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Five Million Dollar Settlement for Discriminatory Parental Leave Policy

On the heels of Estee Lauder's \$1.1 million settlement of an Equal Employment Opportunity Commission lawsuit alleging discriminatory parental leave policies, JP Morgan recently agreed to pay \$5 million to settle a class-action parental leave lawsuit brought by the American Civil Liberties Union (ACLU) and a male employee.

JP Morgan has a parental leave policy which provides 16 weeks of parental leave for the baby's "primary" caregiver and two weeks for a "secondary" caregiver. In the lawsuit, a male employee alleged that although the policy is neutral on its face, in practice, the company discriminated against fathers based on gender stereotypes by giving mothers more parental leave. In particular, the male employee claimed that he requested 16 weeks of parental leave as the primary caregiver, but the bank told him that it considered birth mothers to be the primary caregiver and that he could only take primary caregiver leave if he could prove his spouse was back at work or medically incapable of caring for the child.

Title VII of the Civil Rights Act of 1964 prohibits different treatment of men and women on the basis of gender stereotypes. The EEOC has issued guidance on parental leave policies providing that while an employer can treat men and women differently based on physical limitations on women due to pregnancy or birth, it cannot treat men and women differently with respect to child-bonding leave.

In addition to the \$5 million settlement payment, the bank agreed to revise its bifurcated parental leave policy to clarify that both men and women can obtain primary caregiver leave. JP Morgan also agreed to train its human resource department on gender neutral application of the parental leave policy.

These cases are good reminders for employers regarding Title VII's applicability to parental leave policies. Employers that utilize parental leave policies that provide differing amounts of leave based on "primary" and "secondary" caregiver status must remember that such policies must be both written and applied on a gender neutral basis. A properly written policy will not protect an employer who applies the policy in discriminatory ways.

Please visit www.moreton.com/news-events/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company's in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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