

## Current Workplace Issues

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As a result of recent amendments to the Federal *Employment Insurance Act*, a number of questions have arisen regarding the new extended maternity, adoption and parental benefit provisions and their interaction with the Provincial Employment Standards Legislation.

Previously, the Employment Insurance Program provided 15 weeks of maternity benefits and ten weeks of parental benefits for a total of 25 weeks or about six months. The recent changes increase the duration of parental benefits to 35 weeks for biological and adoptive parents, and allow for a maximum of 50 weeks of combined maternity, parental and sickness benefits. The number of insurable hours that an individual must accumulate before being entitled to receive either maternity or parental benefits has been reduced from 700 to 600 hours.

As well, in the past, where parental benefits were shared, it was necessary that each parent serve a two-week waiting period without benefits. Under the new provisions, there will be only one waiting period for both parties. The amendments also provide that parents may earn the greater of \$50.00 or 25 % of their weekly parental benefits without a deduction from their benefits.

The above changes apply only to parents whose child is born or placed in their care for adoption on or after December 31, 2000.

The Federal Employment Insurance Act provides for financial benefits during maternity and parental leave but does not deal with an employee's entitlement to leave from their employment. Leave provisions are found under the Canada Labour Code, for employees under federal jurisdiction, and in the Employment Standards Code, for employees under provincial regulation. The Federal Government has announced their intention to amend the Canada Labour Code so that the period for leave and job protection will correspond to the newly extended Employment Insurance Benefits. However, there has as yet been no indication that the provincial legislation, which currently provides for less than five months leave, will be amended.

Under the provincial Employment Standards Code an employee who has worked for at least 12 consecutive months is entitled to 18 weeks maternity leave without pay. During this leave, an employee is not entitled to wages, general holiday pay or vacation pay credits from the employer. Upon return to work however, an employee does not have to requalify for holidays, and the anniversary date for calculating vacation and vacation pay entitlements remains unaltered.

Also, under the Employment Standards Code, an employee is entitled to adoption leave without pay if the employee is an adoptive parent of a child under the age of three. In order to qualify, the employee must have worked 12 consecutive months and have given the employer notice of leave at least two weeks before the employee reasonably expects to first have custody of the child. Adoption leave is for not more than eight weeks beginning on the day the adoptive parent first has custody.

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With respect to both maternity and adoption leave, an employee has a right upon his or her return to work to either be reinstated in the position previously held or in a position of a comparable nature. When, as a result of a change in the business, an employer is unable to reinstate or provide alternative work, there is a continuing requirement to reinstate as soon as a further change to the business permits. This requirement extends for 12 months from the date on which the leave ends.

If an employee wishes to take advantage of the extended benefits now provided under Federal Legislation, they must seek permission from their employer to extend their leave beyond the provincially legislated time. While employers are encouraged by the Alberta Government to accommodate such requests, they may refuse the request if they have good business reasons for doing so, or if they would suffer undue hardship. Presumably, the Courts would require the employer to have valid reasons for refusing the request.

If the employer does not grant the leave but the employee takes it nonetheless, it remains to be seen what remedies will be open to either side. In the absence of permission to take the leave, will the employee be deemed to have quit? Will the employer have just cause for terminating the employee? Will the provisions under the provincial legislation, which provide a right to reinstatement for 12 months after the leave, prevent the employer from firing the employee?

Hopefully this issue will be addressed in the provincial legislation before too long. Until it is, both employers and employees should seek legal advice before making decisions regarding maternity or parental benefits.

**DISCLAIMER** this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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