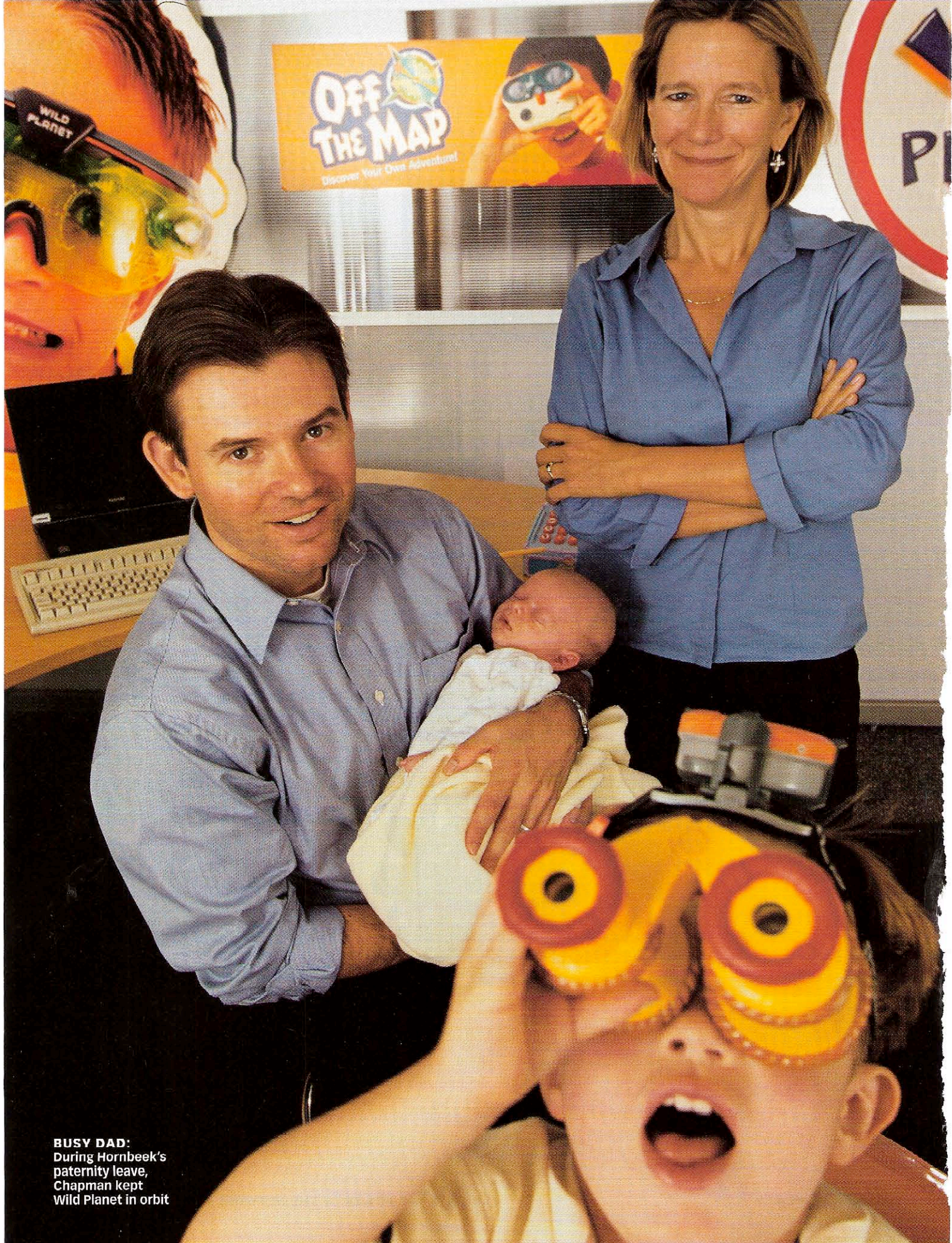


AND THEY'RE OFF

BY JILL HAMBURG COPLAN

As laws mandating family leave appear, it's time to work out a policy that's fair, clear, and easy to implement

A NEW CALIFORNIA LAW is giving some entrepreneurs an early Halloween scare. The California Family Rights Act went into effect this summer, making workers at companies large and small eligible for six weeks of partially paid family leave. The leaves will be funded by an employee payroll deduction, expected to average \$27 per worker per year, that will go into a fund similar to the one used for unemployment insurance. The law isn't a mandate for all companies: Businesses with fewer than 50 employees don't have to hold a leave-taker's job open, and managers can deny an employee's request for leave. ¶ Still, many see the law's passage in California—home to one-tenth of the nation's workforce—as a watershed. “My strong feeling is that paid leave will begin to spread state by state the way unpaid leave did in the mid-1980s,” says Ellen Galinsky, head of the Families & Work Institute, a New York



BUSY DAD:
During Hornbeek's
paternity leave,
Chapman kept
Wild Planet in orbit

think tank. Indeed, laws similar to California's are now pending in no fewer than 28 states.

But the groundswell of support for paid leave isn't as frightening as it may first appear. "There are a lot of myths, such as that workers are going to abuse leaves or that they'll take all 12 weeks if you provide that," says Ann Bookman, director of the Workplace Center at Massachusetts Institute of Technology's Sloan School of Management. Although the national Family & Medical Leave Act (FMLA) requires companies with 50 or more employees to offer 12 weeks of unpaid leave, Labor Dept. statistics show that the average leave is only 10 days.

While opponents decry mandated leave as costly and harmful to productivity, the evidence is mixed. In both 1996 and 2001, a bipartisan congressional committee found that 90% of companies subject to the FMLA experienced no impact on productivity, growth, or revenues. However, intermittent leaves—the on-and-off absences that can accompany a serious employee illness—hurt productivity in 19% of cases. "When somebody leaves a small office, you end up with an intelligence gap," says Vincent Mudd, owner of 39-person San Diego Office Interiors, with \$15 million in annual sales. "If someone doing two jobs starts doing four, they'll be less effective."

Leave-taking doesn't have to cripple your company. The key is to manage leaves effectively. And whether or not mandatory paid leave soon spreads to your state, employee absences are inevitable. An estimated 1 in 10 workers will need to take leave this year, says economist Vicky Lovell at the Institute for Women's Policy Research in Washington. It's a necessity, then, for business owners to prepare for them.

First, entrepreneurs need to make sure the benefits they offer comply with federal and state laws. You can hire a lawyer for help here, but you might also consider other, cheaper alternatives (table, page 85). Then you need to decide if and when to go beyond those minimal requirements, and if so, how to preserve some flexibility if you are sometimes unable to be as generous as you would like.

All business owners, whether or not they try to go beyond the law, face similar difficulties in managing leaves: getting the work done while an employee is out, compensating those who have picked up the slack, and reassuring customers.

STAY FLEXIBLE

Wild Planet Toys, a 50-employee San Francisco maker of Aquapets and other playthings for kids and tweens, is adept at handling most unexpected employee absences. In August, the controller of the \$46 million company, Gary Hornbeek, was about to begin a two-week paternity leave

when his deputy—charged with handling Hornbeek's duties during his absence—gave notice. Suddenly the six-person finance department was down to four.

Chief Operating Officer Jennifer Chapman wasn't thrilled, but she wasn't blindsided, either. Chapman split Hornbeek's job in two, with big-money transactions going to the chief financial officer and smaller, day-to-day responsibilities for both missing employees taken over by a financial analyst in the group. Chapman also has a budget for temps, and often uses them to fill in for senior-level staff. "We have feelers out at all times, and we have people in mind," says Chapman. She makes sure employees who pick up extra work "never get a title such as 'interim controller'—that would cement the deal too much in their brain," she says. Instead, Wild Planet rewards employees who pitch in with year-end bonuses.

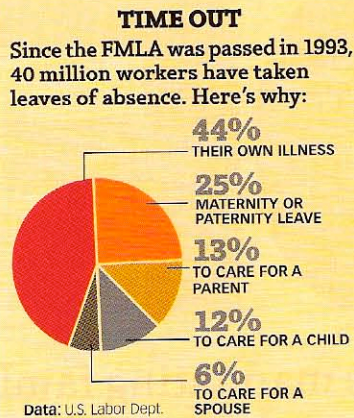
Hornbeek used his paid leave to spend time with his new baby and take his 3-year-old son to museums, a train park, and a San Francisco Giants game. He's grateful that his employer recognizes the value of time spent with his family. "I talk to headhunters on a regular

basis, and without a doubt, the family-friendliness of Wild Planet makes it difficult to leave," says Hornbeek.

To design a policy that will support your employees yet keep your business running smoothly, see if you can survey employees anonymously about their needs for family and medical leave. Ask such questions as: "In the past year, how much time would you have needed, and for what?" You'll also need to decide which factors to take into account when granting leaves—the nature of the job, the employee's tenure, and maybe the employee's performance over a certain period of time. Then do some experimenting. Allow staff to use half their paid sick days for family care or donate sick days to co-workers, and see if the changes affect absenteeism. Once you arrive at a policy, be sure to communicate it clearly to staff. It should be spelled out in an employee handbook and explained to every employee who requests a leave or even calls from the hospital in an emergency.

Jeff Koeze, a former law professor and CEO of Koeze Co., a \$10 million Grand Rapids (Mich.) candymaker, advises other entrepreneurs to build in plenty of leeway. "The primary imperative is to preserve as much flexibility as possible," he says. "You don't know until it comes."

In Koeze's case, "it" came in spades. In 2002, a 13-year veteran of his 33-person company was diagnosed with lung cancer. The fiftysomething clerical worker took the unpaid leave she was allowed under the FMLA. (During holiday season, Koeze often has more than 50 employees.) She also took six weeks of short-term disability leave. The



ADVICE from The Pros

For assistance with state and federal laws, get in touch with:

U.S. LABOR DEPT.
(866) 4USWAGE
www.dolgov/esa/whd/

Free telephone consultations.
Download an Employment Law Guide from its Web site

ALLIANCE OF WORK/LIFE PROFESSIONALS
(480) 922-2007
www.awlp.org

Information on work/life policies; access to a list of groups that help small businesses set leave policies

CALIFORNIA EMPLOYMENT DEVELOPMENT DEPT.
www.edd.ca.gov

Info on California's paid-leave law

FMLA TECHNICAL CORRECTIONS COALITION
(703) 256-0829

Information on the Family & Medical Leave Act and proposed legislative updates



company generally provides partial salary for up to 26 weeks of such leave, but Koeze paid her in full while she was out. The employee returned to work, seemingly cured. Three months later, she had a seizure at her desk. The cancer had spread to her brain.

In the three months that followed—until the woman announced she wasn't coming back—Koeze kept her on as an employee at partial pay. After she left, Koeze had to remove her from his health plan but still picked up her health insurance premium. He admits that such generosity makes his company more vulnerable to employee demands and, potentially, lawsuits. "It's almost never in an employee's interest to share negative health information. They're afraid it can and will be used against them," says Koeze. "But our attitude is that it's not all about reducing our liability risk. It's in our most craven self-interest to keep good employees around and let them know that if we can help them out, we will."

Still, that has to be done carefully. A worker who receives a less generous leave than another may claim the decision was the result of racial, gender, age, or other discrimination. So as cases arise, it's important to document the

criteria used to make decisions regarding leave, including the employee's job, title, tenure, and performance. If, for instance, you hold a worker's job open for six months, explain your reasoning—whether it is in recognition of 15-years of valuable service to the company or that the company is in a strong financial position at the time and can handle it. That will protect you later if a two-year veteran with a spotty record complains when you offer less.

Helping an employee who needs to take a leave is one side of the management coin. The other is handling the rest of the staff—and your customers. Steve Grossman, owner of MassEnvelopePlus in Somerville, Mass., ran for governor of Massachusetts in 2002, so he knows the importance of pleasing multiple constituencies. When employees at his \$28 million, 85-person printing and graphics company need to take leave, Grossman does a lot of handholding. He begins with his company's managers, then talks to the employees who will be affected. Next, he brings customers into the loop. "I call key customers and say: 'It'll be a little hot and heavy, but if there are any issues, here's my e-mail, here's my cell number. Let me know anything you want me

to do.' If you approach it that way, there's rarely damage," says Grossman. It's also smart to make a practice of introducing new clients to several employees, so they will feel more comfortable calling someone else if their usual contact is on leave.

Leveling with customers, as far in advance of an employee absence as possible, can actually enhance a company's image. "Customers look at you differently," says Grossman. "They see a company that really cares for its colleagues, that's not just out for the bottom line. People like doing business with a company that has good values." In recent years, Grossman has given six months' leave—four paid in full—to a sales manager who adopted two children, three weeks' paid paternity leave to an art director, and four months' paid leave to Chrissy Considine, a project manager who suffered a brain aneurysm.

CROSS-TRAIN

Perhaps the toughest managerial challenge is coping with the uncertainty some leaves bring. When his clerical worker was being treated for cancer, Koeze didn't know when or if she would return. He resisted hiring until the sick employee announced she wasn't coming back. "My philosophy is to keep my options open as long as I can," says Koeze.

Even so, leaving a post open—especially one at the heart of a company's business—is an option only if other staff is able to fill in. That's why Sandy Maine is committed to cross-training the 14 employees of her Sun Feather Natural Soap Co., a \$1 million company in Potsdam, N.Y. Every job is documented in a manual, and the company's manufacturing, marketing, retail, and clerical procedures are well understood by employees at all levels.

Employees' ability to share duties also lets Maine offer an innovative leave policy. After a year with the company, employees begin collecting paid-time-off



FILLING IN: Maine trains workers to perform the jobs of those taking time off

coupons for up to five weeks a year of paid leave. Coupons are also given as bonuses and gifts. An employee may be rewarded for working extra hours to fill a big order or when filling in for an absent employee.

Maine feels the paid-time-off coupons and the cross-training strengthen the business overall. It worked in 1998, when the staff banded together to cover for a colleague who needed to take time off to get out of an abusive marriage. "People feel a sense of security and loyalty when a fellow worker has suffered through something and the company supported that person," says Maine. "They know they could be next." But Maine is quick to fire those who don't fit into her company's all-for-one-and-one-for-all mind-set.

At companies that go the extra mile to take care of workers, those who have been helped are of course the most appreciative. Now recovered from her 2001 aneurysm, MassEnvelope's Considine says: "I'm a hard worker anyways, but the comfort, the support, and security that was shown to me—I want to turn around and do even more because of that." While she was recovering, Considine's colleagues not only picked up the slack but also bought her kids' Christmas presents. "I have total dedication and devotion to this job," says Considine. For many employers, those words are worth the effort and expense of giving employees some extra time. ☐

What the Law Says

The "Bermuda Triangle" for employers

The overlap of the three main leave laws—the Family & Medical Leave Act, the Americans With Disabilities Act, and workers' compensation—is known as the Bermuda Triangle of employment law. Many states have their own versions of these laws, with varying definitions of illnesses warranting leave. A quick guide to the federal laws:

✱ The FMLA requires companies with 50 or more employees to provide up to 12 weeks unpaid leave a year. Leaves can be used after the birth of a child, to care for a family member with a serious health condition, or when illness makes it

impossible to work. They may be taken intermittently or all at once. An employee generally has the right to return to the same or an equivalent position, with the same benefits.

✱ The ADA requires businesses with 15 or more employees to provide "reasonable accommodation" to those with disabilities, including people recovering after a serious illness, as long as the accommodation doesn't impose an "undue hardship" on the business. That accommodation may mean allowing an employee to take unpaid leave.

✱ Workers' compensation laws cover employees whose conditions are the result of their work or who are injured on the job. If you have fewer than five employees, chances are you're not subject to workers' comp statutes, but that varies by state.