



# Rights and responsibilities related to PREGNANCY, CHILDBIRTH & ADOPTION

## INTERPRETIVE BULLETIN

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This bulletin cites a number of court decisions and human rights tribunal decisions. For information on where to find the complete text of these decisions, see References on page 8.

This interpretive bulletin explains the provisions of Alberta's human rights legislation, the *Human Rights, Citizenship and Multiculturalism Act* (the *Act*), as it relates to pregnancy and childbirth; leave due to pregnancy and childbirth; breastfeeding; and parental leave. It also discusses aspects of provincial employment standards legislation and federal employment insurance. The bulletin does not offer legal advice nor does it replace the relevant legislation.

If you need more detailed information or have questions about specific situations, please contact the organization that is responsible for your area of concern. See page 9 for a list of organizations and their contact information.

You will find the *Human Rights, Citizenship and Multiculturalism Act* and the *Employment Standards Code* on the Alberta Queen's Printer Web site at [www.qp.gov.ab.ca/display\\_acts.cfm](http://www.qp.gov.ab.ca/display_acts.cfm). If you do not have access to the Web, you can buy the *Act* and the *Code* from the Queen's Printer. See page 9 for contact information.

## Introduction

The purpose of this interpretive bulletin is to:

- ◆ inform women about their rights in the area of employment related to pregnancy, leave due to pregnancy or childbirth, and breastfeeding
- ◆ inform biological and adoptive parents about their rights related to parental leave from work
- ◆ inform employers about their responsibilities related to employees who are pregnant, breastfeeding, or requesting maternity or parental leave

### **Pregnant women are protected from discrimination**

In Alberta, the *Human Rights, Citizenship and Multiculturalism Act* protects people from discrimination on the basis of gender. This includes protection from discrimination because of pregnancy and breastfeeding.

The right to equal treatment without discrimination because of gender, including pregnancy and breastfeeding, applies in all of the areas protected by the *Act*:

- ◆ employment practices
- ◆ employment applications and advertisements
- ◆ residential or commercial tenancy
- ◆ goods, services, accommodation or facilities customarily available to the public (for example, restaurants, stores, hotels or provincial government services)
- ◆ statements, publications, notices, signs, symbols, emblems or other representations that are published, issued or displayed before the public
- ◆ membership in trade unions, employers' organizations or occupational associations
- ◆ equal pay (When employees of any sex—male, female or transgender—do the same or substantially similar work, they must be paid at the same rate.)

Most of the complaints that women file with the Alberta Human Rights and Citizenship Commission because of pregnancy, including breastfeeding, are related to employment. This bulletin focuses on situations that occur in the workplace.

### **Employment standards and employment insurance also protect women and provide benefits**

In addition to being protected by human rights law, pregnant women are protected in the workplace by provincial employment standards. Women who meet requirements may also receive federal employment insurance maternity benefits. This bulletin offers selected information related to employment standards and employment insurance. For a more comprehensive discussion of these topics, contact the relevant organizations, which are listed on page 9.

## Definitions

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**In this publication, leave due to pregnancy or childbirth** refers to any of a variety of leaves that a woman requests due to pregnancy or childbirth. At a minimum, it includes the health-related leave that is a consequence of pregnancy or childbirth.

**Code-defined maternity leave** refers to the leave that a woman may be entitled to under the *Employment Standards Code*. Pregnant employees who have been employed by the same employer for at least 52 continuous weeks are eligible for *Code*-defined maternity leave. The *Code* requires the employer to reinstate the employee in the position she occupied before the leave, or to provide her with alternative work of a comparable nature.

## How does human rights law protect pregnant women?

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<sup>1</sup>**Undue hardship** occurs if accommodation would create onerous conditions for an employer, for example, intolerable financial costs or serious disruption to a business. The Supreme Court of Canada has ruled that employers have a legal duty to take reasonable steps to accommodate individual needs to the point of undue hardship. To substantiate a claim of undue hardship, an employer must show that they would experience far more than minor inconvenience.

In Alberta, it is contrary to the *Alberta Human Rights, Citizenship and Multiculturalism Act* to:

- ◆ treat women differently or create conditions that discriminate against women or make them feel unwelcome because of their pregnancy or breastfeeding
- ◆ ask women on job applications or in job interviews if they are pregnant or plan to have children
- ◆ fire, lay off or demote women because they are pregnant or breastfeeding
- ◆ deny a woman the decision to request a leave due to pregnancy or childbirth
- ◆ deny a woman the decision of when she will begin a leave due to pregnancy or childbirth
- ◆ prevent women from using their benefit plans for the health-related part of their leaves due to pregnancy or childbirth

- ◆ deny a woman the use of any earned overtime or vacation time before, during or immediately after she starts a leave due to pregnancy or childbirth, if this option is available to other employees (If granting overtime or earned vacation time would cause the employer undue hardship, it may be acceptable for the employer to deny this use of earned overtime or vacation time.)
- ◆ ask women to pre-pay their benefit premiums, or to pay their employer's share of premiums during the health-related part of their maternity leaves
- ◆ refuse to rent an apartment or house to a woman because she is pregnant, except in the case of buildings that are designated for seniors or adults only
- ◆ refuse women use of, or access to, any type of public service such as hotels, restaurants, retail stores, schools and hospitals because they are pregnant or breastfeeding

## Employers' responsibility to accommodate pregnant employees

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An employee's pregnancy may prevent her from doing part of her job. This does not mean that pregnant employees should not or cannot continue to work. Employers in Alberta are required by the *Human Rights, Citizenship and Multiculturalism Act* to try to modify the workplace so that employees can continue to work.

Employers are expected to make sincere efforts to the point of **undue hardship**<sup>1</sup> to accommodate pregnant or breastfeeding employees in the workplace. Accommodation could include:

- ◆ changing a pregnant employee's job duties if her pregnancy prevents her from performing parts of her job. For example, a pregnant store clerk who, for health reasons, is restricted from lifting

more than ten pounds may not have to carry heavy boxes. Another employee may be able to do this task temporarily. The pregnant employee would then be expected to assume additional less physically demanding duties in exchange for not carrying heavy boxes.

- ◆ providing a flexible work schedule to accommodate the needs of an employee who is pregnant or breastfeeding. This may include time off for medical appointments, arranging for an employee to work from home, flexible hours, providing a quiet space for breastfeeding or allowing a female employee to arrange her scheduled breaks to breastfeed her child
- ◆ ensuring that female employees may have their infants brought in to breastfeed in the workplace
- ◆ making other changes in the workplace as requested by the pregnant or breastfeeding employee
- ◆ ensuring that a pregnant employee has full access to any earned benefits such as illness or vacation leave

Accommodation should begin as a discussion between the employee and the employer. Each case is unique and will require that both parties cooperate and communicate their concerns and needs in order to achieve a successful accommodation. Employees are expected to cooperate with an employer's sincere efforts to accommodate particular needs arising from their pregnancy or breastfeeding.

Negative comments or reactions from customers or staff about an employee's pregnancy or breastfeeding are not, in and of themselves, a reason to fire, lay off, or demote her.

An employer cannot force a pregnant employee to begin leave due to pregnancy or childbirth earlier than she chooses. Women may work as close to their due date as they wish, if their health permits. The only exception to this is when the employee's duties cannot be modified to accommodate her pregnancy. If an employer can show that accommodating an employee's pregnancy would cause the employer undue

hardship (such as excessive costs), then the accommodation may not be possible. If this situation occurs, the pregnant employee should be allowed to take any earned overtime, vacation leave or sick leave.

For more information about accommodating pregnant employees, contact the Alberta Human Rights and Citizenship Commission. See page 9 for contact information.

## *Employment Standards* Code-defined maternity and parental leave entitlements<sup>2</sup>

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An employee must have 52 continuous weeks of employment with their employer to be eligible for *Code*-defined maternity and/or parental leave. This requirement applies to both full-time and part-time employees.

**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.

**Birth fathers and adoptive parents** are eligible for up to 37 consecutive weeks of unpaid job-protected parental leave. Adoptive parents can take parental leave regardless of the age of the adopted child.

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

<sup>2</sup>*Employment Standards, Alberta Human Resources and Employment has provided this information about Code-defined maternity and parental leave entitlements. For more information, contact Employment Standards (see page 9) or visit [www.gov.ab.ca/hre/employmentstandards/about/matadopt.htm](http://www.gov.ab.ca/hre/employmentstandards/about/matadopt.htm)*

# Key human rights decisions about pregnancy and maternity leave

## Women are entitled to access earned illness benefits for health-related leaves during pregnancy

<sup>3</sup>*Brooks v. Canada Safeway Ltd.* (1989) 59 DLR 321 (S.C.C.)

<sup>4</sup>*Alberta Hospital Association v. Parcels* (1992) 17 C.H.R.R. D/167 (Alta. Q.B.)

<sup>5</sup>*Crook v. Ontario Cancer Treatment and Research Foundation* (1998) 31 C.H.R.R. D/401 (Ont. Ct. (Gen. Div.))

<sup>6</sup>*Brooks v. Canada Safeway Ltd.* (1989) 59 DLR 321 (S.C.C.)

<sup>7</sup>*Wight v. Ontario* (No. 2) (2000) C.H.R.R. Doc. 00-130 (Ont. Sup. Ct.)

*Brooks v. Canada Safeway Ltd.*<sup>3</sup>

In this landmark case, the Supreme Court of Canada laid out basic principles that prohibit discrimination in providing illness benefits during pregnancy:

- ◆ Pregnancy is a valid health-related reason for absence from the workplace.
- ◆ Pregnancy should be compensated by an employer's existing disability plan, where such plans exist.
- ◆ If an employer compensates employees during sick leave but excludes pregnant women from illness benefits, the employer is discriminating against pregnant women.

*Alberta Hospital Association v. Parcels*<sup>4</sup>

In this case, the Alberta Court of Queen's Bench stated that, during the health-related portion of their maternity leave, women are entitled to the same benefits as other workers on sick leave. The Court also indicated that pregnant women are not required to prepay benefits premiums before their maternity leave, nor are they required to pay higher premiums than other employees on sick leave.

## Employers cannot require women to access Employment Insurance maternity benefits instead of illness benefits

An employer cannot decide which portion of a woman's absence from work because of her pregnancy is health-related and which portion is voluntary maternity leave. This decision depends on the individual woman's pregnancy and birth experience as well as her personal choice. Two Ontario human rights cases addressed this issue.

*Crook v. Ontario Cancer Treatment and Research Foundation*<sup>5</sup>

An employee who had not requested maternity leave was nevertheless placed on an unpaid maternity leave by her employer, following the birth of her child. Dr. Crook had chosen to have her child while on vacation. She had not intended to take a maternity leave. After the birth of her child, she became ill. Her employer decided to place her on maternity leave, rather than allow her access to her illness leave benefits while she was absent from the workplace due to illness. Dr. Crook made a human rights complaint.

The board of inquiry that heard the case cited *Brooks v. Canada Safeway Ltd.*,<sup>6</sup> in which the court stated, "if an employer . . . enters into the field of compensation for health conditions and then excludes pregnancy as a valid reason for compensation, the employer has acted in a discriminatory fashion." The board of inquiry agreed with the Ontario Human Rights Commission that "an inherent component of the right to equal treatment is the ability of the individual to make a choice as to how and whether benefit options will be utilized. To force a woman to apply for government benefits under UI [unemployment insurance] rather than to receive benefits owing to her by virtue of her employment because the employer misguidedly believes it is better for her would be to 'imprison her in privileges.'" The board concluded that, where a woman does not request maternity leave, her employer cannot unilaterally place her on such a leave.

The employer appealed the board's decision, but the Ontario Court of Justice dismissed the appeal.

*Wight v. Ontario*<sup>7</sup>

An employee made a number of allegations against her employer, the Legislative Assembly of Ontario. One of the allegations was that the employer had discriminated against her by denying her sick leave benefits because of her sex (pregnancy). The Ontario Human Rights Commission relied on the Brooks



case for the proposition that pregnancy is a valid health-related reason for absence from work. The board of inquiry summarized the law: “An employee has the right to choose whether she will apply for maternity leave under the *Employment Standards Act* or apply for employment benefits, including sick leave. An employer who denies sick leave benefits in those circumstances is in breach of his obligation under the [*Human Rights*] Code to provide a workplace free from discrimination on the basis of sex.”

<sup>9</sup>Carewest and H.S.A.A. (Degagne) Re (2001) 93 L.A.C. (4th) 129 (Alberta)

The board found that there had been a breach of the *Human Rights Code* concerning the denial of sick leave benefits. The sick leave provisions of the policy were applied unequally to pregnant women in that, except for pregnancy, all other employees were eligible for benefits after 20 days of service, but benefits were denied to pregnant women for pregnancy-related illnesses. The employer acted promptly to amend the discriminatory aspects of its policy and paid the complainant the sick pay due to her under the policy.

## Human rights and labour decisions about breastfeeding

Recent decisions by courts and human rights commissions support a woman’s right to breastfeed in the workplace and in public. In a 1997 decision, the British Columbia Human Rights Commission found that Michelle Poirier’s employer discriminated against her by not allowing her to breastfeed her child in the workplace and at a public seminar sponsored by her employer.<sup>8</sup>

<sup>8</sup>Poirier v. British Columbia (1997) 29 C.H.R.R. D/87 (B.C.H.R.T.)

In January 2001, an arbitrator in Alberta ruled that an employer’s refusal to permit employee Doris Degagne to breastfeed her child in the workplace constituted discrimination on the basis of gender. In his decision, arbitrator John Moreau said “discrimination on the basis that a woman is breastfeeding is a form of sex

discrimination.” Doris Degagne had requested permission to have her child brought into the workplace to breastfeed. When her request was denied, she asked for a six-month leave of absence to continue breastfeeding, which was also denied. Her employer, Carewest Cross Bow, terminated Degagne when she did not return to work at the end of her maternity leave. The arbitrator ordered Carewest to reinstate Degagne and issue back pay to cover her loss of wages and benefits.<sup>9</sup>

## Benefit plans

Benefit plans differ from one employer to another. Some employers administer their own sick leave plans, such as salary continuance plans, and others have short-term or long-term disability insurance plans administered by insurance companies. Employers should ensure that their plans do not discriminate against employees taking leave due to pregnancy or childbirth or parental leave, and that employees are informed of existing benefit plans and how to apply for them.

In Alberta, employers are required by law to continue to pay employee benefit premiums during the health-related portion of an employee’s leave due to pregnancy or childbirth if they normally pay for employee benefit premiums when their employees are sick. An employer can ask a pregnant employee to provide relevant information on her medical condition to confirm she is under treatment, as in any other health-related absence.

A woman may begin a leave due to pregnancy or childbirth with no health problems, but may encounter them later in that leave. If so, she can access her sick leave benefit plan from work during the health-related portion of her leave. The health-related portion of her leave may occur before or after the birth of the child. The health-related portion of the leave will vary in length for each woman depending on her situation. A leave of some duration, whether long or short, is expected with any pregnancy.

If an employer offers sick leave benefits to employees during other types of leave (for example, educational leave or sabbaticals), they should also pay these benefits to employees on parental leave.

Employees who pay all or part of their employee benefit premiums are responsible for continuing to pay their portion of those premiums for the time they are on leave due to pregnancy or childbirth. An employer cannot require a pregnant employee to pre-pay these premiums. An employee is not required to pay the employer portion during the valid health-related portion of the leave due to pregnancy or childbirth. Normally, the employee and the employer continue to pay the same portions they paid while the employee was working, following the same schedule of payments. However, if an employee chooses to maintain some or all of the employee benefits while on the voluntary non-medical portion of the maternity leave or the parental leave, the employer could require the employee to pay both the employer and employee portions of the premiums. An employer could do this if it normally requires all employees who choose to maintain employee benefits while on other types of voluntary leave to pay both the employee and employer portions of the premium.

## Common questions about maternity and parental leave benefits

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### **Who is eligible to take *Employment Standards Code*-defined maternity and parental leave?**

Full-time and part-time employees who have worked at least 52 continuous weeks for their employer are eligible.

### **How long are *Code*-defined maternity and parental leaves?**

- ◆ Birth mothers are eligible to take up to 52 weeks of unpaid job-protected leave (15 weeks of maternity leave plus 37 weeks of parental leave).
- ◆ Fathers and adoptive parents are eligible to take up to 37 weeks of unpaid job-protected parental leave after the birth or adoption of a child.

The 37 weeks of parental leave may be taken by one parent or split between two parents. For example, a birth mother might take 15 weeks of maternity leave plus 20 weeks of parental leave, and the father could take the remaining 17 weeks of parental leave. In the case of an adoptive couple, the parents are entitled to up to 37 weeks of parental leave to be taken by one adoptive parent or split between both parents.

### **What if I have not worked for my employer for 52 continuous weeks?**

Under human rights law, your employer cannot fire you for being pregnant, even if you have not worked for the employer for 52 continuous weeks. Human rights law requires the employer to accommodate the health-related consequences of pregnancy and childbirth, even if an employee has not worked for an employer for 52 continuous weeks. This includes adjusting job duties to accommodate pregnancy-related health issues and providing health-related leave as necessary.

If your company provides benefits covering illness and you are eligible for these benefits, then you are entitled to access these benefits during the health-related portion of your maternity leave.

While the *Employment Standards Code* does not address the legal responsibilities of employers related to employees with less than 52 continuous weeks of employment, human rights law addresses the issue as noted above.

### **Who decides when my leave due to pregnancy or childbirth begins?**

Under human rights law, an employer is obligated to accommodate any physical disability, related to the pregnancy or otherwise, that the employee experiences. If physical disability interferes with the employee's job performance, the employer must make a sincere effort to accommodate the employee up to the point of undue hardship. If the employee cannot be accommodated on the job, the employee may be able to access available sick leave. An employer is **only** able to apply section 49 of the *Code* **after considering their obligations under human rights law.**

Section 49 of the *Employment Standards Code* states: "If during the 12 weeks immediately before the estimated date of delivery the pregnancy of an employee interferes with the performance of her duties, an employer may give the employee written notice requiring her to start maternity leave."

### **Who pays me while I am on parental leave or leave due to pregnancy or childbirth?**

The federal government pays Employment Insurance (EI) benefits for up to 50 weeks if you qualify for EI maternity or parental leave benefits. You need to have worked a certain number of weeks to be eligible to receive the EI maternity and parental leave benefits. To find out more about applying for EI maternity and parental leave benefits, contact Human Resources Development Canada (HRDC). See page 9 for contact information.

Some employers who provide benefits for sick or disabled employees offer a Supplementary Unemployment Benefit (SUB) plan, which tops up the EI benefits during the health-related portion of leave due to pregnancy or childbirth. This ensures that pregnant employees receive the same benefits as other employees who are absent from work because of illness or disability. Payments received under a SUB plan do not reduce the amount of EI benefits and can provide up to 100%

of the employee's normal sick leave salary during the health-related portion of leave due to pregnancy or childbirth.

Employees should contact their employers for more information about benefits they may be entitled to while on leave.

### **Will I get my job back after my Code-defined maternity or parental leave?**

Under the *Employment Standards Code*, an employer:

- ◆ cannot terminate an employee while they are on maternity or parental leave, unless the employer suspends or discontinues the business
- ◆ must reinstate the employee to their previous position or provide alternate work of a comparable nature at the end of the leave

## References

Listed below are the court decisions and human rights tribunal decisions that are cited in this interpretive bulletin. Copies of these decisions are published in the various reporters that can be obtained at the Law Society Library at the Court of Queen's Bench of Alberta in Calgary, Drumheller, Edmonton, Fort Macleod, Grande Prairie, Lethbridge, Medicine Hat, Peace River, Red Deer and Wetaskiwin. To contact the Law Society Library nearest you, visit [www.lawlibrary.ab.ca/locations.html](http://www.lawlibrary.ab.ca/locations.html) or check your phone book under Government of Alberta, Courts.

*Alberta Hospital Association v. Parcels* (1992) 17 C.H.R.R. D/167 (Alta. Q. B.)

*Brooks v. Canada Safeway Ltd.* (1989) 59 DLR 321 (S.C.C.)

Access this decision on the Supreme Court of Canada Web site at [www.scc-csc.gc.ca/judgments/index\\_e.html](http://www.scc-csc.gc.ca/judgments/index_e.html)

*Carewest and H.S.A.A. (Degagne) Re* (2001) 93 L.A.C. (4th) 129 (Alberta)



*Crook v. Ontario Cancer Treatment and Research Foundation* (1998) 31 C.H.R.R. D/401 (Ont. Ct. (Gen. Div.))

*Poirier v. British Columbia* (1997) 29 C.H.R.R. D/87 (B.C.H.R.T.)

*Wight v. Ontario (No. 2)* (2000) C.H.R.R. Doc. 00-130 (Ont. Sup. Ct.)  
Access this decision on the Ontario Human Rights Commission Web site at [www.ohrc.on.ca/english/cases/summary-1998.shtml](http://www.ohrc.on.ca/english/cases/summary-1998.shtml)

## For more information

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- ◆ The *Employment Standards Code* and the *Human Rights, Citizenship and Multiculturalism Act* are on the Alberta Queen's Printer Web site at [www.qp.gov.ab.ca/display\\_acts.cfm](http://www.qp.gov.ab.ca/display_acts.cfm).

If you do not have access to the Web, you can buy copies of the legislation from the Queen's Printer. Call (780) 427-4952 in Edmonton. To call toll-free from elsewhere in Alberta, first dial 310-0000.

- ◆ For information on **employment standards related to Code-defined maternity and parental leave**, contact:

**Employment Standards, Alberta Human Resources and Employment**  
Phone: (780) 427-3731 in Edmonton  
Toll-free in Alberta from outside Edmonton, first dial 310-0000  
[www.gov.ab.ca/hre/employmentstandards](http://www.gov.ab.ca/hre/employmentstandards)

A complaint must be filed with Employment Standards within six months of the date that employment was terminated.

- ◆ For information about **Employment Insurance**, contact:  
**Human Resources and Development Canada**  
Phone toll-free: 1-800-206-7218  
[www.hrdc-drhc.gc.ca/ae-ei/pubs/in201\\_e.shtml](http://www.hrdc-drhc.gc.ca/ae-ei/pubs/in201_e.shtml)

- ◆ For more information about rights and responsibilities related to pregnancy and maternity and parental leave under **human rights law**, contact:

**Alberta Human Rights and Citizenship Commission**

**Northern Regional Office**  
800 Standard Life Centre  
10405 Jasper Avenue

Edmonton, Alberta T5J 4R7  
Phone: (780) 427-7661  
Fax: (780) 427-6013

**Southern Regional Office**  
Suite 310, 525 - 11 Avenue S.W.  
Calgary, Alberta T2R 0C9

Phone: (403) 297-6571  
Fax: (403) 297-6567

To call toll-free within Alberta, dial 310-0000, wait for the prompt, and then enter the area code and phone number.

**TTY service for persons who are deaf or hard of hearing:**

Edmonton: (780) 427-1597  
Calgary: (403) 297-5639  
Toll-free within Alberta: 1-800-232-7215

E-mail: [humanrights@gov.ab.ca](mailto:humanrights@gov.ab.ca)  
[www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca)

A complaint must be filed with the Alberta Human Rights and Citizenship Commission within one year of the alleged incident.

# Pregnancy, Childbirth & Adoption – Reader Survey

**Please help us improve this publication by answering any or all of these questions:**

1. What information were you looking for in this publication?

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2. Please indicate  if you found:

all of the information you were looking for       most of the information you were looking for       none of the information you were looking for

3. Please indicate  how easy the publication was to understand.

very easy to understand       somewhat easy to understand       just right       somewhat difficult to understand       very difficult to understand

4. Please indicate  if the format (design) made the publication easy to read.

very easy to read       somewhat easy to read       just right       somewhat difficult to read       very difficult to read

5. What information could be added to this publication to make it more useful?

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6. Please list any other ideas you have for making this publication more useful.

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7. Please indicate  if you are:

- a representative of an employer or service provider
- an individual seeking information about your human rights
- working in human rights, human resources, law or another field related to human rights
- other (please specify) \_\_\_\_\_

Thank you for taking the time to complete this survey.

Please mail or fax your completed form to:

**Coordinator, Information Development, Education and Commission Services**

**Alberta Human Rights and Citizenship Commission**

800 Standard Life Centre, 10405 Jasper Avenue, Edmonton, Alberta T5J 4R7

Fax: (780) 422-3563

You can also submit this form electronically from our Web site at

[www.albertahumanrights.ab.ca/publications/Bull\\_pregnancy.asp](http://www.albertahumanrights.ab.ca/publications/Bull_pregnancy.asp)