

## Maternity Leave and Parental Leave

March 2011

Maternity and parental leaves are employee entitlements set out in Part 2, Division 7 of the *Employment Standards Code (Code)*.

The legislation entitles employees who qualify to a period of leave without pay, at the end of which they must be reinstated in their previous or alternative comparable job.

Employees are entitled to up to one year of unpaid, job-protected leave in the event of the birth of a child and up to 37 weeks on the adoption of a child under age 18.

Birth mothers can take up to 52 consecutive weeks of unpaid job-protected leave. This is made up of 15 weeks of maternity leave and 37 weeks of parental leave.

Fathers and/or adoptive parents are eligible for up to 37 consecutive weeks of unpaid, job-protected parental leave. Adoptive parents can take parental leave for any child under age 18.

Parental leave may be taken by one parent or shared between two parents but the total combined leave cannot exceed 37 weeks.

### Employee eligibility for leave

Employees must have worked 52 consecutive weeks with their employer to be eligible for maternity and/or parental leave under the *Code*. This requirement applies to both full-time and part-time employees.

If a pregnant employee has less than 52 consecutive weeks of employment, an employer cannot arbitrarily lay her off, terminate her employment, or require her to resign because of pregnancy or childbirth. This is because of the impact of human rights law on the health-related consequences of pregnancy. For more information see the section titled Human Rights Legislation.

## Beginning leave

Maternity leave can begin at any time within 12 weeks prior to the estimated date of delivery.

Parental leave can begin at any time after the birth or adoption of the child but it must be completed within 52 weeks of the date a baby is born, or an adopted child is placed with the parent.

The following conditions apply:

- If the pregnancy interferes with the employee's job performance during the 12 weeks before the estimated date of delivery, the employer can require the employee to start maternity leave. The employee must be notified in writing.
- An employee who takes both maternity leave and parental leave must take the leaves consecutively.
- An employee must take at least six weeks of maternity leave after the birth of her child, unless the employer agrees to early resumption of employment and the employee:
  - provides a medical certificate indicating that resumption of work will not endanger her health.
- If the employer employs both parents of a child, the employer is not required to grant leave to both employees at the same time.

## When to provide notice

### Notice to start leave

#### Maternity leave

An employee must give the employer at least six weeks' written notice advising when she intends to start maternity leave.

The employer can require the employee to obtain and submit a medical certificate certifying pregnancy and giving the estimated date of delivery.

If the employee fails to give the necessary notice, she is still entitled to maternity leave if she notifies the employer within two weeks of her last day at work and provides a medical certificate.

An employee who takes maternity leave is not required to give her employer notice before going on parental leave, unless she originally agreed only to take 15 weeks of maternity leave.

### Parental leave

An employee must give the employer at least six weeks' written notice to start parental leave.

Parents will still be eligible for the parental leave if medical reasons, or circumstances related to the adoption, prevent the employee from giving this notice. When this happens, written notice must be given to the employer as soon as possible.

Employees who intend to share parental leave must advise their respective employers of their intention to do so.

### **Notice to end leave**

Employees must give at least four weeks' written notice that they intend to return to work or to change their return date. This notice must be provided at least four weeks before the end of the leave. An employer does not have to reinstate an employee until four weeks after receipt of this notice.

Where an employee fails to provide this notice, or fails to report to work the day after their leave ends, the employer is under no obligation to reinstate the employee unless the failure is the result of unforeseen or unpreventable circumstances.

Employees are required to provide four weeks' written notice if they do not intend to return to work after leave ends.

### **Extension of leave**

The *Code* provides for 15 weeks of maternity leave and 37 weeks of parental leave with no provisions for extensions. While there is no obligation to do so, the employer can decide whether to approve an extension of the leave should unforeseen circumstances arise.

### **Obligations of the employer**

The *Code* does not require an employer to make any payments to the employee, or pay for any benefits, during maternity or parental leave. However, where an employer has benefit plans such as sick leave for employees, there may be obligations that arise under human rights legislation.

An employer cannot terminate an employee on maternity or parental leave, unless the employer suspends or discontinues the business.

Employees returning from maternity or parental leave must be reinstated in the same or a comparable position with earnings and other benefits at least equal to those received when the leave began.

If the business has been suspended or discontinued during the employee's maternity or parental leave, the employee must be reinstated if the business starts up again within 12 months after the end of the leave. The 12-month period runs from the date that the employee would have returned to work from leave.

## Human rights legislation

Under Alberta human rights law, employers are required to accommodate the health-related consequences of an employee's pregnancy and childbirth up to the point of undue hardship, regardless of how long she has worked for the employer. This means that even if a pregnant employee has worked for the employer for less than 52 consecutive weeks and is therefore not entitled to maternity leave under the *Code*, she still has rights to a leave from her employment for the health-related consequences of pregnancy and childbirth. Please see the "Becoming a Parent in Alberta" brochure at [www.employment.alberta.ca/documents/WRR/WRR-ES-PUB\\_becomingparentE.pdf](http://www.employment.alberta.ca/documents/WRR/WRR-ES-PUB_becomingparentE.pdf) for more information.

Human rights law impacts employers' responsibilities for matters such as providing access to sick leave benefits, modifying job duties of pregnant employees and determining when a health-related leave from employment shall begin. For more information, contact the Alberta Human Rights Commission at 780-427-7661 in Edmonton or 403-297-6571 in Calgary. To call toll-free from other Alberta locations, first dial 310-0000. You may also visit the Human Rights Commission website at <http://www.albertahumanrights.ab.ca>. There you will find the interpretive bulletins Rights and Responsibilities related to pregnancy, childbirth and adoption, and Duty to Accommodate.

## Employment insurance

Employment Insurance (EI) is a federal program that enables Canadians to receive benefits when they are not receiving wages due to being unemployed, ill, caring for a seriously ill family member, on maternity or parental leave. Questions regarding rules, procedures and the availability of benefits must be addressed directly to EI. The direct telephone number to inquire about Employment Insurance is 1-800-206-7218. You can also visit the Service Canada website [www.servicecanada.gc.ca/eng/sc/ei/index.shtml](http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml) for additional information.

## Disclaimer & copyright notice

This fact sheet contains general information, not legal advice. To interpret or apply the law, you must consult the *Employment Standards Code* and Employment Standards Regulation. This information is provided 'as is', without representation or warranty. The Government of Alberta will not be responsible for any loss or damage arising from your reliance on this information. This fact sheet is provided for your personal or educational use; it cannot be reproduced for commercial distribution.