firm/employer) mutually agree on the terms of employment applicable during the alternative work arrangement.

Compensation of an attorney on a reduced schedule for child-rearing generally will be paid on a mutually agreed basis, with reference to the number of hours expected to be worked by the attorney during the alternative work schedule as compared to the number of hours that the lawyer would be expected to work if working full-time.

The attorney will receive health insurance coverage while on an alternative work schedule. The attorney may be required to contribute to the cost of coverage. All other benefits (including vacation and sick leave) will be provided on a mutually agreed basis.

Working an alternative work schedule generally will not affect the basic eligibility of the attorney to be considered for promotion, although the attorney must recognize that the alternative arrangement may increase the amount of time necessary to acquire the amount, duration and quality of experience needed for progression, due to the reduced level of time committed to the practice during the arrangement.

Each alternative work schedule arrangement will be reviewed and evaluated periodically (initially, semi-annually) and may be evaluated more frequently as needed. At this time consideration may be given, if necessary, to appropriate adjustments to continue the arrangement on a mutually satisfactory basis.

C. Sample Detailed Policy: Multi-Purpose

Policy on Alternative Work Arrangements

Preface

The kind of alternative work arrangement described in this policy is intended as an accommodation to a lawyer who needs to work for a time at a lightly slower pace. Any lawyer who has a different need or goal than described in this policy and wishes to discuss other kinds of alternative work arrangements should contact the appropriate liaison.

Introduction

(Firm/employer) recognizes that some lawyers may request to reduce the amount of time devoted to the practice for a period in their professional lives. (Firm/employer) is committed to making reasonable efforts to accommodate a lawyer's request for an alternative work arrangement so long as such an arrangement (1) meets the legitimate needs and interests of the individual lawyers; (2) is consistent with (firm/employer's) primary obligation to client service; (3) does not unfairly burden other lawyers; (4) permits the continued professional growth and development of the lawyer; and (5) is economically feasible.

The kind of alternative work arrangement described in this policy is designed for a lawyer who wishes to experience the full range of opportunities and to develop professionally, albeit over a longer period of time than his or her contemporaries.

Various flexible work schedules can be developed to meet the varied requirements of different practice settings and different situations. The attorney and his or her supervisor should feel free to create the most mutually advantageous arrangement possible. The attorney should continue to perform work commensurate with her or his experience and skills. Competent and efficient performance of the appropriate level of work are to be maintained.

The following are examples of alternative work schedules:

Flextime - *The attorney continues to work a full-time schedule, but has some flexibility to choose when to fulfill work obligations.*

Part Time - *The attorney works a reduced schedule.*

Job Sharing - *Two part-time attorneys share one full-time position.*

Remote Work - *The attorney has the option to work at home or in another off-site work setting. The attorney will be linked to the office by telephone and/or computers, facsimile machines and voice mail.*

Where it is feasible, (firm/employer) welcomes proposals for sharing of offices, secretaries, workload and any other ideas for making the alternative work arrangement mutually effective.

Commitments Made By the Lawyer Who Has an Alternative Work Arrangement

The lawyer who has such an alternative work arrangement makes the same commitments as do other lawyers but at a reduced level with respect to time. Specifically:

- . The lawyer commits to a time spent on task goal that is a percentage of the goal expected of all lawyers. This goal needs to be set at a level that allows the lawyer to continue to grow professionally and to be a significant contributor.
- . The lawyer commits to be sufficiently flexible in his or her schedule to accommodate client and colleague emergencies, concentrated periods of work, travel, externally scheduled commitments, and other inflexible practice demands. Availability on a flexible basis is crucial to a lawyer's ability to take on work that will result in professional growth and lead to increasing responsibility.
- . The lawyer commits to maintain regular and predictable core working hours when others can count on finding him or her in the office.
- . The lawyer commits to remain in close contact with the office and to be available on a reasonable basis during time not at work.

Commitments Made By (Firm/Employer)

- . (Firm/employer) commits to make good faith efforts to regulate overall workload so that the lawyer can maintain his or her annual time commitment at the desired level.
- . (Firm/employer) commits that other lawyers will make good faith efforts to schedule planned work and planned meetings for the lawyer's core working hours and will not consistently expect or require the lawyer to perform non- emergency work during off hours.
- . To the extent permitted by the flexibility of the alternative arrangement, (firm/employer) commits to offer a lawyer with an alternative work arrangement an opportunity to handle the same sort of challenging work and opportunities to grow professionally as are offered to other lawyers of commensurate experience.
- . (Firm/employer) commits to evaluate the performance and progress of the lawyer with an alternative work arrangement based on the same criteria as are applied to all other lawyers but with quantitative expectations conducted in accordance with the lawyer's reduced time commitment, if any.

Procedure

A lawyer with a request for this kind of alternative work arrangement should go to (designated individual), who will serve as a liaison to help the requesting lawyer and those with whom he or she works attempt to formulate an arrangement that works for everyone involved.

The liaison will first help the lawyer articulate a specific description of the arrangement requested, including time management and goal, core working hours, term of the arrangement, and any other details concerning what the lawyer plans to do to assure that his or her responsibilities to clients and to (firm/employer) will be met.

The liaison will work with the lawyer and other lawyers who would be affected by the arrangement with the goal of formulating an arrangement that (a) accommodates the lawyer's requirements; (b) is consistent with client service obligations; (c) does not unfairly burden other lawyers; and (d) permits the lawyer's continued professional growth and development. Where the parties can work out an arrangement that satisfies those criteria, and the particulars of any such arrangement, will spend on a variety of circumstances, including the lawyer's area of responsibility and experience level, staffing levels and workloads, and the lawyer's specific requirements for the arrangement.

If the lawyer and other lawyers affected are able to formulate an arrangement that they believe satisfies the four criteria above, the liaison will present the proposal to management, which will (a) determine the compensation level at which the lawyer should be paid during the alternative work arrangement to assure that the arrangement is economically feasible and (b) satisfy itself that the proposed arrangement satisfies the other criteria. All alternative work arrangements must be approved by management.

Guidelines

Eligibility: Any lawyer who has been employed at (firm/employer) for (period of years) is eligible to request an alternative work arrangement. (Firm/employer) believes that the success of an alternative work arrangement depends on the lawyer's bringing to it a solid foundation of professional training and successful practice experience.

Term: There is no maximum or minimum period during which a lawyer may work under an alternative work arrangement; however, such arrangement is not intended to be permanent.

Benefits: (Firm/employer) will continue to provide a benefits package while the alternative work arrangement is in effect. The benefits package shall be agreed upon by (firm/employer) and employee.

Salary: A lawyer's salary while he or she is working pursuant to an alternative work arrangement will be determined on an annual basis by management, which will consider such factors as the amount of time committed to the practice, the lawyer's length of service, and the demands of the practice. A lawyer's compensation may not be as great a percentage of a standard salary as the percentage his or her time goal bears to the standard time commitment. An alternative work

arrangement may require allowance for such costs as full fringe benefits, fixed overhead costs and full-time secretarial services in order to be economically feasible.

Career Progression: Because a lawyer's professional development bears a relationship to the amount of his or her experience in the practice, an alternative work arrangement, with its reduction in the amount of the lawyer's experience, may be expected to delay a lawyer's career progression. Management has the discretion to determine that a lawyer's reduced workload over a short time has not materially affected the cumulative amount of his or her professional experience.

Review: The alternative work arrangement will be evaluated annually to see if it is working for the lawyer and for (firm/employer). Based on that evaluation, the arrangement can be continued, modified or terminated. The lawyer, his or her supervisor and the liaison are expected to meet periodically to review how the arrangement is working and to agree upon such adjustments as are necessary to address problems or improve the arrangement.

Long-Term Employee Recognition Policy

3.15 Long-Term Employee Recognition

All employees who complete seven years of continuous employment with the Firm (“eligible employees”) shall receive the following benefit in recognition of their service to the Firm:

One week of paid bonus vacation will be granted, in addition to vacation benefits otherwise earned, during the anniversary year immediately following the completion of seven years of continuous service. In addition, eligible employees shall receive the sum of \$1,000, less applicable tax withholding, on the pay day immediately preceding the use of the bonus vacation week (the “seven year benefit”).

Employees will be credited for their years of continuous service prior to January 1, 1996; provided, however, that employees who have completed more than fourteen years of continuous employment prior to January 1, 1996, will receive the following alternative benefit in their present anniversary year:

One week of paid bonus vacation will be granted, in addition to vacation benefits otherwise earned, during the employee’s present anniversary year. In addition, eligible employees shall receive the sum of \$2,000, less applicable tax withholding, on the pay day immediately preceding the use of the bonus vacation week (the “alternative benefit”).

An employee who has completed more than seven, but less than fourteen years of continuous service prior to January 1, 1996, may elect to take the seven year benefit in the employee’s present anniversary year, or take the alternative benefit when the employee has completed fourteen years of continuous service. Employees who have not completed seven years of continuous service prior to January 1, 1996, are not eligible to receive the alternative benefit.

Beginning in the anniversary year that any employee receives the benefit (or the alternative benefits, as applicable) described in this policy, that employee’s years of continuous service will begin to accrue again for the purpose of receiving subsequent benefits under this policy. As used in this policy, the term “continuous service” means that an employee has remained on the Firm’s payroll without a break in service. A leave of absence taken under state or federal law shall not be deemed a break in service under this policy.

This policy does not apply to attorneys or to the Firm’s Office Administrator. The Office Administrator must approve the scheduling of the bonus vacation week. This policy may be revoked or altered at any time by the Firm. Upon termination of employment, there will be no payment for unused benefits under this policy.

Long-Term Employee Recognition
(Office Administrator Only)

An employee of the P.C. who completes ten years of continuous employment in the capacity of "Office Administrator" shall receive four weeks of paid bonus vacation ("bonus vacation"), in addition to vacation benefits otherwise earned ("regular vacation"). This benefit shall be used during the anniversary year immediately following the completion of ten years of continuous service. It may be used in conjunction with no more than two weeks of regular vacation, unless otherwise approved by the P.C.'s president. The P.C.'s president shall approve the scheduling of any remaining regular vacation available to the Office Administrator during that year.

Beginning in the anniversary year that the Office Administrator receives this benefit, the Office Administrator's years of continuous service will begin to accrue again for the purpose of receiving subsequent benefits under this policy. After the first bonus vacation benefit is taken, the Office Administrator shall receive this bonus vacation benefit every sixth year of continuous service thereafter. As used in this policy, the term "continuous service" means that the Office Administrator has remained on the P.C.'s payroll without a break in service. A leave of absence taken under state or federal law shall not be a break in service under this policy.

Under this policy, since [insert name of Office Administrator here] received her first bonus vacation benefit in 1996, her next bonus vacation benefit will become available in 2002, provided she meets the criteria hereunder and subject to the last paragraph hereof.

This policy may be revoked or altered at any time by the P.C. Upon termination of employment, there will be no payment for unused benefits under this policy.