

# Fourth Trimester Podcast

## How to Maximize Maternity Leave & Paternity Benefits with MAMAttorney

### Daphne Delvaux

**Sarah Trott:** [00:00:05] My name is Sarah Trott. I'm a new mama to a baby girl and this podcast is all about postpartum care for the few months following birth, the time period also known as the Fourth Trimester. My postpartum doula, Esther Gallagher, is my co-host. She's a mother, grandmother, perinatal educator, birth and postpartum care provider. I've benefited hugely from her support. All parents can benefit from the wisdom and support that a postpartum Doula provides. Fourth trimester care is about the practical, emotional and social support parents and baby require, and importantly, helps set the tone for the lifelong journey of parenting.

When I first became pregnant, I had never heard of postpartum Doulas, let alone knew what they did. So much of the training and preparation that expecting parents do is focused on the birth and newborn care. Once a baby is born, often the first interaction parents have with medical or child professionals, other than the first pediatrician visits, is the six-week checkup with the OB/GYN. *What about caring for mama and family between the birth and the six week doctor visit? What are the strategies for taking care of the partner and the rest of the family while looking after your newborn?*

Our podcasts contain expert interviews with specialists from many fields to cover topics including postpartum doula practices, prenatal care, prenatal and postnatal yoga, parenting, breastfeeding, physical recovery from birth, nutrition, newborn care, midwifery, negotiating family visitation, and many more.

First-hand experience is shared through lots of stories from both new and seasoned parents. Hear what other parents are asking and what they have done in their own lives.

We reference other podcasts, internet resources and real-life experts who can help you on your own parenting journey. Visit us at <http://fourthtrimesterpodcast.com>

**Sarah Trott:** [00:00:01] Hi, this is Sarah Trott and welcome back to the Fourth Trimester Podcast. I'm here with a special guest today. Her name is Daphne Delvaux and I will introduce her in a moment. The topic that we're discussing today is all about maximizing your maternity, paternity, parental leave rights. To make sure that you know what you need to know so that you have the experience that you want. I was looking at some data and some stats in the US here we have about 40% or 2 in 5 people in the workforce have young children. And so that means a lot of us have a variety of opportunities as it relates to leave and workplace rights available to us.

And the data we *don't* have is what percentage of working parents actually had the experience they wanted and knew what their rights were and had the leave that they wanted if they knew everything that they should know. So, we want to make sure that you today, listeners, you're walking away from this in the camp of people who are educated, know what they need to know. At least know what you need to go find out later, even so, that you're in a strong position and to set yourself up for success. So that's what we're here to talk about today.

**Sarah Trott:** [00:01:25] I want to remind everyone, before we go any further, that we have a website which is [fourthtrimesterpodcast.com](http://fourthtrimesterpodcast.com). You can go there, sign up for our newsletter. You can also follow us on Instagram or anywhere that you like to engage with social media. And we encourage you to check out our resources section, where you can find lots of links to our deals and discounts, and our recommended resources that will help you have a well resourced fourth trimester.

**Sarah Trott:** [00:01:54] And so I want to introduce our guest, Daphne. So I'm really thrilled that she's here with us. She has spent her career helping people answer these questions around maximizing their leave benefits, and she is a mom herself. She has two kids, and she was inspired through her experience that she's going to talk to us about creating her own platform. It's called the MAMAttorney, and it's there to help provide information for folks to find out what they need to know in more depth for their locale.

And so she's also the founder of a law firm, Delvaux Law. It's the nation's first and only law firm devoted to women's rights at work. She's been an attorney for over ten years, and her focus is helping women and families understand and defend their rights in motherhood discrimination cases. And she also helps parents really think through what kind of leave and employment benefits they have access to through pregnancy and postpartum. So between being a parent, having her own law firm, often having educational content that's just creating and maintaining. She's really squarely in the best position to help us answer these questions and provide us with a guide today. So we're really honored to have you on the show today, Daphne, welcome!

**Daphne Delvaux:** [00:03:12] Thank you so much. What a beautiful introduction. It's very flattering.

**Sarah Trott:** [00:03:18] Well, we're really happy to have you here today. I'd love to hear an introduction for you in your own words.

**Daphne Delvaux:** [00:03:26] Well, I'm fiercely devoted to the protection of the children of America. I would say, and the mothers, because the mother, as a source of all life. And if we support the mother, we support the children, too. I take almost a level of personal offense when mothers are expected to rush back to work after they've just had a baby. I take personal offense in the sense that, you know, we are all one, we are all one's babies, and people have seemed to have forgotten that.

And so it's really important to me that we do better. We do better with the resources that we have and that we support mothers as the life creators that they are. And I do that by using the tool of the law. The law is a very powerful tool. Mothers often assume they have no rights or that the law does not have their back. And truly, my micro revolution is to remind mothers that they do have rights. Now things would get better. They can always get better. But what I don't want to do as a mother and a lawyer who focuses on maternal rights is come to these issues from a place of hopelessness.

**Daphne Delvaux:** [00:04:40] And I find that there is a pervasive sense of hopelessness when it comes to motherhood and our rights and motherhood and our rights in America,

which often leads us to just kind of give up. And that either looks like quitting or just kind of going back to work when you're still bleeding, when often there's a lot of options we haven't really looked into because no one's told us about them or we feel too scared. And that's kind of where I exist.

In that place of tension between your ambition, between your income, and between your baby's needs and your own needs. Because during that time, especially the fourth trimester, is when there are so many conflicting needs and it's like, where do I even start? So that's where I meet you in that place of tension of all right, let's actually create a plan. Let's create a plan. Let's look at all of your needs, all of these competing interests, and let's do something that makes sense for you, something that you won't regret.

**Sarah Trott:** [00:05:35] Yeah. That's so interesting that you talk about the tensions. What are some of the things that you hear people saying when they come to you for help?

**Daphne Delvaux:** [00:05:42] Well, they have to put food on the table, so they can't afford to lose their jobs. They have to provide in the most literal sense, financially also because usually they just had a baby or they're pregnant. They need health care. The healthcare is tied to the job. So there's already this sense of complete imbalance of power. Feeling like you're tethered to your employer and that they have a lot more power over you, because it's also a really vulnerable time to try to look for another job when you're pregnant or you're postpartum.

So there's a sense of increased fear, I would say of 'I can't lose my job. I'm scared to lose my job'. But when you are in a position of fear towards your employer, you tend to ignore your own needs. You tend to not ask for what you want. You tend to not want to rock the boat, but then you at the same time have either your pregnancy or your postpartum. You have a baby. So on the home front you have this avalanche of needs. Your own body, your new baby has a need for you to be there all the time. And then you sometimes have a partner or another child, so often kind of on both ends, you are pulled and you kind of go back and forth, and in the process you ignore your own needs.

**Daphne Delvaux:** [00:07:00] So there's just this complete aggregation of everyone's needs, and an activation of everything in your life is kind of on full force. It's like the heat is turned up on everything: family, body, work, money, partnership and it all is full of tension and confusion and complication. I just invite any woman who's in that place to take a breath and remind her that things will never be this hard. And also, there are things that we can do.

The best thing you can do for yourself and your family is actually really look at your rights, look at the options that you have before you are in the fourth trimester. So actually quite early on, but even if you are in that position when you're postpartum, just know that there's a few things you can do. There's just things that no one's told you about. I mean, that's what I keep seeing over and over again.

That's kind of the constant theme because we assume we have no power, we have no options, and we should just do what our employer tells us. We don't really look into anything further because our employers aren't really going to tell us either. Often they don't know or they don't want you to know. So we do have to take it on ourselves to protect our own careers and to protect our time with our baby.

**Sarah Trott:** [00:08:24] Yeah. Information is power. And and what you're saying actually is a fairly consistent theme with other topics we've discussed, not necessarily the laws and rights around maternity and paternity leave, but just around being proactive and understanding what information is out there and what decisions and choices you have, like medically, also when you're going through pregnancy and postpartum. Right. Just because a doctor says something, right, it doesn't mean you can't get a second opinion. And you know, you have the right to advocate for yourself in so many areas of your life. So I appreciate that point that you're making there.

**Daphne Delvaux:** [00:08:56] Yeah. I see a lot of mothers make a birth plan. Right? But we have to make a postpartum plan, too, for our workplace, and we have to make a return to work plan. So it's vital that we know what to expect and just all the ways that it

can go wrong, because that when you know that it's actually much more likely that it will go right, because you're prepared and you know what to say and you know what to do.

**Sarah Trott:** [00:09:23] Love that. By the way, a small side note: we have a birth plan template on our website that you can download, so I'll link to it in the show notes. But also we call it a birth intentions document because sometimes don't things don't exactly go to plan. And that's such a good psychological point to make going into it.

**Daphne Delvaux:** [00:09:44] Yeah. My birth plan was easily tossed aside when I absolutely like there was only the plan to surrender eventually that I was kind of dragged into. So I love that reframe because it could have made, I mean, for me coming out of that, just like, all right, I did meet the intention. That's a lot easier to digest than I did meet the plan. So that's so good.

**Sarah Trott:** [00:10:08] Yeah, it kind of takes the pressure off. Or that feeling of failure afterwards. You're like, no, no, no, actually, I left room for change. Right. But tell me more. like, we would love to hear more about your own fourth trimester experience.

**Daphne Delvaux:** [00:10:19] Oh, well, so I had two children. the first one, I. Yeah, I did all the things, like, I did all the so many birth classes, and I studied from birth, like I study for the bar exam, which.

**Sarah Trott:** [00:10:37] Why am I not surprised?

**Daphne Delvaux:** [00:10:38] Yeah. And I thought I would just be, like, really good at birth. And then birth absolutely humbled me. It ended up being very medical, which I didn't want. And a lot of interventions and quite traumatic. And I hadn't really studied for a postpartum the way that I studied for birth. So, I suddenly found myself with this baby. And, I think what I had to learn more most is like, I actually can't study motherhood from a book like it is written on my bones. I need to just listen to myself and that I just was looking for answers outside of me, like with the hospital providers, with just different people.

And in the end had to tune out a lot of different voices, including relatives and family because I had struggled breastfeeding and it was really hard. So I ended up having to really focus on just like, all right, baby, let's do this. You and me. because I was so confused that I already felt like I was failing at breastfeeding, when I was like, this is what I'm going to do. And then the baby didn't want to latch. And so that I just remember feeling really confused about, like, hey, like, I was going to do this thing this way. And it didn't go that way. So it was incredibly humbling.

**Daphne Delvaux:** [00:12:01] And there was also a sense of strange freedom when I felt when I was postpartum, in a sense that I had a really, really heavy job as a trial lawyer. Very stressful. I was doing a lot of volunteer work so I was doing a lot of different things. And then suddenly I had this baby and I'm like, oh, I have this one project, and everyone's letting me focus on this one project. And even though it's not easy, it was very simple in a way of like, I have to take care of this baby, I'm gonna take care of this baby. So there was like a strange sense of liberation in, like, I'm going to go for a walk. I'm gonna, like, hang out with this baby.

And I hadn't even really gone for many walks because I was so busy working all those years. So there was also a beautiful seed of like, oh, I came fully alive in that first maternity leave. I think it kind of broke me open to the fullness of life and love. so that was really beautiful, but it was definitely a very humbling journey, which I think I needed, honestly, because I was so ambitious and dense in the working world. You know, like, I was really good at being good at work, and I wasn't very good at resting.

**Daphne Delvaux:** [00:13:18] I wasn't very good at being soft and vulnerable and tender. So that was the first maternity leave. And then actually after that baby I went back to being a trial lawyer and a litigator, but it always felt aggressive. It always felt overwhelming. And I started to kind of slowly shift my career. First I asked for flexibility, which helped a lot, and then I started to grow the mom attorney, really focusing on the other mothers. I loved that I was able to work with other moms because they understood my life. and then when I had my second baby, which was during the pandemic, that was actually quite a tough experience because at the time, I was a pro, so birth was different.

In fact, I gave birth in a car, and I really recommended in the sense that it happened so fast. It was a complete opposite. So I had one like very hard, long medical birth. And then I had one that just like just yeah, just came out really fast while I was in a moving vehicle. And he and that was a lot easier because I knew what to do. I trusted my body. By then, I stopped listening to people giving me wrong advice or unsolicited advice.

**Daphne Delvaux:** [00:14:32] But then I had because we were in lockdown, so I couldn't really do anything and leave much. And that was really hard. And then my boss at the time had an accident about like when I was about eight weeks postpartum and I was kind of the second in line. I was the most senior lawyer, so he was in the hospital, and I had to kind of rush back to work to attend to a few cases. And when you're a lawyer, like, you can't really ignore your work. so that was very frustrating because here I am, this, like, advocate for maximizing maternity leave.

That's kind of like going back to work early. And it was very hard for me to reconcile that. and I also felt like I didn't really have a choice, and there were just a lot of pending cases, and I was at such a senior level that I couldn't really delegate my work easily. so that was really tricky, that second maternity leave. And I ended up taking more time because I took intermittent time. So I ended up taking more time in the summer when my other child was home. So to kind of take a little bit more time, but I actually never was able to find my mojo again. So I ended up leaving that job to start my own job, start my own law firm pretty shortly after I had that second baby.

**Daphne Delvaux:** [00:15:49] And yeah, it's been a lot better ever since. Just having time, freedom, having full control. So I think each baby just kind of led me to different realizations and being fortified in different ways. And you know, motherhood has been the absolute best thing that's ever happened to my career. And that's kind of ironic because to most people, they assume motherhood will be the worst thing that will happen to your career. And my whole mission is to really center motherhood in the workplace and to celebrate it as a superpower. It is as a raw source of life force that, you know, fuels everything, all of humanity.



And to celebrate that in the workplace, too, because like, as a mother we're just really good at work, like, we're really good. And we get this, you know, like, kind of this, stereotype put on us that we're distracted and tired and overwhelmed, which at times can be true. But we're also so many other things like we're so creative, so caring, so non-judgmental, organized. We're able to work when we're tired. So it just unlocked a level of being a superpower, I would say. So yeah, that's a little bit of my experience.

**Sarah Trott:** [00:17:03] Thank you. There's so much richness in your answer, I appreciate that. Moms do have superpowers. I mean, any mom, any parent, I mean, we know how to delegate. We know how to get things done. If there's a deadline, it's done. There's no chit chatting or wasting time. If there's prioritization that has to happen in order to get other needs met, because it is a balancing act of competing priorities, because it's not just, you know, there's more to your career suddenly in life.

And that creates so many opportunities to learn more about oneself, like you talked about the transformative journey for you personally, right. And it also transformed your career. And I want to just appreciate some of the language you used because I really liked what you just said about you can't study motherhood in a book. It's written on your bones. That was so beautiful. Yeah, it's so true. It's in our bodies. It's in our soul.

**Daphne Delvaux:** [00:18:01] Yeah. In fact, I would read books written by men, like about baby sleep. And I mean, why? Like it's absurdity. yeah. Like, looking back on it, I was I was trying to study it. And I think it's also because we don't teach, we don't showcase motherhood in our culture. We don't celebrate it. You know, we want women to cover up while they're breastfeeding. We want them to be home with our newborns. We want them to hide all their paints. so we are not really models, you know, and shown how to mother. And we have, of course, our own experiences, but I just don't really see a lot of it in culture. Right. There's not a lot of movies about it, even though it's so universal. yeah. So yeah, I just remember feeling unprepared for it when I was pregnant. So I was like, all right, I'm just going to because that's what my brain does. It's when I freak out, it's like I'm going to study for it. And that didn't work. But it's also kind of through that process that I really learned to trust myself.

**Sarah Trott:** [00:19:07] Mhm. Self trust is incredibly important. We have episodes dedicated to that. So I'll link to that as well for anyone interested. And I appreciate the inclination to study and plan. I think we've said a few times on the show you're not going to know everything. You can't predict anything. It's really a set of intentions, but it is helpful and certainly for a lot of people, to reduce their anxiety, to gain information and know about some of the possibilities and topics that are likely to come up. So we do encourage you to do your planning ahead of time. And certainly this subject about maternity leave

**Daphne Delvaux:** [00:19:42] Maternity leave is not written on your bones.

**Sarah Trott:** [00:19:46] No, that's something squarely in the camp of, like, let's research a little bit ahead of time and put a plan there. Yeah.

**Daphne Delvaux:** [00:19:54] There's no instinct with maternity leave. It is just very a bunch of rules that sometimes make sense. Yeah. So that is something you absolutely have to study.

**Sarah Trott:** [00:20:04] Yeah. Especially in a system that's not designed with women and families in mind. In the US, I think we're really fighting for just whatever we can get.

**Daphne Delvaux:** [00:21:00] I want to pause here because this is a common narrative where I actually invite us to take a breath, because when we're looking at other countries and we're comparing the US to other countries the US maternity leave is decided at the state level. So, we actually have to compare states to states. So for example, in the state of California it is possible to have a year of paid leave. So when we speak about these issues, to me, it's so important that we talk about the success of the state programs. New Jersey has a good one. Massachusetts, California, Washington a few more so that we really kind of put in perspective that it actually does exist in America.

Of course, not every American mother has access to it, but millions of American mothers do. I also advocate for paid leave at the federal level. And I find this when we

compare the US to other countries the conversation often ends there, especially with lawmakers, because they're like, well, we're never going to be Sweden or France or any of the countries. But when we actually showcase evidence from the states, that's when we really get their interest of like, oh, this is actually already happening and we didn't know.

**Daphne Delvaux:** [00:22:15] So that's kind of one is that we don't want to compare the US to other countries. We want to compare the states to the states. Now, of course, we do need federal paid leave for everyone. But in the meantime, it is so essential that women who are in paid leave states know that they may actually have paid leave on the level of European countries, in fact more. California has one of the most generous systems in the whole world. It actually has, like, the top three most generous paternity leave. Like much better than most European countries.

Same with New Jersey, same with Massachusetts. So it's interesting to hear that the US actually does. Some states have better parental leave than most European countries because we don't tend to frame it in that way. But when we move down from the federal level and we look at the individual states, it does actually paint quite a different picture.

**Sarah Trott:** [00:23:17] Yeah, I appreciate that point. I would like it to be a little simpler. Those who live in California - lucky them. But that's not the majority of Americans right. So it really is a mixed picture.

**Daphne Delvaux:** [00:23:52] So this is the second issue is that when we look at maternity law, it's very barren generally on parental leave. But what I lean into with my moms is disability rights. So postpartum is covered by disability rights. And the US actually has an extremely robust disability law system. It's sometimes for mothers a little bit odd to consider themselves as disabled during the motherhood experience. But what legally disability means is that you have a limitation. You have a limitation that is impacting the way that you work. It's a very, very broad definition.

So that tends to cover any postpartum mother. So the disability system in the state of California allows mothers to take up to a year of disability leave under the state

program, the benefit program. So this is something that a lot of mothers I work with do. You do have to go through the process of first maximizing your leave - total is seven months, and then you have to extend it to a year. What I always do with the mothers I work with is use their disability rights, which tend to be a lot more generous than any kind of bonding benefits or bonding leave.

**Sarah Trott:** [00:25:08] That's a complex situation to navigate. And I appreciate the varying perspective on that because it is often just a comparison of US versus not or you know, I think California is an example I've heard often used. But talk to me more about the different kinds you just mentioned. Disability and bonding. Are those the two leave types?

**Daphne Delvaux:** [00:25:34] Yes. So there's two different types of leave after birth. So they don't call it maternity leave just to make it super easy for all of us. And yeah, I wish it was easier just kind of as a first, as a foundational issue. I could be doing a lot of things with my time if it would be a lot easier, like, I'd love to go take a salsa class or go jet skiing or something, but instead I have to like, figure out all of these complex systems.

And absolutely, it should be harmonized. It should be easier. But that is not how the federal government has looked at employment law historically. In fact, the way that the federal government is moving into now is actually deferring more and more to the states. So we should even see an untangling of some of these federal protections and a moving away of any sort of harmonization. So much of it is going to be depending on where you live. So, yes, a mother in California is going to have a very different experience as a mother in Alabama. And that is an absolute injustice.

**Daphne Delvaux:** [00:26:29] And it's very hard to meet the mothers where they are like, you're, you know, like, because what we have been doing is categorically saying Americans don't get paid leave, but then we are actually ignoring like it's up to 40% of Americans who do have paid leave through their states. So there's a whole range. The states that have paid leave are California, Colorado, Connecticut, Delaware, Illinois. Well, Illinois. Not really. It's like 40 hours. Maine. Maryland. Massachusetts. Minnesota.

Also it's only starting in 26. Delaware is also starting in 26. So is Maine, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington. Most of them are going to be around 14 weeks. And then you have some of them that are longer, like California, New Jersey, Massachusetts, those are kind of the top three, I would say.

**Daphne Delvaux:** [00:27:33] And when it comes to the paid leave programs, these are systems that people pay into. So the employer doesn't pay you. This is also a lot of the misconceptions that we see. The employer doesn't pay you. Instead, we pay ourselves like we pay into a fund. Everyone pays into it. And then you kind of get the money back. There is also federal paid leave, actually, but it only is available to federal employees. It's called FEPLA. It's one of the federal ones to say but when people say there's no federal paid leave, truly there is one, but it's not available to everyone. So one of the ways that we've advocated for federal paid leave is by making people more expansive to everyone, but so far, we have not been successful in that advocacy effort. And so those are the states. If you do not live in one of those states, then your leave. Paid leave is going to be subject to your employer's generosity.

**Sarah Trott:** [00:28:34] And paid leave. Is that full pay? Is that part pay?

**Daphne Delvaux:** [00:28:39] No. So it's mostly going to be a percentage, usually 60 or 70%, up to 90% in Washington and in California. And then we have to also and this is where it gets really complicated. And I don't want to lose any of you. But that's because they don't call it maternity leave. Maternity leave actually doesn't exist in the legal sense. There's only medical leave and there is bonding leave. So there's going to be disability benefits and also bonding benefits. And those are two separate sets of benefits. The disability benefits and the disability leave is to use when you are recovering physically from birth or from a postpartum condition or a pregnancy condition. Bonding is to take care of a new baby.

What I see often is that mothers will take disability, and then they don't know that they actually have bonding leave or bonding benefits. And this is why we see a lot of mothers return to work at six weeks postpartum because their doctors clear them to go to work.

So they're like, oh, I guess I should go back to work. But they don't know that under FMLA, FMLA, in every state statute you can actually switch to bonding, leave and stay at home. No one's really teaching these moms that. So while a lot of mothers definitely are not supported at work and don't have the rights, it is also true that a lot of mothers are assuming they have no rights and that they are kind of going back to work because they just have never been told that they can keep their full leave. And I know we're going to talk about extending leave as well. That's another thing that no one's ever told them. So what I see is it's a both and there is not enough maternity leave in the US, and mothers don't even know about the options that they have.

**Sarah Trott:** [00:30:30] Yeah. It's doubly negative. Let's blow this out of the water. Well, and so the point about, you know, even being only a percentage of pay. So even if you do know you have some paid leave, you may want to put some savings aside. If you're planning for a family planning to get pregnant or pregnant now and you're looking forward to that leave. Make sure you understand what your budget requirements are going to be, and that you might have a need to set aside some savings to help supplement that. While you're maximizing that time that you're at home with your new baby.

**Daphne Delvaux:** [00:31:01] Yeah, and the differential can be very difficult. This is why California last year increased it from it was 60 to 70%. And now it's 90% of most people. So so because a lot of people were kind of going back to work, they were like, this is great, but I can't afford life on 60 to 70% of my pay. So yeah. And also companies sometimes will supplement to 100%. This is called an integration policy and you definitely want to ask your employer about that. Then you're at 100%.

**Sarah Trott:** [00:31:35] Yeah. Some of the more modern, larger tech companies are doing a fabulous job of paying full pay to their employees for up to a year, and I think that's really encouraging to see. But not all employers can afford that. So it's often down to the families and the parents themselves to put their savings aside and make it work for them.

**Daphne Delvaux:** [00:31:56] Yeah. And even if your company has paid leave as a policy because it's a perk and it's not a right. Companies are actually allowed to change our minds about that. So, for example, this is what happened with Twitter. Twitter had this really, really good paid leave policy. And then Elon came in and just gutted the whole thing, like while people were on the program. And it just kind of caused this chaos. So with the changing winds of management, they can change their minds or if economically things are tough. So just something to keep in mind is that when your company offers paid leave as a policy that is not a right that you have, that is something that can absolutely go away. So you just want to be prepared regardless.

**Sarah Trott:** [00:32:44] Very good point. Be ready with a backup plan.

**Daphne Delvaux:** [00:32:51] In case Elon buys your company.

**Sarah Trott:** [00:32:55] I hope not. The backup Elon plan. We wouldn't say it if it hadn't happened.

**Daphne Delvaux:** [00:33:09] Right?

**Sarah Trott:** [00:33:10] So what I'm hearing is there's just a huge range of variability, state by state, for different types of leave for paid versus unpaid. and certainly kind of talking about tech and startups, there are all kinds of small businesses, private companies who, you know, if you have a conversation with them, if they're flexible with you, you may be able to come to an agreement to say, hey, this might not necessarily be you know, part of our standard policy. But, you know, for employees who are really valued, you may be able to negotiate something for yourself that's specific to you. And working with HR and putting something in writing around, holding your job for a bit longer if you want a longer period of time, even if it's unpaid, if that's something that you can afford and you want to do. Yeah.

**Daphne Delvaux:** [00:34:00] And look into intermittent leave. We we often assume maternity leave or any sort of leave is like, you're out of work and then you're back at work when there's kind of a lot in between. So you can ask to work part time. You can

ask to work remote. You can ask to take some of your leave later. So, you know, you can coordinate with your partner that you kind of stagger your leave And that you're taking certain blocks. Employers don't tend to advocate it because it's a pain in the ass to set this up. But employees can look into things like, how do I actually structure my leave rights in a way that makes most sense? It doesn't have to be like a 12 week block or a six month block. Like it can actually be more of a phase.

**Sarah Trott:** [00:34:46] Yeah. So how does that work? Like let's say there are two working parents. They both have some leave that they have the right to. Yeah. How would you help them maximize that and structure that. Yeah.

**Daphne Delvaux:** [00:34:57] So what I do is I have both of them take some leave when the baby is born just for bonding purposes. But then I have the non-birthing parent. So usually that's dad. I send them back to work, and then when the mom is out of leave, then the dad stays home. Or sometimes I have the mom save some of her bonding leave if she feels overwhelmed when she goes back to work. Sometimes she enjoys it. Sometimes it's a lot. So when we can save some of her bonding leave, we can make sure that we bookmark like we protect her and we kind of can offer her that time if she feels overwhelmed or if she wants to take it when the baby is a little bit older. And it has to be taken within the first year of birth. So I have her save usually like two weeks also because you never know with the baby. Sometimes the babies get sick or there's something else that comes up and then when you or your own health and when you have exhausted all of your leave rights and options, you're kind of committing to never taking any time away. So that is really tough. So I usually just have her save like a week to two weeks in or leave bank.

**Sarah Trott:** [00:36:15] Okay. Yeah. And what about same sex partners. How does that differ for just generally in terms of rights?

**Daphne Delvaux:** [00:36:23] So only the birthing parents can take advantage of any medical and disability rights, both medical leave and also disability benefits any accommodations, pregnancy or postpartum accommodations those are only available to the birthing parent. Same sex parent can only take advantage of bonding leave rights,



so usually that's going to be in the form of FMLA. A 12 week bonding leave. A lot of people don't know that the non-birthing parent, the dad, or the same sex mom or dad can take 12 weeks if they're eligible for FMLA because we tend to think of FMLA as a medical leave. But it is also a caretaker leave. So it is also available for 12 weeks of being with your baby.

**Sarah Trott:** [00:37:10] Right. And it's unpaid in that example.

**Daphne Delvaux:** [00:37:14] Depends on the states. So in the conservative states it would be unpaid.

**Sarah Trott:** [00:37:21] Yeah. Got it. Okay.

**Daphne Delvaux:** [00:37:23] Yeah, but in the states that have a paid leave program, it would be paid under the Benefits family leave program.

**Sarah Trott:** [00:37:31] Okay. Got it. And there's some basics around eligibility. I know it's going to be super high level here because it's again, I think the answer with all of this is do your research where you live and find out what's what, especially. And then also like with your employer what they have as an offering. But eligibility is also a thing. Usually you have to be working for a certain amount of time with that company.

**Daphne Delvaux:** [00:37:51] Yes. Yeah. So you have. So again this depends on the state. And I have this all laid out like state by state. So there's going to be some small employer exemptions on the federal level. That's 50 employees. But some states it's smaller five sometimes. And then there's going to be usually you would need to have a year tenure and 1250 hours of working. Although again that can differ some. So I'm trying to summarize this as best as I can. When you live in a progressive state, you should assume that you have rights that you didn't know about. Like, that's really the most, like, generalized way that I can say it. If you live in a conservative state, you need to have worked 12 months for the same employer, 1250 hours in that preceding year, and the employer needs to have 50 or more employees. Yeah.

**Sarah Trott:** [00:38:55] Okay. So it's not a really easy to navigate system.

**Daphne Delvaux:** [00:38:57] Yeah. You need to do math. You need to do math to be able to be with your baby. That's what they decided. And this is such an old law. It's like over 30 years old and it's like, never really changed. It was like, passed during the Clinton years. Just very old. It was supposed to be just a placeholder because they always wanted it to be six months, and then they just kind of never circled back to it.

**Sarah Trott:** [00:39:34] Are there any changes on the horizon that are possibly coming that you're aware of?

**Daphne Delvaux:** [00:39:43] Only at the state level. In fact, I'm a little concerned. Some of these laws, like the Pregnant Workers Fairness Act. I'm a little worried about them, to be honest because we're seeing a return to states on any kind of federal laws. So if you want to take advantage of federal law, this would be the time. But getting laws passed on maternity will be really unlikely in the next four years. But the states are probably going to compensate for that. They're going to do some really cool stuff. Like there's all of the paid sick leave props passed.

So this is for sick leave like a couple of days usually. So there's definitely an appetite for these policies. And we see that, we see that everyone agrees on this. So this is not controversial or polarizing. It's just something that has to be set up. And people assume that it's expensive, which it's not because people actually pay into it. The employers don't pay for it. So what I'm finding here is that people are just really confused about it and overwhelmed and kind of misinformed. But on the state level, I think we're going to see some really great things.

**Sarah Trott:** [00:41:05] Yeah, that's encouraging for sure. Yeah. All right. So for our listeners who are putting their leave plans together, they're listening. They want to understand how to maximize these rights. We've talked about educating yourself based on where you live, finding out what your rights are, having those discussions with your employer, when would they have those discussions and what would they want to think through as well about? I mean, we talked about increments and whatnot, but what else

do they want to think about when putting that plan together and when do they want to communicate it and how do they communicate it.

**Daphne Delvaux:** [00:41:38] Yeah, very early. So don't wait to announce your pregnancy until you're 12 weeks. First of all, because it doesn't help anyone. When you wait, it doesn't help you. Because when you wait to announce your pregnancy, you can't use any of the accommodation rights you might need when you have morning sickness. And also you're not protected from any discrimination. So if you lose your job and you're pregnant, there's nothing you can do about that. And then from your employer's perspective, it's actually quite frustrating for them when you wait to announce your pregnancy because they have to. We can't be naive about this. They have to figure out an operational solution to your upcoming absence.

And they need time to do that. So I like to tell the moms to give notice as soon as they can. And do that in writing. And then also start actually prepping for your maternity leave very early because you never know what's going to happen. So you want to start keeping a list of all of your tasks, make sure that someone has access to that. And then you have to essentially write out an SOP (standard operating procedure) process for your own job so that someone can take it over. What a lot of moms do is they just kind of wait for their employers to figure this out, but in the end, it is you who's the expert on your job. And if you wait for your employer to figure this out, they might actually not do that because they have to protect your job, but they don't actually have to protect your work.

**Daphne Delvaux:** [00:43:01] So it's very possible if you leave and then you come back to work and all your projects are completely neglected and ignored, there's kind of nothing you can do about that. So the best thing you can do is actually to protect your own work. I mean, we take a lot of pride in our work. Sometimes we work on projects for many years and it's something that is important to us. So the better the the more you can prepare your employer and whoever is taking over your job, the easier it is for them and the easier it is for you. It's also a really good time to showcase just how incredible that you are in the sense of like, no one really knows what you do all the time, especially if you're a remote worker.

So if you can lay out, look at all of these things I do all the time, and then they can see that it's actually black and white on the page and they're like, oh, wow, okay. This lady is really vital, indispensable. It's a really good time actually. Yeah, showcase all of your skills and your talents and your contributions. So just really start tracking your work, start tracking your projects very early. A lot of people wait a long time before they have these conversations. They're going to wait until they're eight months pregnant before planning for their leave. That's really too late.

**Sarah Trott:** [00:44:15] Oh, yeah. You could go into labor early. Yeah. Predictable.

**Daphne Delvaux:** [00:44:19] Yeah, absolutely.

**Sarah Trott:** [00:44:21] So two things there, which is when to tell and then how to prep. On the when to tell point. You're not necessarily saying you announce it to all of your colleagues, but certainly you want to be telling HR in your boss. Yeah, yeah. And you can ask them to keep that private, especially if you're waiting to, to pass some benchmarks in your pregnancy where you feel like you're at a very stable point.

**Daphne Delvaux:** [00:44:45] Yeah, right. Yeah, absolutely.

**Sarah Trott:** [00:44:48] But it puts those protections in place, particularly around pregnancy discrimination. Which do you want to describe that just like really briefly.

**Daphne Delvaux:** [00:44:55] So pregnancy discrimination is when you're treated differently because you're pregnant. So there's a few ways that we detect that. The first is the most common - like your job was fine, they treated you fine. And then you announce your pregnancy and suddenly things are not fine. Suddenly you find yourself not invited to the luncheons or you find yourself, receiving kind of subpar work or less interesting work, or you find yourself iced out. That is the most common way that we see pregnancy discrimination. It's like the employer assumes you might not come back. The employer assumes you might have more babies. The employer assumes you're going to be distracted or not focused on work. Sometimes the employer, it's almost like

they see it as this personal betrayal of like, now I have to share my attention with your baby. And they get, you know, they get like that. They don't say that, of course, but they'll show it through their actions of like, well, this one's on the mommy track. So that is the most common way that we see it.

**Daphne Delvaux:** [00:45:56] Or sometimes when you see that you're being treated differently than others. So someone who's less qualified or hasn't been there that long has gets a certain promotion that they know you've wanted, but because you're pregnant, they might assume that that's not a good time for you. And sometimes it looks like what we call benevolent discrimination, where they stop giving you like they just assume that you just want to be home with your baby, or they assume you want to. You don't want to do the work trips, or you don't want to do certain demanding projects because now you have a baby, so it's best for you to just focus on that. So yeah. So those are some of the ways that we detect it. It's usually based on timing. Sometimes it's based on comments, you know like oh this is really inconvenient to us. We're really busy at this time. You're really leaving us hanging like those sorts of comments where the employer is expressing frustration about the mother's absence.

**Sarah Trott:** [00:46:55] Yeah, it's almost like they think they're doing you a favor.

**Daphne Delvaux:** [00:46:59] Unbelievable. Yeah, exactly like that of like, oh, you're so lucky that you still have a job. And we're so generous giving you time off, even though that's what the law demands of us. You know, it's like that kind of attitude.

**Sarah Trott:** [00:47:10] Yeah. Yep. And then your points around preparing. Love that we actually have another episode from a career coach. Her name is Sharon Weinberg, so we'll link to that in the notes as well. But she really works through the plan from a like, obviously a career coaching perspective of like, how do you create a way to minimize any operational disruption for you, your boss, your team or any partners at work? And how do you set yourself up for success when you're coming back? it not only speaks to the points you're making around demonstrating what you do, it could be very eye opening for your boss, maybe to see it all written down. Yeah.

**Daphne Delvaux:** [00:47:50] They don't know what you do. They're busy doing their thing.

**Sarah Trott:** [00:47:53] Yeah, for sure, which is kind of the point. Right. And then it also can provide some interesting leadership opportunities for maybe team members who report to you who want a chance to demonstrate their own skills, maybe give them some stretch activities to do for them too. So yes, Really appreciate that.

**Sarah Trott:** [00:48:12] And doing that early. Yes. I want to repeat that point, because that was such a good point that you made. Yeah, yeah.

**Sarah Trott:** [00:48:12] We should probably touch on when you return. What about asking for a place to to use your breast pump? What if they say, here's a bathroom?

**Daphne Delvaux:** [00:48:38] Uh, Can't do that. Yeah. Pumping. So the Pump Act went into effect last year, and it expanded eligibility for pumping before it was only available to hourly workers, which was strange because almost everyone's on salary, so it expanded eligibility. You need to be given a space to pump, which cannot be a bathroom. It has to be private. It has to be clean. And also time and time is as needed. So this is not something that should be negotiable. You know, where they're like, well, we've been meeting at this time, but what about at this time? Like you just go when you need to go, it is as needed so the pumping rights are available.

Also, the Pregnant Workers Fairness Act is a really beautiful law that allows pregnant and postpartum women to use accommodations such as telework or remote work, or more breaks if they're struggling. And you can also use this to extend your maternity leave. And this is how you know, when people look at my website or my numbers, because I get moms these super long maternity leaves and they're just like, how is that possible in America? It's because I actually use a combination of leave laws and accommodation laws, and I use them kind of as these like blocks, you know, that I stack on top of each other to get to these, big, like, long leaves.

**Daphne Delvaux:** [00:50:02] So that's how we do that. And again, it's by leaning into our disability rights. And usually that is for stress, for stress or depression. When the mother feels too stressed to go back to work, we can actually extend it. The maternity leave. So this is something that most people don't know. So that is one of the ones.

**Daphne Delvaux:** [00:50:22] So and then to very briefly touch on IVF and fertility. So fertility is covered under disability law as well. So mothers who are going through fertility treatment can take time off for those treatments, either under the Pregnant Workers Fairness Act or your leave laws. So what you don't want to do, for example, is you don't want to ask for PTO because PTO is not protected and a lot of mothers use PTO for medical appointments, also for prenatal appointments, and then end up without a job because the employer is like, sorry you exceeded your PTO or you came back late. so you actually want to rely on your rights for medical appointments as well?

**Sarah Trott:** [00:51:06] Okay. So you don't have to use your PTO if you're going to see the doctor for any kind of fertility treatments.

**Daphne Delvaux:** [00:51:10] Yeah, you really shouldn't because PTO is unprotected time. You need to be really explicit about whether I need this for pregnancy reasons or I need this for fertility reasons. And even though that's scary, right. But it's actually worse for your job to hide it because then the employer still has full control. And if you assert your pregnancy, which is a protected class, or your fertility treatments, which is also a protected class then you actually take your own control back because that's where the power lies is in the rights. And I think a lot of mothers are really scared to talk about these issues at work. They're scared to announce their pregnancies. And having been a litigator in these issues, on these issues, I can tell you that they're a lot more scared of you. Like, employers are really, really scared of these cases, you know, that we have brought so when you assert your rights in this way of like, hey, I'm giving you notice that I'm pregnant, or I'm giving you notice I'm going through fertility treatments.

They tend to be quite careful. I mean, of course bad things happen, but it's quite rare. I, of course, get calls by women all the time, but it's a lot more likely that things will be fine, because once you assert your rights, the employer is like, all right, we've got to

take this really seriously as they should. So just assume that things will go well, is I think my main message. Don't assume that it won't, that you'll get fired. And then sometimes when you're so scared, you know, we kind of act accordingly and we start to hide our morning sickness. We start to hide that we have a high risk pregnancy and that can be quite dangerous. So just always being transparent is even though it sounds scary, it is actually the best way to protect your job during and after pregnancy.

**Sarah Trott:** [00:53:08] Yeah. And you can keep that private with HR to the extent possible, right? Yeah. does HR have to tell your boss if you're taking appointments?

**Daphne Delvaux:** [00:53:22] Yea as needed. So HR there's no distinction between HR and everyone else. So there's no privacy right. In the workplace I think sometimes people confuse HIPAA with the right to have privacy at work, which that's not really what HIPAA means or stands for. so but once you tell HR, you have to assume they're going to tell all your managers. So if you're not ready for your managers to know, you can't tell HR, you can't really ask HR to keep a secret. They're not your confidante. They're not your friend. they have no reason to keep that secret. In fact, it really puts them in a tough spot because they have to start making plans, which will always involve your team. so that's not something I'd recommend. so I would say announce it once you're ready for people to know.

**Sarah Trott:** [00:54:18] Yeah. Yeah. That's fair. Yeah. Well, any final words you want to share with listeners?

**Daphne Delvaux:** [00:54:25] no. Just that you can do it. You know, I know it's unfair that during the most vulnerable time of your life, you've got to also take on this, like, massive legal project. and then I'm here for you. You know, you don't have to do the research on your own. This is something that has been figured out, like these roadmaps. Like, it's very much systemized. We have a process. There is. You know, you're not alone in this. You know, like, there is a whole realm of resources and information. so it's just just let me. Yeah, like, just come find me.



**Sarah Trott:** [00:55:06] Wonderful. Yeah. Well, I want to remind listeners again that Daphne's website, the mamattorney.com, is where you can go to get more information about her.

**Sarah Trott:** [00:55:16] And we're going to have a special offer for our listeners to join her resource site, which is the Liberated Mothers Society. it's a service where you can join and learn more information and get access to all kinds of resources that are available when you are in the midst of planning. And as we discussed, I think quite thoroughly, you're going to have to figure out information that's specific to where you live, what state you live in. for those of our listeners who are in the US and so we just encourage you to go check that out and see if it's a good fit for you. And we will have a discount code in the show notes. So check that out as well. And a link.

**Sarah Trott:** [00:55:55] So thank you so much again Daphne. We really appreciate having you on the program.

**Daphne Delvaux:** [00:55:59] Thank you so much.

**Sarah Trott:** You can subscribe to this podcast in order to hear more from us. [Click here for iTunes](#) and [click here for Spotify](#). Thank you for listening everyone and I hope you'll join us next time on the Fourth Trimester. The theme music on this podcast was created by Sean Trott. Hear more at <https://soundcloud.com/seantrott>. Special thanks to my true loves: my husband Ben, daughter Penelope, and baby girl Evelyn. Don't forget to share the Fourth Trimester Podcast with any new and expecting parents. I'm Sarah Trott. Goodbye for now.