

Protecting You and Your Child: Maternal and Parental Rights and Benefits at Work

Sandy just found out she's pregnant, Mary just had a baby and Jodi has finally decided to adopt a new born. They know nothing about each other but they have a lot in common. All of them are employees. All of them have a lot on their minds. They know that their employment will be affected in some way but none of them are sure how to proceed.

Sandy, Mary and Jodi's situations are not uncommon. According to Statistics Canada, just over 250,000 employees received some form of maternal or parental benefit in 2008. What we don't know is how many new or expecting mothers didn't get benefits because they were unaware that these benefits existed or worse, afraid of how their employers might react if they exercised their rights. What is clear is that although there are a number of laws that provide benefits to, and protect the rights of, new and expecting mothers at work, the mere existence of such laws does not guarantee that women like Sandy, Mary and Jodi will be able to secure the benefits they deserve or exercise their rights at work.

While education is only part of the solution, Sandy, Mary and Jodi could definitely benefit from a better understanding of their basic entitlements and rights in the workplace. And perhaps there's no better place to start than with a discussion of how federal legislation like the *Employment Insurance Act* and provincial legislation like Ontario's *Employment Standards Act, 2000* and *Human Rights Code* deal with rights of and benefits available to new and expecting parents.

The Employment Insurance Act: Maternity and Parental Benefits

The *Employment Insurance Act* is federal legislation that provides monetary benefits (e.g., maternity and parental benefits) to employees who are pregnant or caring for a newborn or adopted child. The

program is administered by Human Resources and Social Development Canada (“HRSDC”) and services are delivered by Service Canada.

Maternity benefits are only available to birth mothers or surrogate mothers. To be eligible, a woman typically has to have worked at least 600 hours in the last year. Benefits are based on 55% of a mother's average insured earnings and are capped at a maximum of \$447 per week. Whether you can get the maximum depends on what your earnings were in the last 26 weeks and a number of other factors. Maternity benefits are payable for a maximum of 15 weeks. While a mother can choose to begin collecting benefits as early as 8 weeks before her expected due date, the legislation is clear that in most cases, the period in which she can actually receive benefits is limited to 17 weeks after the baby's expected due date or after the baby's actual date of birth, whichever is later.

In contrast to maternity benefits, parental benefits are available to eligible biological or adoptive parents – men and women - while they are caring for a new-born or adopted child. Like maternity benefits, parental benefits are based on 55% of a parent's average insured earnings, are capped at a maximum of \$447 per week and typically require that the parent have worked at least 600 hours in the last 52 weeks. Parental benefits last for a maximum of 35 weeks and must be collected within 52 weeks of the child being born or the date of adoption. One parent can choose to collect all of the benefits or they can be shared between both parents, so long as the combined amount received does not exceed 35 weeks worth of benefits.

Employment Standards Act, 2000: Pregnancy and Parental Leaves

In every jurisdiction in Canada, there is employment legislation that sets out minimum standards that employers and employees must follow. Most employees and employers in Ontario are covered by a piece of legislation called the *Employment Standards Act, 2000*. Whereas the *Employment Insurance*

Act provides employees with monetary benefits, the *Employment Standards Act, 2000*, like other minimum standards employment legislation in other jurisdictions, provides employees with the right to take unpaid time off work (i.e., leaves) if they are pregnant or when a baby or new born first comes under their care.

Pregnancy leaves are only available to women and can last a maximum of 17 weeks. In order to be eligible for the leave, you must have worked for your employer for at least 13 weeks before your baby's expected birth date. If you intend to take a pregnancy leave, you must notify your employer in writing of your intention to do so at least two weeks before you expect to take the leave. Generally speaking, the earliest you can begin a pregnancy leave is 17 weeks before the expected birth date of your child and once you begin it, you can't stop and begin again – you have to take your leave all at once.

Parental leaves are available to male and female parents. A “parent” includes a birth parent, adoptive parent or a person who is in a relationship with a parent of a child who plans on treating the child as his or her own. For birth mothers, the leave can last a maximum of 35 weeks. For all other parents, the leave can last a maximum of 37 weeks. While birth mothers typically begin their parental leaves right after their pregnancy leaves end, the legislation requires other parents to begin their leaves within 52 weeks of the baby's birth or when their child first came into their care, custody and control. In order to be eligible for the leave, you must have worked for your employer for at least 13 weeks before you intend to commence the leave. If you intend to take a parental leave, you must notify your employer in writing of your intention to do so at at least two weeks before you expect to take the leave.

Although pregnancy and parental leaves carry with them no monetary benefit, their importance cannot be overstated. Once an employee exercises her or his rights surrounding pregnancy and/or parental leaves under the *Employment Standards Act, 2000*, they continue to earn credit towards their seniority

and length of service and to receive certain work-related benefits. Furthermore, employers are prohibited from punishing an employee for asking about or exercising her or his right to a pregnancy or parental leave.

Sex Discrimination under Ontario's Human Rights Code

Like human rights legislation in other jurisdictions across Canada, Ontario's *Human Rights Code* prohibits discrimination and harassment in employment on the basis of sex and family status as well as a number of other grounds. The *Human Rights Code* is enforced by the Human Rights Tribunal of Ontario and applies to employees in provincially regulated workplaces in Ontario. Generally speaking, the *Human Rights Code* provides employees who are expecting, recently had a baby or are adopting a baby with an additional and potent layer of protection.

If you or someone you know can relate to Sandy, Mary or Jodi's situations and want to find out more about your rights at work, consider contacting an employment or human rights lawyer or visiting the websites of the government agencies listed above. If your employer has violated your maternal and paternal rights at work, Franklin Law is ready and eager to provide you with advice, support and representation in pursuing the redress you deserve.