Pregnancy and parental leaves in Ontario

A how-to guide for employers and payers to comply with employment standards pregnancy and parental leaves in Ontario

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Part A: Introduction

Overview

Most employers are aware that Ontario’s Employment Standards Act, 2000 (the “Employment Standards Act”) obligates them to provide secure leaves of absence for pregnant women and new mothers and fathers, but sorting out what that obligation means in practical terms is not so clear. That’s why First Reference has prepared this guide, Pregnancy and parental leaves in Ontario, featuring clear and up-to-date information, best practices and sample documents that will help organizations comply with the law and maintain healthy and strong relations with employees.

Pregnancy, childbirth and the initial weeks and months of parenthood offer many challenges for both employees and employers. Consider the following issues.

How should an employer accommodate a pregnant employee, if necessary? If an employee finds her pregnancy limiting her ability to perform certain parts of her job, the employer will likely need to accommodate her. Employers need to pay attention to their obligations under the Ontario Employment Standards Act and Human Rights Code. Experience shows that, where required, a pregnant employee can often be accommodated with minimum difficulty until her leave commences.

Even other employees who are soon-to-be parents may require accommodation to care for their pregnant partners in the time before birth. Employers have clear obligations with respect to offering parental leaves of absence for partners of new mothers, but it’s not clear what obligations an employer owes them before the birth.

Employers must continue to provide certain benefits (i.e., pension plans, life insurance plans, accidental death plans, and extended health and dental plans) to an employee during pregnancy or parental leave, provided the employee meets certain conditions. Employers who provide benefits such as sick pay plans and short- or long-term disability plans need to determine whether they must continue these plans.

Although employees who become parents (by birth or adoption) are entitled by legislation to parental leave, few employees can afford to take a lengthy absence from work without pay. The federal Employment Insurance Act permits the payment of special EI benefits to qualified employees related to maternity, parental and sickness leaves.

Employment standards laws in each jurisdiction in Canada, while similar, provide different benefits. This guide covers the obligations of Ontario employers and organizations with employees in the province with respect to pregnancy and parental leaves of absence, specifically the obligations under the Ontario Employment Standards Act. Employers must understand their obligations under the Human Rights Code as well.

Of course, employers also have to consider how they’ll fill the gap the pregnant employee or new parent will open up when the pregnancy or parental leave commences.

After reading this guide, readers will be able to answer the following questions and more:

- Who is eligible for pregnancy or parental leave?
- How much notice of their intention to take pregnancy or parental leave must employees give to their employer?
- How long can pregnancy or parental leave last?
- When does pregnancy or parental leave begin?
- What if the employee is forced to stop work...
because of difficulties related to pregnancy or a miscarriage or stillbirth?

- Is written notice required if the employee ends pregnancy or parental leave early or does not intend to take parental leave?
- What effect does pregnancy or parental leave have on employee entitlement to vacation and other benefits?
- Does the employer have to hold the employee’s job for her or him?

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This guide was reviewed by the employment law experts at **Stringer LLP** (formerly Stringer Brisbin Humphrey), the legal editors for The Human Resources Advisor for Ontario Employers and Accessibility Standards PolicyPro. For over 45 years, Stringer LLP has represented and advised employers in all areas of employment, labour and human resources law.
Part B: Legal requirements

Pregnancy leave

Entitlement to pregnancy leave

Pregnancy leave of absence provisions are outlined in Part XIV of Ontario’s Employment Standards Act. These provisions are summarized below.

An employee is entitled to at least 17 weeks of unpaid leave of absence for pregnancy, providing she has been employed with the employer for at least 13 weeks preceding the estimated date of delivery. The leave can begin up to 17 weeks before the expected date of delivery. However, the leave must begin no later than the expected due date or the actual date the mother gives birth, whichever comes first. The mother can start collecting Employment Insurance maternity benefits either up to eight weeks before she is expected to give birth or on the week she gives birth (for more information on Employment Insurance maternity benefits, refer to the section on Maternity Employment Insurance benefits). This means the employee can plan to work right up until her due date, but no later.

As noted by the Ontario Ministry of Labour, it is important to remember that an employee does not have to actively work the 13 weeks prior to the due date to be eligible for pregnancy leave. It is only necessary that she be hired at least 13 weeks before the baby is expected to be born.

Pregnancy leave provisions apply to full-time, part-time, temporary and contract employees. Pregnancy leave is available only to the natural mother (also referred to as the birth mother).

Notice of intent to take pregnancy leave

The employee is required to give the employer at least two weeks of written notice of the date that the leave is to begin and, if the employer requests it, a certificate from a legally qualified medical practitioner stating the due date.

See Employment Insurance benefits below for details on EI benefits and processes for employees on pregnancy leave.

If the employee does not specify the duration of the leave, it will be assumed she wishes to take the maximum amount of leave.

An employee who has given notice to begin a pregnancy leave may change the notice to an earlier date by giving at least two weeks’ written notice before the earlier date. She may change to a later date by giving two weeks’ notice before the leave is to begin.

It is important to note that an employee who fails to give the required notice does not lose her right to a pregnancy leave.

Seniority and benefits plans

Seniority for all purposes continues to accrue during pregnancy leave. However, the period of the employee’s leave is not included in determining whether she has completed a probationary period under an employment contract.

An employer must continue to provide and make contributions to pension plans, life insurance plans, accidental death plans, and extended health and dental plans, unless the employee gives written notice to the employer that she does not wish to participate or does not wish to continue to make employee contributions (if any) to such plans.

Based on the Employment Standards Act 2000 – Policy and Interpretation Manual by the Employment Practices Branch of the Ontario Ministry of Labour, employees who are on pregnancy leave can continue to participate in other benefit plans if employees who are on other types of leave are able to continue to participate in those plans. In addition, a female employee may...