

EMPLOYMENT STANDARDS FACT SHEET

MATERNITY LEAVE AND PARENTAL LEAVE

Maternity and parental leave are employee entitlements set out in the *Employment Standards Code (Part 2, Division 7)*. The legislation entitles employees, who qualify, to a period of leave without pay at the end of which they must be reinstated in their old or equivalent job. During maternity and parental leave employees may be entitled to maternity and parental benefits under the federal Employment Insurance (EI) program. With the introduction of parental leave and changes to maternity leave in early 2001, the duration of leave entitlement and the period of time for which EI benefits are available are very similar.

What Are The Employee Entitlements?

Alberta employees are entitled to up to one-year of unpaid, job-protected leave in the event of the birth and up to 37 weeks on the adoption of a child. This leave is available to parents of children born or adopted on or after December 31, 2000.

- Birth mothers can take up to 52 consecutive weeks of unpaid job-protected leave. This is made up of 15 weeks maternity leave and 37 weeks parental leave.
- Fathers and/or 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 but the total combined leave cannot exceed 37 weeks.

When Is An Employee Eligible For Leave?

Employees must have 52 consecutive weeks of employment with their employer to be eligible for maternity and/or parental leave under the *Code*. This requirement applies to both full-time and part-time employees.

If a pregnant employee has less than 52 consecutive weeks of employment, an employer cannot arbitrarily lay her off, terminate her employment, or require her to resign because of pregnancy or childbirth. For more information see the section titled *How does human rights legislation apply?*

When Can Leave Begin?

Maternity leave can begin at any time within 12 weeks of the estimated date of delivery.

Parental leave can begin at any time after the birth or adoption of the child but it must be completed within 52 weeks of the date a baby is born, or an adopted child is placed with the parent.

The following conditions apply:

- If the pregnancy interferes with the employee's job performance during the twelve weeks before the estimated date of delivery, the employer can require the employee to start maternity leave. The employee must be notified in writing.
- An employee, who takes both maternity leave and parental leave, must take the leaves consecutively.
- An employee must take at least six weeks of maternity leave after the birth of her child, unless the employer agrees to early resumption of employment and the employee provides a medical certificate indicating that resumption of work will not endanger her health.
- If the employer employs both parents of a child, the employer is not required to grant leave to both employees at the same time.

What Notice Must An Employee Give?

Notice to Start Leave

An employee must give the employer at least six weeks written notice about when she intends to start maternity leave.

- The employer may demand a medical certificate certifying pregnancy and giving the estimated date of delivery.
- If the employee fails to give the necessary notice she is still entitled to maternity leave if she notifies the employer within 2 weeks of her last day at work and provides a medical certificate.

.../2

- Contact our Information Centre at: **427-3731**
(Toll-free in Alberta by dialing 310-0000, then 780-427-3731)
- Visit our Web site at: www.gov.ab.ca/hre/employmentstandards

An employee who takes maternity leave is not required to give her employer notice before going on parental leave, unless she originally agreed only to take 15 weeks of maternity leave.

An employee must give the employer at least six weeks written notice to start parental leave.

- ♦ Parents will still be eligible for the leave if medical reasons, or circumstances related to the adoption, prevent the employee from giving this notice. When this happens, written notice must be given to the employer as soon as possible.

Employees who intend to share parental leave must advise their respective employers of their intention to do so.

Notice to End Leave

Employees must give at least four weeks written notice that they intend to return to work or to change their return date. This notice must be provided at least four weeks before the end of the leave. An employer does not have to reinstate an employee until four weeks after receipt of this notice.

Where an employee fails to provide this notice, or fails to report to work the day after their leave ends, the employer is under no obligation to reinstate the employee unless the failure is the result of unforeseen or unpreventable circumstances.

Employees are required to provide four weeks written notice if they do not intend to return to work after leave ends.

Can Leave Be Extended?

The Employment Standards Code provides for 15 weeks maternity leave and 37 weeks parental leave with no provisions for extensions. While there is no obligation to do so, it is up to the employer to decide whether to extend leave should unforeseen circumstances arise.

What Are The Employer Obligations?

The *Employment Standards Code* does not require an employer to make any payments to the employee, or pay for any benefits, during maternity or parental leave. However, where an employer has benefit plans such as sick leave for employees, there may be obligations that arise under human rights legislation.

An employer cannot terminate an employee on maternity or parental leave, unless the employer suspends or discontinues the business.

Employees returning from maternity or parental leave must be reinstated in the same or a comparable position with earnings and other benefits at least equal to those received when the leave began.

If the business has been suspended or discontinued during the employee's maternity or parental leave, the employee has hiring priority if the business starts up again within 12 months after the end of the leave.

How Does Human Rights Legislation Apply?

Under human rights law, employers are required to accommodate the health related consequences of an employee's pregnancy and childbirth up to the point of undue hardship, regardless of how long she has worked for the employer. This means that even if a pregnant employee has worked for the employer for less than 52 consecutive weeks and is therefore not entitled to maternity leave under the *Code*, she still has rights to a leave from her employment for the health-related consequences of pregnancy and childbirth.

Human rights law also impacts employer responsibilities for matters such as providing access to sick leave benefits, modifying job duties of pregnant employees, and determining when a health-related leave from employment shall begin. For more information, contact the Alberta Human Rights and Citizenship Commission at (780) 427-7661 in Edmonton or (403) 297-6571 in Calgary. To call toll-free from other Alberta locations, first dial 310-0000. Visit the Commission Web site at www.albertahumanrights.ab.ca. There you will find the interpretive bulletins *Rights and responsibilities related to pregnancy, childbirth and adoption* and *Duty to accommodate*.

What About Employment Insurance?

Alberta's job-protected maternity and parental leave provisions closely parallel EI maternity and parental benefits in timing and duration. For information on EI benefits, contact Human Resources and Skills Development Canada at 1-800-206-7218.