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Labor and Employment Alert: Recent Settlement Highlights Importance of Gender-Neutral Application of Parental Leave Policies

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CLIENT ALERT | 6.10.2019

On May 30, 2019, JPMorgan Chase agreed to pay \$5 million to settle a class action lawsuit brought by male employees who requested paternity leave under company policy and were granted less leave than their female counterparts. The case, which was filed in federal court in the Southern District of Ohio, is believed to be the largest settlement ever recorded in a U.S. parental leave discrimination lawsuit.

The United States has no laws at the federal level that guarantee paid parental leave to workers after they have a new child. Nevertheless, some employers offer paid parental leave policies as a matter of company policy. In this case, the company offered “primary caregivers” 16 weeks of paid parental leave and offered “non-primary caregivers” two weeks of paid parental leave. The policy itself did not include any gender-specific terminology regarding who qualified for primary and non-primary caregiver status. Although the company’s policy was gender-neutral on its face, problems arose with how the company put the policy into practice.

The plaintiff in the lawsuit was a financial crimes investigator. After his child was born in May 2017, he requested 16 weeks of paid parental leave as a primary caregiver. The company denied his request, and allegedly informed him of the informal “policy” that restricted fathers’ eligibility to be primary caregivers. The plaintiff could not demonstrate that his wife had returned to work, however, because she was a teacher and had the summer off. Shortly after his request was denied for the full parental leave, the plaintiff filed a discrimination charge with the EEOC. He alleged that the company only treated fathers as primary caregivers if they could demonstrate that their spouse or domestic partner had either returned to work or was medically incapable of any childcare, whereas mothers were always considered primary caregivers.

The company did eventually grant the plaintiff the full 16 weeks of primary caregiver parental leave under its policy, and then clarified its policy to ensure equal access to all employees seeking to serve as the primary caregiver to their new child, regardless of gender. By that point, however, the plaintiff had retained an attorney and proceeded to

file the nationwide class action lawsuit at issue here.

The lesson here is straightforward: if employers are going to offer paid parental leave, simply having gender-neutral terminology in the formal policy document may be insufficient to prevent claims of gender-based discrimination. Employers need to consider how these policies are put into practice and whether employees' gender plays a part in how much paid leave the employees actually receive.

Contact your Vorys lawyer if you have questions about your company's parental leave or other leave policies.