

# LABOUR & EMPLOYMENT UPDATE

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## MULTIPLE BIRTHS - AN EI CLAIM FOR EACH PARENT?



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In a somewhat surprising decision, an Employment Insurance Board of Referees panel has granted simultaneous Employment Insurance ("EI") benefits to both parents of newborn twins. Effectively, the decision sets the stage for each parent who qualifies for EI benefits to be able to make a separate 35-week parental leave claim per child where there is a multiple birth.

Shortly after Christian Martin and Paula Critchley welcomed twin baby girls into the world, Mr. Martin applied for 35 weeks of benefits to care for one baby and Ms. Critchley applied for 35 weeks of parental benefits to care for the other.

Ms. Critchley's application was approved but Mr. Martin's claim was denied based on Ms. Critchley's claim. Mr. Martin appealed the decision to the Board of Referees. He argued that the relevant section of the Employment Insurance Act (the "Act") allows benefits based on the claimant's status as a claimant and is not restricted by a combined claim by both parents.

The section in the Act stated that once one 35-week claim has been made for one or more children, no further 35-week claims are allowed. The Board determined that the section in question allowed each parent to make a 35-week claim for each separate child.

The Federal Government has 60 days to appeal. The Government may also amend the Act to specifically address the benefits available to parents of twins or other multiple babies.

Whether or not the legislation is altered, this decision may cause employers to question whether each of the parents in such a situation would be entitled to a full 35-weeks off of work for parental leave. Where an employer employs both of the parents some further issues may also arise.

The Alberta Employment Standards Code (the "Code"), provides that 37 weeks of parental leave must be granted to one parent or shared by both. Thus, under this legislation, if more than the shared 37 weeks is desired, one of the parents will have to request the time off in some form other than parental leave, depending upon the employment contract and the particular circumstances involved.

What if both parents work for the same employer? Under the Code one parent may take the 37 weeks or the two parents can share the 37 weeks. The decision to allow the parent not taking parental leave time off is at the employer's discretion. However, refusing time off without considering the circumstances of the parent may trigger human rights issues based on family or gender status. However, be aware that employers are not required to grant both of the parents parental leave at the same time.

Given the rise in multiple births in recent years the issue of parental leave in such circumstances is likely to be addressed in legislation or court and tribunal decisions in the near future.

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